

# TAB J

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**Cobb, Evan**

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**From:** Cobb, Evan  
**Sent:** March 19, 2012 5:58 PM  
**To:** 'Alex Rose'  
**Cc:** Pasparakis, Orestes; 'nbrearton@kpmg.ca'  
**Subject:** Revised and Final Uplift Agreement [OR-EDRMS.FID2927391]  
**Follow Up Flag:** Follow up  
**Flag Status:** Green  
**Categories:** Filed To Worksite  
**Attachments:** DOCSTOR-#2368743-vdoc-Air\_Canada\_Uplift\_Agreement\_\_Feb\_28.DOC; DOCSTOR-#2368743-v8A-Air\_Canada\_Uplift\_Agreement\_\_Feb\_28.DOC

Alex,

Attached is a revised uplift agreement blacklined to the version that was sent to you on March 8th at approximately 1:20pm.

The only change has been the addition of a new paramountcy paragraph at the end of the agreement. Please let me know if this is acceptable to Air Canada. Once Air Canada has signed off we will put together a final version for execution.

While we are still anticipating that Aveos will undertake the uplift, we are also looking at potential alternatives given Aveos' current financial circumstances. Can you provide us with the contact information for the appropriate person at Air Canada who Aero may call in order to explore the possibility of Air Canada stepping in if Aveos is unable to perform?

Thanks.

**Evan Cobb**  
Associate

26/04/2012

## AGREEMENT

**AERO INVENTORY (UK) LIMITED (IN ADMINISTRATION)**, a company registered in England under company number 02904862 and with its registered office at KPMG LLP, 8 Salisbury Square, London EC4Y 8BB acting by its joint administrators James Robert Tucker, Richard Heis and Allan Watson Graham of KPMG LLP (the "Administrators") and **AERO INVENTORY PLC (IN ADMINISTRATION)**, a company registered in England under company number 02887038 and with its registered office at KPMG LLP, 8 Salisbury Square, London EC4Y 8BB acting by the Administrators

hereinafter called "AI"

-and-

## AIR CANADA

**WHEREAS** AI and certain of its affiliates are currently subject to, *inter alia*, administration proceedings in the United Kingdom (the "Administration Proceedings") commenced by order of the High Court of Justice of England and Wales on November 11, 2009 (the "Filing Date") (as extended by an order of the High Court of Justice of England and Wales on October 20, 2010) and proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, commenced in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") on November 11, 2009 (the "CCAA Proceedings");

**WHEREAS** AI was assigned into bankruptcy on January 22, 2010 under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and KPMG Inc. has been appointed as trustee in bankruptcy of AI (the "Trustee");

**WHEREAS** Air Canada and Aveos Fleet Performance Inc. ("Aveos") share access to a joint inventory management system referred to as "ARTOS". Among other things, ARTOS tracks consumable and expendable "CAT 3" parts ("Parts"), including the type of Part, the number of units, the city, the facility and the bin where such Parts are located;

**WHEREAS** the Virtual Inventory Management System, version 2.1 ("VIMS" or the "Algorithm"), and the Bin Allocation Program (as defined below) have been developed as an acceptable means by which to track consumption, allocate the ownership, and identify the bin location of Parts listed in ARTOS and located in facilities set out in Schedule C hereto (the "Air Canada Facilities") and all other facilities occupied by Aveos and/or Air Canada where such Parts may be located;

**WHEREAS** a computer program has been developed (that program being the "Bin Allocation Program") to, among other things, identify the bin location of Parts (by ACID number and quantity) that are located in the facilities where two or more of AI, Air Canada or Aveos own such Parts; and

**WHEREAS** Air Canada and the Trustee are engaged in litigation as a result of the motion brought by the Trustee in the CCAA Proceedings on or about April 27, 2010, seeking, *inter alia*, a declaration that certain transactions involving Air Canada are preferences within the meaning of s. 95(1) of the BIA and void as against the Trustee (the "Preference Motion");

**NOW, THEREFORE**, the parties agree as follows:

Parts Schedules

1. AI and Air Canada have prepared two schedules. The schedules list certain Part types and quantities that (a) are shown as existing in the opening balance of ARTOS as of the effective date of such schedule, and (b) AI and Air Canada have determined, on the basis of VIMS, belong to AI subject to section 1.2 (collectively, the "AI Parts"), as follows:
  - 1.1. Schedule A lists all of the types and quantities of such AI Parts, save and except those types and quantities of AI Parts shown on Schedule B (the "Schedule A Parts"). The effective date of Schedule A shall be March 1, 2012.
  - 1.2. Schedule B lists certain types and quantities of AI Parts, the ownership of which Air Canada may seek to challenge (the "Schedule B Parts"). The effective date of Schedule B shall be March 1, 2012.
  - 1.3. Schedule A and Schedule B specify the particular facility (whether an Air Canada Facility or otherwise) and bin location of each Part listed thereon, as determined by VIMS, ARTOS and the Bin Allocation Program.

AI Parts

2. With respect to the Schedule A Parts:
  - 2.1. Air Canada confirms that it has no right, claim or interest in any of the Schedule A Parts that are not located at the Air Canada Facilities and that AI may make such arrangements with Aveos or other third parties as it sees fit to uplift and remove (or scrap or otherwise dispose of) such Parts.
  - 2.2. With respect to the Schedule A Parts located at the Air Canada Facilities:
    - 2.2.1. Air Canada confirms that it has no right, claim or interest in any of the Schedule A Parts located at the Air Canada Facilities other than a claimed storage lien on such Schedule A Parts.
    - 2.2.2. AI has not admitted the existence or amount of any liability in connection with rent or occupancy of the Air Canada Facilities (with the exception of the Montreal Main Stores, as provided in section 4, below) or any such lien. AI reserves all rights in respect of any claims that may be available to it including as a result of any alleged continued usage of AI's Parts.
    - 2.2.3. Subject to the preservation of the claimed storage lien claim, Air Canada shall permit, following reasonable written notice to, and under the

supervision of, Air Canada, the uplifting and removal (or scrapping or disposition) of such Schedule A Parts by AI, or by such parties as may be approved by Air Canada acting reasonably, in a manner agreed to by the parties acting reasonably (the costs of doing so to be borne solely by AI) so as not to materially disrupt the normal operations of Air Canada. For the avoidance of doubt, Air Canada may refuse to approve the uplifting or removal by parties other than AI if, amongst other things, they fail to demonstrate continuing insurance coverage satisfactory to Air Canada and/or in order to ensure compliance with collective bargaining agreements or other similar arrangements. Aveos is, as at the date of this Agreement, approved by Air Canada as a party that may undertake the uplifting and removal (or scrapping or disposition) of Schedule A Parts at Air Canada Facilities.

- 2.2.4. AI has maintained its insurance policies covering aviation product liability, comprehensive general liability, property, and worker's compensation liability referenced in section 30 of the Agreement for the Supply and Management of Consumable and Expendable Spares dated December 10, 2008, or substantially similar insurance coverage. AI will continue to maintain such insurance until the uplift is completed at the Air Canada Facilities and will immediately notify Air Canada of any material change with respect to such insurance.
- 2.2.5. AI agrees to pay to the Trustee forthwith the amount of Air Canada's insurance deductible to be held by the Trustee until 60 days after the uplift is complete for the purpose of satisfying any claim by or on behalf of Air Canada. Air Canada confirms that said deductible is \$100,000.
- 2.2.6. AI will pay as a "post-filing" claim in the Administration Proceedings any final amount ordered by the Canadian Court in respect of the storage lien claims described above and Air Canada shall be permitted to offset any amount so ordered against any other amount ordered to be paid to AI, the Trustee, the Administrators or Lloyds TSB Commercial Finance Limited (in its capacity as agent for the secured lenders to AI ("Lloyds")) in the Preference Motion or related proceedings. Air Canada claims that it is currently owed approximately \$700,000 in respect of such storage lien claims.

### 3. With respect to the Schedule B Parts:

- 3.1. Air Canada has advised AI that it may claim an interest in some or all of the Schedule B Parts.
- 3.2. AI has denied and shall not be taken as admitting the validity of, or any liability to Air Canada in respect of, any claim that Air Canada asserts in some or all of the Schedule B Parts.

- 3.3. The Schedule B Parts shall not be uplifted or removed (or scrapped or disposed of) pursuant to this Agreement.

#### Montreal Main Stores

4. AI agrees to pay Air Canada the monthly rental costs for the portions of the Montreal Main Stores (as defined in Schedule C) occupied by the AI Parts from and after October 1, 2011 (adjusted monthly based upon the space occupied by such Parts) at a market rate per month to a maximum of \$27,861 per month. The payment of any rent in respect of the Montreal Main Stores shall not be an admission by AI that any rent or occupancy costs are owing at any other Facility. Notwithstanding the foregoing, AI shall not be required to pay the monthly rental costs described above to Air Canada for a particular period if, for that same period, Air Canada has received rent payments from Aveos in respect of the portions of the Montreal Main Stores occupied by AI Parts.

#### Commingling of Parts and "Vapour"

5. In the event that AI seeks to uplift any Schedule A Parts that are shown by VIMS as located in the same city as other units of the same Part type shown by VIMS as located in that city and either belonging to Air Canada or listed on Schedule B, the following rules shall be applied:
  - 5.1. AI's right to uplift or otherwise dispose of any such Schedule A Parts shall be limited to the lesser of:
    - 5.1.1. The number of units of such Part type located in the city in excess of the number of units of such Part type shown by VIMS as located in the city and either belonging to Air Canada or listed on Schedule B; and
    - 5.1.2. The number of units of such Part type that are Schedule A Parts.
  - 5.2. The parties are not hereby agreeing as to liability, if any, for any shortfall, the cause of any such shortfall or when it may have occurred.
6. The parties have not made any agreement regarding responsibility for "vapour" Parts.

#### Reservation of Rights

7. Notwithstanding anything contained herein, nothing in this Agreement shall amend in any way the rights, remedies, claims or defences that any party may have in the Preference Motion.
8. Nothing in this Agreement shall amend in any way the rights that any party has to claim payment for consumption of Parts owned by such party, whether before or after the Filing Date.

9. Nothing in this Agreement shall affect any rights that AI may have to retain funds collected from Aveos associated with consumption of Parts occurring in the period before the Filing Date.
10. Nothing in this Agreement shall be construed as a reaffirmation or confirmation of any rights or obligations under any contracts or agreements previously entered into between AI and Air Canada nor any claim by Air Canada for an accounting of funds derived in whole or in part from consumption by Air Canada of parts pursuant to the Bulk Inventory Purchase Agreement dated January 28, 2009.

#### Conditions

11. The parties' obligations under this Agreement will only come into effect upon Air Canada receiving letters from counsel to the Trustee, counsel to the Administrators and counsel to Lloyds acknowledging the existence of this Agreement and acknowledging that they will be estopped from making any claims against Air Canada as a result of or arising out of this Agreement, but reserving all rights in respect of any other matters.

#### SALSA

12. Air Canada acknowledges that AI and Aveos, among others, have entered into a Settlement and Labour Supply Agreement, dated as of December 31, 2010 (the "SALSA").
13. Subject to the terms of this Agreement, Air Canada agrees that, in permitting the uplift and removal described above, it will use reasonable efforts to cooperate so as to allow the certification and removal of Schedule A Parts from the Air Canada Facilities to be effected as contemplated by Section 6 of the SALSA. Any out-of-pocket costs associated therewith shall be payable by AI.

#### General

14. This Agreement shall be construed in accordance with the laws of the Province of Quebec without regard to its conflict of laws rules and Air Canada and AI hereby attorn to the exclusive jurisdiction of the Canadian Court for any matter relating thereto.
15. This Agreement may be executed by any number of separate counterparts (including counterparts by email and pdf or by fax) and all of said counterparts taken together shall be deemed to constitute one and the same instrument.
16. The headings used in this Agreement are for the purpose of reference only and shall not affect the meaning or interpretation of any provision of this Agreement.
17. The parties hereto acknowledge and agree that the terms set out in the Schedules to this Agreement shall be valid and enforceable as if they were in the main body of this Agreement.

- 18. This Agreement shall enure to the benefit of and bind each of Air Canada and AI. This Agreement, and all rights, interests and obligations thereunder shall be assignable by AI with the consent of Air Canada, such consent not to be unreasonably withheld.
- 19. This Agreement is drafted in the English language pursuant to the express wish of all of Air Canada and AI. *Les parties aux présentes confirment leur consentement à ce que cette convention de même que tous les documents, ainsi que tout avis s'y rattachant, soient rédigés en anglais.*
- 20. The parties hereto acknowledge that the Administrators have executed this document as agents for AI and without personal liability.
- 21. The parties hereto confirm the accuracy of the recitals contained herein.
- 22. This Agreement is to be read in conjunction with the Endorsement of the Ontario Superior Court of Justice (Commercial List), dated March 9, 2012, (the "Endorsement"). In the case of any conflict between the terms of this Agreement and the agreement evidenced by the Endorsement, the terms of this Agreement shall prevail. For greater certainty, the parties hereto confirm that the balances and location of Aero-owned Parts at Air Canada's and Aveos' facilities as at each of September 30, 2009, November 11, 2009 and March 1, 2012, including the balances and location of Schedule B Parts as at November 11, 2009, were as described in the Endorsement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of ● \_\_\_\_, 2012.

**AIR CANADA**

Per: \_\_\_\_\_  
 Name:  
 Title:

SIGNED by )  
**AERO INVENTORY (UK) LIMITED** )  
**(IN ADMINISTRATION)** )  
 )  
 By \_\_\_\_\_ ) .....  
 one of its administrators acting as agent ) Administrator  
 without personal liability pursuant to powers )  
 conferred under the English Insolvency Act )  
 1986, duly authorized as he so declares )

SIGNED by )  
**AERO INVENTORY PLC** )  
**(IN ADMINISTRATION)** )  
 )



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