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*Proposed Counsel for Debtors and  
Debtors-In-Possession*

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

|   |                                    |
|---|------------------------------------|
| -----X  |                                    |
| In re:  | : Chapter 11                       |
| AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup> | : Case No. 20-11133 (MG)           |
| Debtors.  | : (Joint Administration Requested) |
| -----X  |                                    |

**APPLICATION FOR AN ORDER APPOINTING KURTZMAN  
CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING  
AGENT FOR THE DEBTORS PURSUANT TO 28 U.S.C. § 156(c),  
11 U.S.C. § 105(a), AND S.D.N.Y. L.B.R. 5075-1  
NUNC PRO TUNC TO THE PETITION DATE**

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Avianca Holdings S.A. and its affiliated debtors in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), as debtors and debtors-in-possession (collectively, the “Debtors”) respectfully represent as follows in support of this application (the “Application”):

**RELIEF REQUESTED**

1. By this Application, the Debtors seek entry of an order pursuant to 28 U.S.C. § 156(c), section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), and S.D.N.Y. LBR 5075-1, substantially in the form annexed hereto as **Exhibit A** (the “Proposed Order”), appointing Kurtzman Carson Consultants LLC (“KCC”) as the claims and noticing agent for the Debtors in connection with these Chapter 11 Cases *nunc pro tunc* to the date hereof (the “Petition Date”), including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors’ Chapter 11 Cases. In support of this Application, the Debtors submit the Declaration of Robert Jordan, Managing Director at KCC (the “Jordan Declaration”), attached hereto as **Exhibit B** and incorporated by reference herein.

2. The Debtors’ selection of KCC to act as the claims and noticing agent has satisfied the Court’s *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)* (the “Claims Agent Protocol”), in that the Debtors have obtained and reviewed engagement proposals from at least two (2) other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that KCC’s rates are competitive and reasonable given KCC’s quality of services and expertise. The terms of retention are set forth in the Agreement for Services and Addendum annexed hereto as **Exhibit C** (the “Services Agreement”); provided, however, that

KCC is seeking approval solely on the terms set forth in this Application and the proposed order attached hereto.

3. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be thousands of entities to be noticed. In light of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent is both necessary and in the best interests of both the Debtors' estates and their creditors.

4. By appointing KCC as the claims and noticing agent in these cases, the distribution of notices and the processing of claims will be expedited, and the clerk's office will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

#### **JURISDICTION**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
6. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
8. The bases for the relief requested herein are section 105(a) of the Bankruptcy Code, 28 U.S.C. § 156(c), and S.D.N.Y. LBR 5075-1.

#### **STATUS OF CASE**

9. On the date hereof, each of the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

10. Each Debtor is continuing to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No creditors' committee has yet been appointed in these Chapter 11 Cases (as defined below). No trustee or examiner has been appointed.

11. The Debtors have filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”).

### **BACKGROUND**

12. Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and in the Republic of El Salvador. It is the largest airline in the Republic of Colombia (the third largest Latin American economy), a code-share partner of United Airlines, and a member of the Star Alliance which, with 26 members, is the world’s largest global airline alliance. Established in 1919, Avianca has a 100-year legacy as a leading provider of air travel and cargo services in the Latin American market and around the globe. Avianca is well respected throughout Latin America and maintains significant customer brand equity and market share in the regions it services.

13. The Debtors operate an extensive network of routes from their primary hubs in Bogotá and San Salvador (in addition to other focus markets) and offer passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. With approximately 18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline market.

14. Despite an effective debt reprofiling executed in the second half of 2019, a significant improvement in Avianca’s liquidity position in early 2020, and the successful 2019 launch of the “Avianca 2021” transformation plan, the Debtors have been compelled to file these Chapter 11 Cases for one principal reason: the COVID-19 pandemic, which has affected the world’s population and economies in ways that have never been experienced. The reduction in travel as a result of the virus, and the measures undertaken to combat the virus, including

restrictions commercial flights and on travel, have had and will continue to have an adverse impact on the Debtors. As a result of the ongoing pandemic and its consequences, the Debtors are facing significantly reduced revenues from ticket sales and ancillary revenues, government prohibitions globally on international flights, substantial ongoing contractual obligations to their lessors, lenders and other creditors, and a near complete standstill of the global economy—all with significant continued impact and limited visibility as to the potential market recovery.

15. On March 20, 2020, the Republic of Colombia, consistent with what numerous other governments around the world have done, announced that it would close its airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures in various other of the Debtors’ primary markets, on March 24, 2020 the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020 until at least the end of April 2020; this situation has now been extended and is ongoing, and no date has been established for restart of flights.

16. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), which is being filed contemporaneously herewith and is incorporated by reference herein.

### **KCC’S QUALIFICATIONS**

17. KCC is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC’s professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases, as well as experience on matters of this size and complexity. KCC’s professionals have acted as debtors’ administrative advisor and/or official

claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide, including: The McClatchy Company, Case No. 20-10418 (Bankr. S.D.N.Y. Feb. 13, 2020); In re The College of New Rochelle, Case No. 19-23694 (Bankr. S.D.N.Y. Sep. 20, 2019); In re Windstream Holdings, Inc., Case No. 19-22312 (Bankr. S.D.N.Y. Feb. 25, 2019); In re Waypoint Leasing Holdings Ltd., Case No. 18-13648 (Bankr. S.D.N.Y. Nov. 25, 2018); In re 21st Century Oncology Holdings, Inc., Case No. 17-22770 (Bankr. S.D.N.Y. May 26, 2017); In re Westinghouse Electric Company LLC, Case No. 17-10751 (Bankr. Mar. 30, 2017); In re Toisa Limited, Case No. 17-10184 (Bankr. S.D.N.Y. Jan. 29, 2017); In re AOG Entertainment, Inc., Case No. 16-11090 (Bankr. S.D.N.Y. May 2, 2016); In re MPM Silicones, LLC, Case No. 14-22503 (Bankr. S.D.N.Y. Apr. 13, 2014); In re Metro Affiliates, Inc., Case No. 13-13592 (Bankr. S.D.N.Y. Dec. 3, 2013); In re Flat Out Crazy, LLC, Case No. 13-22094 (Bankr. S.D.N.Y. Feb. 20, 2013); In re Broadview Networks Holdings, Inc., Case No. 12-13581 (Bankr. S.D.N.Y. Sept. 14, 2012); In re Sunco Liquidation, Inc. Case No. 17-10561 (Bankr. D. Del. Mar. 13, 2017); In re Aquion Energy, Inc., Case No. 17- 10500 (Bankr. D. Del. Mar. 8, 2017); In re Eastern Outfitters, LLC, Case No. 17-10243 (Bankr. D. Del. Feb. 5, 2017). KCC will follow procedures that conform to applicable guidelines promulgated by the Clerk of the Court and the Judicial Conference, and as may be entered by the Court's order.

### **SERVICES TO BE PROVIDED**

18. This Application pertains only to the work to be performed by KCC under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and S.D.N.Y. LBR 5075-1, and any work to be performed by KCC outside of this scope is not covered by this Application or by any Order granting approval hereof. Specifically, KCC will perform the following tasks in its role as claims and noticing agent (the "Claims and Noticing Services"), as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in these Chapter 11 Cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these Chapter 11 Cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these Chapter 11 Cases;
- (b) Maintain an official copy of the Debtors’ schedules of assets and liabilities and statement of financial affairs (collectively, the “Schedules”), listing the Debtors’ known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a “core” mailing list consisting of all parties described in sections 2002(i), (j) and (k) of the Bankruptcy Code and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; and update said lists and make said lists available upon request by a party-in-interest or the Clerk;
- (d) Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;

- (g) Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- (h) Provide an electronic interface for filing proofs of claim;
- (i) Maintain the official claims register for each Debtor (the "Claims Registers") on behalf of the Clerk on a case specific website; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- (j) Provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- (k) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (l) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (m) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of KCC, not less than weekly;
- (n) Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk's review (upon the Clerk's request);
- (o) Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the Claims Registers and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- (p) Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- (q) Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the Debtors or the Court, including through the use of a case website and/or call center;



- (r) If the case is converted to a case under chapter 7 of the Bankruptcy Code, contact the Clerk's Office within three (3) days of the notice to KCC of entry of the order converting the case;
- (s) Thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing KCC and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- (t) Within seven (7) days of notice to KCC of entry of an order closing these Chapter 11 Cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the Chapter 11 Cases; and
- (u) At the close of these cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064 or (ii) any other location requested by the Clerk's Office.

19. The Claims Registers, if any, shall be open to the public for examination without charge on a case-specific website maintained by KCC.

#### **PROFESSIONAL COMPENSATION**

20. The Debtors respectfully request that the undisputed fees and expenses incurred by KCC in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A), and be paid in the ordinary course of business without further application to or order of the Court. KCC agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee for the Southern District of New York, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Services Agreement or

monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

21. Prior to the Petition Date, the Debtors provided KCC a retainer in the amount of \$65,000. KCC seeks to first apply the retainer to all pre-petition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Services Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

### **KCC'S DISINTERESTEDNESS**

22. Although the Debtors do not propose to employ KCC under section 327 of the Bankruptcy Code through this Application (such retention, if required, will be sought by separate application), KCC nonetheless has reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Jordan Declaration, KCC has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

23. Moreover, in connection with its retention as claims and noticing agent, KCC represents in the Jordan Declaration, among other things, that:

- a. KCC is not a creditor of the Debtors;
- b. KCC does not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the claims and noticing agent in these Chapter 11 Cases;
- c. by accepting employment in these Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- d. in its capacity as the claims and noticing agent in these Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States;

- e. KCC will not employ any past or present employees of the Debtors in connection with its work as the claims and noticing agent in these Chapter 11 Cases;
- f. KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as claims and noticing agent in these Chapter 11 Cases, KCC will not intentionally misrepresent any fact to any person;
- h. KCC shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;
- i. KCC will comply with all requests of the Clerk’s Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. none of the services provided by KCC as claims and noticing agent in these Chapter 11 Cases shall be at the expense of the Clerk’s Office.

24. KCC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

**BASIS FOR RELIEF**

25. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of bankruptcy courts, and authorizes the Court to use “facilities” or “services” other than the Clerk’s Office for administration of bankruptcy cases, provides as follows:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

26. In addition, Local Bankruptcy Rule 5075-1(b) provides in pertinent part as follows:

The Court may permit, subject to the supervision of the Clerk, the use of services and agents to maintain Court records, issue notices, file certain documents, and maintain and disseminate other administrative information when the costs of such services and agents are paid for by the estate.

S.D.N.Y. L.B.R. 5075-1(b).

27. The Court has promulgated the Claims Agent Protocol “to ensure the use of competitive process in the selection of claims and noticing agents in instances where the Court has authorized such use under 28 U.S.C. § 156(c).” In compliance with the Claims Agent Protocol, the Debtors obtained and reviewed engagement proposals from three court-approved claims and noticing agents, including KCC. The Debtors provided each court-approved claims and noticing agent the basic facts about these Chapter 11 Cases and asked each agent to submit a written proposal based upon such facts. The Debtors then asked each agent case-specific pricing questions. Ultimately, the Debtors chose KCC as their claims and noticing agent based on its capability and favorable price terms.

28. Local Bankruptcy Rule 5075-1(b) requires the retention—pursuant to an order of the Court—of an approved claims and noticing agent in a case having 250 or more creditors and/or equity security holders. These Chapter 11 Cases are such a case.

29. Given the number of creditors and other parties in interest involved in these Chapter 11 Cases, the Debtors seek an order appointing KCC as the claims and noticing agent in these Chapter 11 Cases pursuant to 28 U.S.C. § 156(c), Local Bankruptcy Rule 5075-1, and the Claims Agent Protocol to relieve this Court and the Clerk’s Office of the administrative burdens associated with these cases.

**NUNC PRO TUNC RELIEF IS APPROPRIATE**

30. At the Debtors’ request, KCC has been serving in a claims and noticing agent capacity since prior to the Petition Date with assurances that the Debtors would seek approval of its employment and retention effective *nunc pro tunc* to the Petition Date, so that KCC may be compensated for its pre-application services in these Chapter 11 Cases. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment, as provided

herein, because KCC has provided and continues to provide valuable services to the Debtors' estates in the interim period.

31. Courts in this district have routinely approved *nunc pro tunc* employment for claims and noticing agents in a similar manner to that requested herein. See, e.g., In re Chassix Holdings, Inc., Case No. 15-10578 (MEW) (Bankr. S.D.N.Y. Apr. 20, 2015) (approving *nunc pro tunc* employment to perform bankruptcy administration services); In re dELiA\*s, Inc., Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015) (same); In re NII Holdings, Inc., Case No. 14-12611 (SCC) (Bankr. S.D.N.Y. Oct. 14, 2014) (same); In re MPM Silicones, LLC, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 16, 2014) (same); In re Sbarro LLC, Case No. 14-10557 (MG) (Bankr. S.D.N.Y. Apr. 7, 2014) (same).

32. This Application complies with the Claims Agent Protocol and conforms to the standard application in use in this Court.

33. To the extent there is any inconsistency between this Application, the Order, and the Services Agreement, the Order shall govern.

#### **NOTICE**

34. The Debtors will provide notice of this Motion to the following parties: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the forty (40) largest unsecured claims against the Debtors (on a consolidated basis); (c) the holders of the five (5) largest secured claims against the Debtors (on a consolidated basis); (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Federal Aviation Administration; and (g) any party that requests service pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**NO PRIOR REQUEST**

35. No prior request for the relief sought in this Application has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form of the Proposed Order, authorizing KCC to serve as claims and noticing agent in these Chapter 11 Cases pursuant to 28 U.S.C. § 156(c), and granting such other relief as this Court deems just and proper.

Dated: New York, New York  
May 11, 2020

MILBANK LLP

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*Proposed Counsel for Debtors and  
Debtors-in-Possession*

**EXHIBIT A**

**PROPOSED ORDER**



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

-----X  
: In re: : Chapter 11  
: :  
: AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
: :  
: Debtors. : (Joint Administration Requested)  
: :  
-----X

**ORDER AUTHORIZING RETENTION AND APPOINTMENT  
OF KCC AS CLAIMS AND NOTICING AGENT UNDER 28 U.S.C. § 156(c),  
11 U.S.C. § 105(a), AND S.D.N.Y. L.B.R. 5075-1 *NUNC PRO TUNC*  
TO THE PETITION DATE AND GRANTING RELATED RELIEF**

Upon consideration of the application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “Debtors”), for entry of an order (this “Order”) authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“KCC”) as claims and noticing agent under 28 U.S.C. §156(c), section 105(a) of the Bankruptcy Code, and S.D.N.Y. LBR 5075-1 to, among other things, (i) distribute required notices to parties in interest; (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors’ Chapter 11 Cases; and

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<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

(iii) provide such other administrative services—as required by the Debtors—that would fall within the purview of services to be provided by the Clerk’s Office; and upon the Jordan Declaration submitted in support of the Application; and the Debtors having estimated that there are in excess of a thousand creditors in these Chapter 11 Cases, many of which are expected to file proofs of claim, and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors’ expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and that KCC does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the employment of a claims and noticing agent is in the best interest of the Debtors, their estates and creditors; and sufficient cause appearing therefor; it is hereby

**ORDERED** that the Application is approved solely as set forth in this Order; and it is further

**ORDERED** that the Debtors are authorized to retain KCC effective *nunc pro tunc* to the Petition Date under the terms of the Services Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in these Chapter 11 Cases, and all related tasks, as described in the Application and as modified herein, by the Bankruptcy Rules or other orders of this Court; and it is further

**ORDERED** that should KCC agree, upon the Debtors' request, to provide additional service not set forth in the Application, KCC shall file a notice on the docket detailing such additional services; and it is further

**ORDERED** that KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk; and it is further

**ORDERED** that KCC is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim; and it is further

**ORDERED** that KCC is authorized to take such other action to comply with all duties set forth in the Application; and it is further

**ORDERED** that the Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses; and it is further

**ORDERED** that prior to any increase in KCC's billing rates, KCC shall file an affidavit with the Court and provide ten business days' notice to the Debtors, the United States Trustee and any official committee, which supplemental affidavit shall explain the basis for the requested rate increase and state whether the Debtors have consented to such rate increase. The United States

Trustee retains all rights to object to any rate increase and all rates and rate increases are subject to review by the Court.

**ORDERED** that KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, and any party-in-interest who specifically requests service of the monthly invoices; and it is further

**ORDERED** that the parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved; and it is further

**ORDERED** that, pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates; and it is further

**ORDERED** that KCC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Services Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement; and it is further

**ORDERED** that the Debtors shall indemnify KCC under the terms of the Services Agreement; and it is further

**ORDERED** that to the extent applicable in the Services Agreement, all requests by KCC for the payment of indemnification or attorney fees shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Services Agreement and is reasonable under the circumstances of the

litigation or settlement in respect of which indemnity is sought, *provided, however*, that in no event shall KCC be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct; and it is further

**ORDERED** that in the event KCC is unable to provide the services set out in this order, KCC will immediately notify the Clerk and Debtors' attorney and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' attorney; and it is further

**ORDERED** that the Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for services that are to be performed by KCC that are not specifically authorized by this Order; and it is further

**ORDERED** that the Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application; and it is further

**ORDERED** that, notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order; and it is further

**ORDERED** that KCC shall not cease providing claims processing services during the chapter 11 case(s) for any reason, including nonpayment, without an order of the Court; and it is further

**ORDERED** that in the event of any inconsistency between the Services Agreement, the Application and the Order, the Order shall govern.

Dated: May \_\_\_\_\_, 2020  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**JORDAN DECLARATION**

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

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In re: : Chapter 11  
: :  
AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
: :  
Debtors. : (Joint Administration Requested)  
: :  
-----X

**DECLARATION OF ROBERT JORDAN IN SUPPORT OF DEBTORS' APPLICATION  
FOR ENTRY OF AN ORDER APPOINTING KURTZMAN CARSON CONSULTANTS  
LLC AS CLAIMS AND NOTICING AGENT FOR THE DEBTORS PURSUANT  
TO 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), AND S.D.N.Y. L.B.R 5075-1  
NUNC PRO TUNC TO THE PETITION DATE**

I, Robert Jordan, under penalty of perjury, declare as follows:

1. I am a Managing Director of Kurtzman Carson Consultants LLC ("KCC"), a chapter 11 administrative services firm, whose offices are located at 1120 Avenue of the Americas, 4th Floor, New York, New York 10036. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called and sworn as a witness, I could and would testify competently thereto.

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<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

2. I submit this declaration in support of the *Debtors' Application for An Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(c), 11 U.S.C. §105(a), and S.D.N.Y LBR 5075-1 Nunc Pro Tunc to the Petition Date* for the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), which was filed contemporaneously herewith (the "Application").<sup>2</sup>

3. KCC is composed of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases, and have experience in matters of this size and complexity. KCC's professionals have acted as debtors' administrative advisor and/or official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide, including: The McClatchy Company, Case No. 20-10418 (Bankr. S.D.N.Y. Feb. 13, 2020); In re The College of New Rochelle, Case No. 19-23694 (Bankr. S.D.N.Y. Sep. 20, 2019); In re Windstream Holdings, Inc., Case No. 19-22312 (Bankr. S.D.N.Y. Feb. 25, 2019); In re Waypoint Leasing Holdings Ltd., Case No. 18-13648 (Bankr. S.D.N.Y. Nov. 25, 2018); In re 21<sup>st</sup> Century Oncology Holdings, Inc., Case No. 17-22770 (Bankr. S.D.N.Y. May 26, 2017); In re Westinghouse Electric Company LLC, Case No. 17-10751 (Bankr. Mar. 30, 2017); In re Toisa Limited, Case No. 17-10184 (Bankr. S.D.N.Y. Jan. 29, 2017); In re AOG Entertainment, Inc., Case No. 16-11090 (Bankr. S.D.N.Y. May 2, 2016); In re MPM Silicones, LLC, Case No. 14-22503 (Bankr. S.D.N.Y. Apr. 13, 2014); In re Metro Affiliates, Inc., Case No. 13-13592 (Bankr. S.D.N.Y. Dec. 3, 2013); In re Flat Out Crazy, LLC, Case No. 13-22094 (Bankr. S.D.N.Y. Feb. 20, 2013); In re Broadview Networks Holdings, Inc., Case No. 12-13581 (Bankr. S.D.N.Y. Sept. 14,

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



2012); In re Sunco Liquidation, Inc., Case No. 17-10561 (Bankr. D. Del. Mar. 13, 2017); In re Aquion Energy, Inc., Case No. 17- 10500 (Bankr. D. Del. Mar. 8, 2017); In re Eastern Outfitters, LLC, Case No. 17-10243 (Bankr. D. Del. Feb. 5, 2017).

4. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), KCC will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the “Clerk’s Office”), the services specified in the Application and the Services Agreement, and, at the Debtors’ request, any related administrative, technical, and support services as specified in the Application and the Services Agreement. In performing such services, KCC will charge the Debtors the rates set forth in the Services Agreement, which is attached as Exhibit C to the Application.

5. KCC represents, among other things, the following:

- a. KCC is not a creditor of the Debtors;
- b. KCC does not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the claims and noticing agent in these Chapter 11 Cases;
- c. by accepting employment in these Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- d. in its capacity as the claims and noticing agent in these Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- e. KCC will not employ any past or present employees of the Debtors in connection with its work as the claims and noticing agent in these Chapter 11 Cases;
- f. KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as claims and noticing agent in these Chapter 11 Cases, KCC will not intentionally misrepresent any fact to any person;
- h. KCC shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;

- i. KCC will comply with all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. none of the services provided by KCC as claims and noticing agent in these Chapter 11 Cases shall be at the expense of the Clerk's Office.

6. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither KCC, nor any employee thereof, has any materially adverse connection to the Debtors, their creditors, or other relevant parties. KCC may have relationships with certain of the Debtors' creditors as a vendor or in connection with cases in which KCC serves or has served in a neutral capacity as noticing, claims, and balloting agent for another chapter 11 debtor.

7. KCC personnel may have relationships with some of the Debtors' creditors or other parties-in-interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal nature and completely unrelated to these Chapter 11 Cases. KCC has and will continue to represent clients in matters unrelated to these Chapter 11 Cases. In addition, KCC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties-in-interest that may be involved in the Debtors' cases in matters unrelated to these cases. KCC may also provide professional services to entities or persons that may be creditors or parties-in-interest in these Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors. To the best of my knowledge, neither KCC, nor any employees thereof, represents any interest materially adverse to the Debtors' estates with respect to any matter upon which KCC is to be engaged.

8. KCC is an indirect subsidiary of Computershare Limited ("Computershare"). Computershare is a financial services and technologies provider for the global securities industry and is the transfer agent for Blackrock, Inc., a significant equityholder of the Debtors. Within the

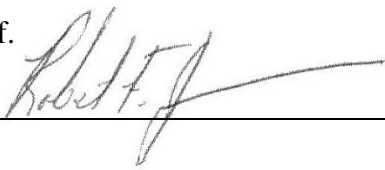
Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, and in light of the administrative nature of the services to be performed by KCC, any relationships that Computershare and its affiliates, or Blackrock, Inc. and its affiliates, maintain do not create an interest of KCC that would be materially adverse to the Debtors' estate or any class of creditors or equity security holders.

9. Although the Debtors do not propose to retain KCC under section 327 of the Bankruptcy Code (such retention will be sought by separate application), KCC has nonetheless reviewed its electronic database to determine whether it has any relationships with the entities provided by the Debtors. At this time, we are not aware of any relationship which would present a disqualifying conflict of interest. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to promptly file a supplemental declaration. KCC will also comply with all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

10. Based on the foregoing, I believe that KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
and correct to the best of my information, knowledge and belief.

New York, New York  
Dated: 5/10/2020

  
\_\_\_\_\_  
Robert Jordan  
Managing Director  
Kurtzman Carson Consultants LLC

**EXHIBIT C**

**SERVICES AGREEMENT**



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 19<sup>th</sup> day of March 2020, between Avianca Holdings S.A. (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase occurs, KCC will give thirty (30) days written notice to the Company and the Company may elect to immediately terminate this Agreement.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be separately agreed to by the Company and KCC.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$20,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the



## **KCC AGREEMENT FOR SERVICES**

Bankruptcy Court seeking entry of an order or orders approving this Agreement (the “Retention Order”). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, this Agreement will continue in full force and effect unless otherwise terminated in accordance herewith, and KCC will continue to be paid for services provided prior to any termination in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$65,000.00 (the “Retainer”) that may be held by KCC as security for the Company’s payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### **III. RIGHTS OF OWNERSHIP**

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term “program” shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC’s performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company’s use during and in connection with the services provided by KCC under this Agreement.

### **IV. NON-SOLICITATION**

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### **V. CONFIDENTIALITY**

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days’ written notice to the other party, release the required information.





## KCC AGREEMENT FOR SERVICES

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC in connection with the services provided under this Agreement, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. In no event shall KCC or the Company be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.



## KCC AGREEMENT FOR SERVICES

### X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133  
E-Mail: dfoster@kccllc.com

Avianca Holdings S.A.  
Calle 26 #59-15  
Attn: Renato Covelo  
Bogota, Colombia  
Tel: +571 587 7700

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity,



## **KCC AGREEMENT FOR SERVICES**

legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

### **XV. COUNTERPARTS; EFFECTIVENESS**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### **XVI. ASSIGNMENT**

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### **XVII. ATTORNEYS' FEES**

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

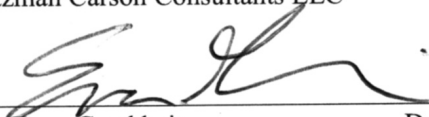
[SIGNATURE PAGE FOLLOWS]



### KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

  
\_\_\_\_\_  
BY: Evan Gershbein DATE: 3/19/20  
TITLE: EVP, Corporate Restructuring Services

Avianca Holdings S.A.

\_\_\_\_\_  
BY: DATE:  
TITLE:



## KCC AGREEMENT FOR SERVICES


IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

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BY: Evan Gershbein    DATE:  
TITLE: EVP, Corporate Restructuring Services

Avianca Holdings S.A.



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BY: Richard Galindo    DATE: March 19, 2020  
TITLE: Secretary



## **KCC ADDENDUM TO AGREEMENT FOR SERVICES**

This Addendum to the Services Agreement dated March 19, 2020 between Avianca Holdings S.A. (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”) is entered into as of the 31<sup>st</sup> day of March, 2020. In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **Confidentiality and Data Privacy / Security**

General. “Personal Information” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular living individual, including, without limitation, names, signatures, addresses, email addresses, telephone numbers, account numbers and information, social security numbers and other personal identification numbers, financial data, date of birth, transaction information, user names, passwords, security codes, employee ID numbers, identity photos, and any other information defined in applicable United States’ privacy laws or regulations as personal information, that KCC receives from the Company. “Confidential Information” means any and all technical or business information relating to a party, including, without limitation, financial, marketing and product development information, proprietary information and Personal Information, that is disclosed or otherwise becomes known to the other party or its affiliates, agents or representatives during the term of this Agreement. Confidential Information shall not include any information that is: (a) already known to the other party or its affiliates at the time of the disclosure; (b) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the other party; (c) subsequently disclosed to the other party or its affiliates on a non-confidential basis by a third party not having a confidential relationship with the owner and which rightfully acquired such information; or (d) independently developed by one party without access to the Confidential Information of the other.

Use and Disclosure. All Confidential Information of a party will be held in confidence by the other party with at least the same degree of care as such party protects its own confidential or proprietary information of like kind and import, but not less than a reasonable degree of care. Neither party will disclose in any manner Confidential Information of the other party in any form to any person or entity without the other party's prior consent. However, each party may disclose relevant aspects of the other party's Confidential Information to its officers, affiliates, agents, subcontractors and employees to the extent reasonably necessary to perform its duties and obligations under this Agreement and such disclosure is not prohibited by applicable law. For the avoidance of doubt,

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case or cases.



## **KCC ADDENDUM TO AGREEMENT FOR SERVICES**

Confidential Information may be disclosed and used as required for the performance of KCC's duties in accordance with Bankruptcy Court orders, direction of Company Representatives and applicable law. Without limiting the foregoing, each party will implement physical and other security measures and controls designed to protect (a) the security and confidentiality of Confidential Information; (b) against any threats or hazards to the security and integrity of Confidential Information; and (c) against any unauthorized access to or use of Confidential Information.

Required or Permitted Disclosure. In the event that any requests or demands are made for the disclosure of Confidential Information, other than requests or demands pursuant to Bankruptcy Court orders, subpoenas from state or federal government authorities (e.g., probate, divorce and criminal actions), the party receiving such request or demand will promptly notify the other party to secure instructions from an authorized officer of such party as to such request or demand and to enable the other party the opportunity to obtain a protective order or other confidential treatment, unless such notification is otherwise prohibited by applicable law or court order. Each party expressly reserves the right, however, to disclose Confidential Information to any person whenever it is advised by counsel that it may be held liable for the failure to disclose such Confidential Information or if required by applicable law or court order.

Unauthorized Disclosure. As may be required by applicable law and without limiting any party's rights in respect of a breach of this agreement, each party will promptly:

- (a) notify the other party in writing of any unauthorized possession, use or disclosure of the other party's Confidential Information by any person or entity that may become known to such party;
- (b) furnish to the other party full details of the unauthorized possession, use or disclosure; and
- (c) use commercially reasonable efforts to prevent a recurrence of any such unauthorized possession, use or disclosure of Confidential Information.

### Data Privacy.

- (a) KCC will not retain, use, or disclose Personal Information for any purpose other than (i) the specific purpose of performing the Services specified in the Agreement on behalf of the Company and the services reasonably related thereto; (ii) KCC's business purposes, including, without limitation, as may be defined by applicable U.S. privacy laws, Bankruptcy Court orders and as directed by Company Representatives, or (iii) as otherwise required or permitted by applicable law and the terms of the Agreement.
- (b) KCC will not sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, any Personal





## **KCC ADDENDUM TO AGREEMENT FOR SERVICES**

Information to a third party for monetary or other valuable consideration from such third party, except as permitted by applicable law.

(c) KCC will reasonably assist the Company to support the Company's obligations to respond to requests of Holders exercising their rights under applicable U.S. privacy laws, as directed by the Company and agreed to by KCC.

Data Security. KCC will establish and maintain administrative, physical and technical safeguards designed to protect against unauthorized access, use, disclosure, alteration or destruction of Personal Information (the "Information Security Program"). The Information Security Program shall include the maintenance of policies and procedures, and technical, physical, and administrative safeguards, designed to (a) ensure the security and confidentiality of the Confidential Information, (b) protect against anticipated threats or hazards to the security or integrity of Confidential Information, and (c) protect against unauthorized access to or use of such information.

If KCC uses, discloses or otherwise communicates the Personal Information or Confidential Information in any manner or for any purpose other than as set forth in this agreement, and/or does not apply reasonably necessary measures to guarantee the confidentiality, security, integrity and availability of the Personal Information to the Company or does not comply in any way with applicable U.S. privacy laws or KCC's own data security policies (the "Noncompliance"), it shall be liable to the Company for such Noncompliance and shall reimburse the Company for any monetary fine, judgment or penalty assessed against it by any individual, government, judicial authority, public institution or private institution on account of such Noncompliance. In addition, KCC shall pay the reasonable attorney fees or expenses incurred by the Company in connection with any Noncompliance described in the paragraph.

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## KCC ADDENDUM TO AGREEMENT FOR SERVICES

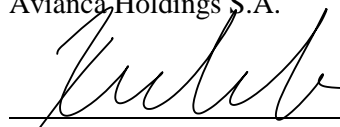
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

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BY: Evan Gershbein  
DATE:  
TITLE: EVP, Corporate Restructuring Services

Avianca Holdings S.A.



---

BY: Richard Galindo  
DATE: March 31, 2020  
TITLE: Secretary



**KCC ADDENDUM TO AGREEMENT FOR SERVICES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

A handwritten signature in black ink, appearing to read 'Evan Gershbein', is written over a horizontal line.

BY: Evan Gershbein

DATE: 3/31/20

TITLE: EVP, Corporate Restructuring Services

Avianca Holdings S.A.

\_\_\_\_\_  
BY:

DATE:

TITLE: