



## **CANADA AVIATION AND FINANCE MANAGEMENT LTD.**

### **RETAINER AND BUSINESS CO-OPERATION AGREEMENT**

**(Exclusively for Investor)**

This Retainer and Business Co-operation Agreement (hereinafter referred to as this “AGREEMENT”), is made and entered into this ..... day of ..... 1999, by and between :

....., represented by .....,

Telephone :

Facsimile :

as Principal, hereinafter known as “Investor”, and

....., represented by .....,

Telephone :

Facsimile :

hereinafter known as the “Program Manager”

### **RECITALS**

WHEREAS, the Investor and the Program Manager shall hereinafter jointly be referred to as the “Parties” or individually as the “Party”, and

WHEREAS, the Program Manager presently have access to at least one private placement program, (hereinafter referred to as “Program”), which may generate a profit in excess of normal returns, as more particularly will be set forth in Agreement(s) to be executed by Investor with either the Grand Master Commitment Holder, Investment Manager, Program Manager, Program Administrator, Bank administering the Program or equivalent; (hereinafter collectively referred to as the “PM”); and

WHEREAS, Investor is actively seeking a private placement program with the securities referenced herein;

WHEREAS, Investor hereby retains the services of the Program Manager as an Asset Manager solely for the limited purpose of being able to acquire access to a Private Placement Program; and

WHEREAS, except for the limited purpose stated herein above, the Program Manager shall not represent the Investor as an attorney unless a separate retainer agreement is executed by the parties, and



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WHEREAS, except for the limited purpose stated herein above, the Program Manager shall not represent the Investor as an attorney unless a separate retainer agreement is executed by the parties, and

WHEREAS, Investor agrees to submit through the Program Manager the Instrument, letter of intent plus eventual other documents to be presented to the PM when same are requested; and

WHEREAS, to accomplish the mutual objectives of the Parties, as set forth in this Agreement, Investor and Program Manager shall execute “Program Documents” or “Contracts” for each transaction to be initiated by and between the Program Manager that is approved by Investor, Investor-Attorney, which shall be automatically incorporated into this Agreement by said reference, and

WHEREAS, the Parties desire to work harmoniously together for their mutual benefit and profit in transactions of these types as well as other types of enterprises and/or transactions as they may from time to time agree to be of mutual interest and benefit; and

WHEREAS, the parties agree that each have certain proprietary information which they desire to protect; and

WHEREAS, the type of transactions may vary as specific situations shall arise, and the parties shall consult each other as to the type of transactions for which the Participant’s Funds are to be utilised, and copies of any and all documentation, including, but not limited to, all Contracts and/or Agreements, all bank statements and/or all disbursement documents and/or statements, on all transactions, shall always be distributed amongst the Parties; and

WHEREAS, the parties affirm and acknowledge that the Program Manager did not, directly or indirectly, solicit Investor to either invest or participate in any private financial transaction or program, nor did he either offer to sell or offer to purchase any securities; and

WHEREAS, to protect their proprietary information, the parties agree that each undertake the obligation of “Non-Circumvention” and “Non-Disclosure” of the other party’s proprietary information; and

WHEREAS, the parties acknowledge, understand and agree that this is a private transaction between the parties, and the information contained in the Agreement is only for the parties described herein, and said information is privileged, private, confidential and otherwise protected by law from prohibited use or disclosure, copying or dissemination without the express written consent of the parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows: -



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The PREAMBLE as aforesaid, is incorporated herein by reference and made a part of the main body of this Agreement; as if set forth at length herein.

### 1. DEFINITIONS

- 1.1 (a) “SECURITIES” – For the purpose of this Agreement, the Securities shall be the Bank Guarantee for US\$ ..... Million to be provided by the Investor.
- 1.2 (a) “INVESTOR” – The legitimate owner of the Securities, covered under this Agreement.
- (b) “PROGRAM MANAGER” – For the purpose of this Agreement, Canada Aviation and Finance Management Ltd., shall be the Program Manager.
- 1.3 “PROFITS/YIELD” – The actual profits/yield to be received by Investor shall be .....% (.....percentage) per annum on Investment Funds for One Year period.
- 1.4 “PROGRAM” – Private Placement Program.

### 2. INVESTMENT FUNDS

- 2.1 Investor shall allocate funds in any approved transaction, that are clean, cleared, from a non-criminal origin and from a legal source in the amount to be specifically set forth in the Contract(s) to be executed by the Program Manager with participant. For the purpose of this transaction Investment Fund has been considered as US\$ ..... (.....) Million, in the form of a Bank Guarantee as per Annexure I. The bank guarantee shall be from a Prime UK/USA Bank. If the bank guarantee is issued from a local bank, the same to be confirmed by the Corresponding Bank of the Guarantee Issuing Bank in London/USA. The bank guarantee will be kept under the safe keeping of the Corresponding Bank of the guarantee issuing bank in London/USA (in case the guarantee is issued from a local bank).

### 3. DISTRIBUTION OF PROFITS/YIELD

- 3.1 The profits/yield shall be paid and distributed as follows :-
- The entire profit (.....% of the Investment Fund) earned shall be payable to M/s. ....

#### 3.2 Disbursements

Within 30 banking days of receiving Bank Guarantee in the Transaction Bank of the Program Manager, payable in cash via Bank Transfer:-

To the M/s. ...., .....% of the investment fund in 10 equal monthly instalments.



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### **4. FULL DISCLOSURE**

- 4.1 The parties mutually agree to provide each other with full and complete information to the best of their ability as to any transaction(s) in which the parties, or any party introduced by a party to this Agreement, is involved.
- 4.2 The parties hereby declare and agree that there are numerous instances in which, under contractual confidentiality agreements with third parties, disclosure is prohibited. Therefore, information covered by such confidentiality agreements with third parties will remain privileged and neither party shall have a right to such information.

### **5. DUTY OF GOOD FAITH AND DEALING**

- 5.1 All parties agree they will deal in good faith with the other and will provide any and all materials, information and assistance as may be reasonably necessary to complete contemplated transactions in a complete, professional, and timely manner. The parties agree that in the performance of this Agreement, the parties shall be required to expend only such time and effort as they, in their sole discretion, reasonably believe is required to fulfill the goals and purposes of this Agreement.

### **6. TERM**

- 6.1 This Agreement shall commence when all parties or their representatives have signed this Agreement, and shall be considered honoured or terminated upon the execution of a successor Agreement, or the expiration of Ten (10) years, whichever occurs first. At any time prior to the expiration of the term, by mutual written agreement of the parties, this Agreement may be terminated. This undertaking shall survive the termination of this Agreement.
- 6.2 It is expressly agreed by the parties that each and every business transaction begun prior to date of termination of this Agreement shall be conducted in the normal course of business and in a professional and good faith manner until consummation and completion regardless of the date of termination of this Agreement.
- 6.3 The parties further agree that in the event this Agreement is terminated prior to the expiration of the term by mutual consent, that said early termination shall not release the parties of their respective indemnities and obligations until the expiration of Ten (10) years from the execution of this Agreement, or as may be further extended upon the execution of a successor Agreement. This undertaking shall survive the termination of this Agreement.

### **7. GUARANTEE OF SUCCESS**

- 7.1 The Program Manager agrees that the Transaction will be guaranteed .....% (.....Percent) PER ANNUM profit/yield on the Investment Fund for One Year Period.



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- 7.2 The bank guarantee is to be issued from a Prime European/USA Bank. If the bank guarantee is issued from a local bank, the same to be confirmed by the Corresponding bank of the guarantee issuing bank in London/USA.

### **8. TAXES**

- 8.1 Each of the parties accepts responsibility for the payment of their respective taxes, imposts, levies, duties, charges, or bank charges as a consequence of the Profits realised from transactions under this Agreement. No representations or advice regarding the relative tax consequences, if any, have been made or given by any party to this Agreement.

### **9. DISPUTE RESOLUTION, VENUE AND COSTS**

- 9.1 In the event of any controversy or dispute arising out of this Agreement, or any resulting transaction, the parties shall first attempt to achieve an adequate settlement among themselves. If such an attempt fails, the dispute or controversy arising out of or relating to this Agreement or its interpretation shall be settled exclusively and finally by arbitration. Each arbitration will be governed by the provisions of ..... Arbitration Practice. The arbitration shall be conducted in Geneva, Switzerland.
- 9.2 Any award rendered in any such arbitration proceeding shall be final and binding on each of the parties, their respective heirs, executors, administrators, legal representatives, successors and assigns, and judgement may be entered thereon in a Court of competent jurisdiction. The arbitrator shall award one hundred percent (100%) of all attorney's fees and costs incurred by the prevailing party in any such arbitration proceeding. All attorney's fees and costs shall be included in any award rendered in such arbitration proceeding by the arbitrator.
- 9.3 Agreement. It includes any claim or controversy of any kind which arises out of, or is in any way related to, this Agreement. It also includes statutory, common law and equitable claims. A dispute also includes any disagreement about the meaning of this Agreement and whether a disagreement is a "dispute" subject to binding arbitration as provided for in this Agreement.

### **10. NON-CIRCUMVENTION AND NON-DISCLOSURE**

- 10.1 The parties agree to abide by the customary international rules of non-circumvention and non-disclosure for a period of ten (10) years from the date of this Agreement. Neither the parties nor any entity with which they are affiliated or entitled to receive compensation, will, in any manner, without the express written permission of the other party who made available the source(s), disclose the source(s) to anyone. Further, the parties agree not to circumvent, by pass, or obviate the other party or parties in any dealing, present or future, with any persons or entities introduced by a party to this Agreement. In the event any profit is generated from any such prescribed contact, the offending party hereby agrees that the aggrieved parties are entitled to the full profit participation as set forth by the terms of this Agreement.



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- 10.2 Agreement. It includes any claim or controversy of any kind which arises out of, or is in any way related to, this Agreement. It also includes statutory, common law and equitable claims. A dispute also includes any disagreement about the meaning of this Agreement and whether a disagreement is a “dispute” subject to binding arbitration as provided for in this Agreement.

### 11. NON-CIRCUMVENTION AND NON-DISCLOSURE

- 11.1 The parties agree to abide by the customary international rules of non-circumvention and non-disclosure for a period of ten (10) years from the date of this Agreement. Neither the parties nor any entity with which they are affiliated or entitled to receive compensation, will, in any manner, without the express written permission of the other party who made available the source(s), disclose the source(s) to anyone. Further, the parties agree not to circumvent, by pass, or obviate the other party or parties in any dealing, present or future, with any persons or entities introduced by a party to this Agreement. In the event any profit is generated from any such prescribed contact, the offending party hereby agrees that the aggrieved parties are entitled to the full profit participation as set forth by the terms of this Agreement.
- 11.2 The parties agree to maintain complete confidentiality regarding each other’s affiliates, clients, business sources, contacts and sources, and will not disclose to third persons, the identity or the details of such sources, contacts, contracts or agreement, except as may be required by applicable statute, regulation or process of law. Once fully executed, neither this Agreement nor any subsequent amendments or Agreements may be reproduced in any manner whatsoever, except on a “need to know basis”.
- 11.3 The parties hereto covenant, one with the other, that the text of this Agreement will be maintained as ***confidential*** between the parties hereto and agree that the text will not be exhibited or demonstrated to any third-party, save and except to their respective Corporate Officers, and to those who, of necessity, must be aware of the terms and conditions hereof in order to cause orderly preparation and performance of the functions representative of the parties roles as defined in these presents.
- 11.4 It is further expressly agreed and understood by the parties, and their respective representatives, that they shall, to the best of their ability, ensure and be responsible for, strict confidentiality on the part of their employees, relatives, assigns, associates and attorneys with respect to this Agreement.
- 11.5 The parties agree that failure to maintain ***confidentiality*** will be construed as a material breach of this Agreement.
- 11.6 Any violation of the Non-Disclosure and Non-Circumvention provisions of this Agreement shall survive the termination of this Agreement and/or Contracts arising from this Agreement for a period of ten (10) years from the said termination date, and the same will be deemed to be a breach of this Agreement by such defaulting party and will make the Party in violation liable to punitive and compensatory damages actions in any court of competent jurisdiction.





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- 11.7 Any violation of the Non-Disclosure and Non-Circumvention provisions of this Agreement shall survive the termination of this Agreement and/or Contracts arising from this Agreement for a period of ten (10) years from the said termination date, and the same will be deemed to be a breach of this Agreement by such defaulting party and will make the Party in violation liable to punitive and compensatory damages actions in any court of competent jurisdiction.

### **12. JURISDICTION**

- 12.1 Jurisdiction shall be in Geneva, Switzerland.

### **13. FORCE MAJEURE**

- 13.1 No party shall be liable for any inability to comply with the obligation inherent in this Agreement, whether wholly or in part, where such inability is due, whether directly or indirectly, to - (i) Causes beyond their reasonable control ; (ii) Acts of God ; (iii) Acts (including failure to act) of any Government Authority (dejure or de facto) ; (iv) Wars (whether declared or undeclared) ; (v) Riots, Revolution, Strikes, or other labour disputes ; (vi) Fire, Flood, Sabotage, Nuclear Accident, Earthquake, Storm or Epidemic ; and (vii) Where banks are closed by reason of Industrial Dispute or Government Intervention.
- 13.2 In all other respects, any legal definition of a circumstance promoting a claim for Force Majeure shall consider provisions of the clause, “Force Majeure Hardship” as contained in the International Chamber of Commerce Publication No. 421, which model reference clause is deemed included herein by said reference.

### **14. CHANGES, AMENDMENTS, MODIFICATIONS**

- 14.1 In order to be effective, any change, modification, or amendment to this Agreement must be made in writing and signed by all parties to this Agreement.

### **15. BINDING UPON SUCCESSORS**

- 15.1 This Agreement shall inure to the benefit and be binding upon the parties, their respective heirs, executors, administrators, legal representatives, successors and assigns, shall extend to their controlled corporations, partnerships, trusts, proprietorships, affiliates, agents, trustees, or executives until termination of this Agreement.

### **16. NOTICES**

- 16.1 All notices, requests, demand, and other communications provided for thereunder shall be in writing (or by facsimile transmission) and shall be deemed to have been duly given or at such addresses as the party affected may designate in written notice in compliance herewith.



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### **17. WAIVER NOT CONSENT**

- 17.1 A waiver, at any time, of compliance with any of the terms and conditions of this Agreement, shall not be construed to be a modification, cancellation, or waiver of such terms and conditions, or any preceding or succeeding breach thereof, unless expressly so stated in writing.

### **18. SECTION HEADINGS**

- 18.1 The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 18.2 Paragraph headings and numbering of paragraphs as utilised herein is for convenience of review only, and in any legal interpretation, such headings and numberings shall not be construed as part of the contents, or an indication of the contents of the particular paragraph then under review.

### **19. APPLICABLE LAW**

- 19.1 This Agreement, and the rights and obligations of the parties hereto, shall in any legal interpretation, be governed by the Laws of Switzerland without giving effect to the conflict of laws rules thereof. This Agreement is in the English Language only, which shall be controlling in all respects.

### **20. COUNTERPARTS**

- 20.1 This Agreement may be executed in one or more counterparts by hard copy signatures and/or signature on facsimile copies, each of which shall be deemed an original, and said counterparts shall together constitute but one and the same Agreement, binding upon the parties, notwithstanding that the parties are not signatory to the original or the same counterparts. Legible, machine-receipted telefax copies of signed documents shall be valid and accepted as original in the absence of demonstrated forgery. All facsimiles shall be followed by the delivery of executed hard copy originals at the request of either party.
- 20.2 The parties hereto acknowledge that a facsimile copy of this Agreement in executed form, shall be deemed an original, binding and enforceable instrument.

### **21. ENTIRE AGREEMENT**

- 21.1 Except as otherwise provided herein, this Agreement constituted the entire Agreement between the parties, and all prior negotiations, representations, or Agreements between the parties, whether oral or written, are merged into this Agreement. This Agreement may only be amended, supplemented, or changed and any provision hereof can be waived, only by a written instrument making specific reference to this Agreement signed by all parties hereto. This Agreement consists of Ten (10) pages, including the signature page.





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### **22. LEGAL OPINION**

- 22.1 The parties hereto acknowledge that each has had adequate time and opportunity to consult with a counsel of their own choosing, prior to the execution of these presents, and having had such advice as deemed necessary, or lack thereof by voluntary election, each has executed this Agreement freely, and under no compulsion or coercion.

### **23. REPRESENTATION OF AUTHORITY**

- 23.1 Investor hereby represents that : (a) they are in good standing under the Laws of their respective jurisdiction ; (b) the execution, delivery and performance of this Agreement is within their respective corporate powers ; (c) they have been duly authorised by all corporate actions ; (d) in entering into this Agreement they do not contravene any law of their respective jurisdiction ; and (e) no other authorisation, approval or action by an Governmental Authority is required for the delivery and performance of this Agreement.

### **24. MISCELLANEOUS**

- 24.1 Each of the parties acknowledge that if any of the provisions of this Agreement, including any sentence, clause, or part hereof, shall be deemed contrary to law or invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not be affected, but shall remain in full force and effect, and any invalid and unenforceable provisions shall be deemed, without further action on the part of the parties hereto, modified, amended, and limited to the extent necessary to render the same valid and unenforceable.
- 24.2 All parties acting as signatories are expressly authorised to sign and act in such capacity, and have read, understood, and hereby accept all of the terms and conditions of this Agreement.

### **25. WARRANTIES AND REPRESENTATIONS**

- 25.1 The parties represent and warrant to each other that :
- (i) Each has thoroughly read and reviewed this Agreement, all of which comport with the negotiated business terms which have been agreed upon, are in form and substance satisfactory to the parties hereto and any misrepresentation(s) shall be treated as action of Fraud and punishable by Law ;
  - (ii) Each has had a full and complete opportunity to seek advice of independent counsel of its own selection regarding this Agreement and the Parties have advised each other to do so prior to executing this Agreement ;
  - (iii) Each has freely and voluntarily executed and delivered this Agreement without duress or coercion, and with full knowledge of the consequences and significance thereof, all of which is in form and substance satisfactory to each of them ;
  - (iv) Each has received actual and adequate consideration for the execution and delivery of this Agreement ;



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- (v) Each is a commercially sophisticated businessman with substantial experience of a significant magnitude dealing with the financial, domestic and international marketplace and transactions intended to be consummated in connection with this Agreement and any other documents relating thereto ;
- (vi) Each has not relied, in *this private financial business transaction*, upon United States of America Securities Act of 1933, (the “Securities Act”) and/or any other regulations and/or laws with regards to the Securities Act ;
- (vii) Each declares that they are not a licensed securities broker ; and
- (viii) Each agrees upon the exemption from the Securities Act, and/or any other related regulation, of this business transaction between the parties which is not intended for the general public.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement today the ..... day of September 2000.

### **INVESTOR:**

.....  
Passport No.  
Nationality

### **WITNESS:**

**MR.**  
Passport No.  
Nationality

### **PROGRAM MANAGER:**

.....  
**MR.**  
Passport No.  
Nationality

### **WITNESS:**

.....  
**MR.**  
Passport No.  
Nationality