

**EXPRESSJET AIRLINES, INC.**

**LONG TERM DISABILITY PROGRAM FOR PILOTS**

**(AMENDED AND RESTATED AS OF FEBRUARY 1, 2007)**

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**EXPRESSJET AIRLINES, INC.  
LONG TERM DISABILITY PROGRAM FOR PILOTS  
(AMENDED AND RESTATED AS OF FEBRUARY 1, 2007)**

**INTRODUCTION**

Continental Airlines, Inc. established the Continental Air Lines, Inc. Long Term Disability Program for Pilots (the "Predecessor Plan") effective February 1, 1984. The Predecessor Plan superseded the Continental Air Lines, Inc. Pilots Disability Income Plan and the provisions of Article VIII of the Texas International Airlines, Inc. Fixed Pension Plan for Pilots; provided, however, disability benefits under said plans for disabilities incurred prior to February 1, 1984 continue to be paid under said plans in accordance with the applicable provisions of said plans.

As of January 1, 1989, as successor to Continental Air Lines, Inc., Continental Airlines, Inc. renamed the Predecessor Plan as the Continental Airlines, Inc. Long Term Disability Program for Pilots.

The Predecessor Plan was amended and restated as of January 1, 1992 and as of January 1, 1998.

ExpressJet Airlines, Inc. (formerly Continental Express, Inc.) adopted the Predecessor Plan and, effective as of April 23, 2002, ExpressJet adopted this ExpressJet Airlines, Inc. Long Term Disability Program for Pilots (the "Plan") as successor to and for the purposes of providing continued benefits thereunder for its pilots without gap, interruption or change.

The Plan is being amended and restated to read as set forth herein, and this plan document represents the Plan as amended and restated as of February 1, 2007.

This is a voluntary contributory plan providing a disability income continuation benefit to each pilot of ExpressJet Airlines, Inc. (and its participating subsidiaries and affiliates) who chooses to enroll in and be covered by the Plan, to any Transferred Pilot (as defined in Section 1.39) who is enrolled in the Plan pursuant to Section 2.1, and any Transferred Disabled Pilot (as defined in Section 1.38) who is benefiting under the Plan pursuant to Article 13. The Plan is jointly funded by both the employer and employees. The funds are contributed to and held by the Trustee of the Trust established under this Plan in a separate trust agreement. The Trustee shall make payments from the Trust in accordance with the provisions of the Plan and the Trust.

ARTICLE 1  
**DEFINITIONS**

The following capitalized words and phrases used in the text of the Plan shall have the meanings set forth below unless the context clearly and expressly provides otherwise. Words in the masculine gender shall connote the feminine gender as well, and words used in the singular form also shall be construed in the plural form where applicable. Article and section headings are inserted for convenience and reference and do not constitute part of the Plan.

1.1 ***Actively at Work.*** “Actively at Work” means that a Pilot is performing, in the customary manner, all of the regular duties of his or her employment with the Employer. A Pilot using paid sick time shall not be deemed to be Actively at Work.

1.2 ***Administrative Committee.*** “Administrative Committee” means the committee appointed pursuant to the provisions of Section 9.1. References in the Plan to the Administrative Committee shall include both the Appeals Committee and the Review Committee unless the context clearly indicates otherwise.

1.3 ***Adverse Benefit Determination.*** “Adverse Benefit Determination” means any denial, reduction or termination of or failure to provide or make payment (in whole or in part) for a Plan benefit, including any denial, reduction, termination or failure to provide or make payment that is based on a determination of a Claimant’s eligibility to participate in the Plan. Further, any invalidation of a claim for failure to furnish written proof of loss or to comply with the claim submission procedure will be treated as an Adverse Benefit Determination.

1.4 ***Appeals Committee.*** “Appeals Committee” means a subcommittee of the Administrative Committee appointed pursuant to the provisions of Section 9.1.

1.5 ***Association.*** “Association” means the Air Line Pilots Association.

1.6 ***Board of Directors.*** “Board of Directors” means the Board of Directors of the Company.

1.7 ***Claimant.*** “Claimant” means a Participant or beneficiary or an authorized representative of such Participant or beneficiary who has filed or desires to file a claim for a Plan benefit.

1.8 ***Claims Administrators.*** “Claims Administrators” means the organization, person or persons which under Section 9.5 may be appointed by the Administrative Committee to process Plan benefit claims.

1.9 ***Code.*** “Code” means the Internal Revenue Code of 1986, as amended.

1.10 **Company.** “Company” means ExpressJet Airlines, Inc., and its legal predecessors and successors.

1.11 **Company Pilot.** “Company Pilot” means a Pilot who completed at least one hour of Company Service as a Pilot for Continental Airlines, Inc. on or after October 1, 1997 or a Pilot who has completed at least one hour of Company Service as a Pilot for the Employer or its legal predecessors or successors on or after December 14, 1998.

1.12 **Company Service.** “Company Service” means:

(a) in the case of a Company Pilot, (i) any period in which the Participant is paid or entitled to be paid by an Employer (including a predecessor, successor, or an employer within the same controlled group of employers) and (ii) any period before April 23, 2002 or in which the Participant is a Flow Through Pilot, and in which the Participant is paid or entitled to be paid by Continental Airlines, Inc. (including a predecessor, successor, or an employer within the same controlled group of employers); provided, however, that no Participant shall be credited more than once for the same period of time; and

(b) in the case of any other Participant, the Participant’s aggregate period of employment with the Employer as a Pilot, excluding approved leaves of absence and furloughs other than leave granted for active duty with the armed forces of the United States under the Employer’s established military leave policy as in effect from time to time. In addition:

(i) A Pilot’s active periods of employment with Rocky Mountain Airways, Inc., Britt Airways, Inc., and Bar Harbor Airways, Inc. shall be treated as Company Service for purposes of determining the Pilot’s Loss of License Disability benefits under Section 3.2.

(ii) A Pilot who was employed by Frontier Airlines, Inc. shall have his or her Company Service deemed to begin as of his or her applicable “Longevity Date” for purposes of determining the Pilot’s Loss of License Disability benefits under Section 3.2. For this purpose, “Longevity Date” shall mean the date assigned to the former Frontier Pilot for computing seniority with the Employer.

(iii) A Pilot who was employed by New York Airlines, Inc. or People Express Airlines, Inc. immediately prior to employment with the Employer, with no break in service between jobs, shall have his or her Company Service calculated from the date of hire by such previous organization, excluding any periods of furlough or leave of absence.

The number of years of Company Service of a Participant shall be calculated strictly as of the Disability Date.

1.13 **Compensation.** “Compensation” means 1,026 times the hourly rate a Participant is earning for flight hours as of the Disability Date.

1.14 ***Disability or Disabled.*** “Disability” or “Disabled” means:

(a) In the case of a Company Pilot employed by Continental Airlines, Inc. whose Disability Date is on or after January 1, 1998, or a Company Pilot employed by the Company or its legal predecessors or successors, whose Disability Date is on or after December 14, 1998, (i) the Participant’s loss of his or her Federal Aviation Administration Medical Certificate for reasons other than alcoholism or drug abuse, or (ii) the Participant’s failure to pass a Company physical examination due to medical reasons other than alcoholism or drug abuse.

(b) In any other case, either a Loss of License Disability or a Total and Permanent Disability, as defined below in this Section 1.14(b):

(i) ***Loss of License Disability.*** “Loss of License Disability” means the demonstrated inability, as determined by the Administrative Committee pursuant to the procedures set forth in Section 3.8, of a Participant to pass, for medical reasons other than alcoholism or drug abuse, a physical examination(s) required by the Federal Aviation Administration or the Employer.

(ii) ***Total and Permanent Disability.*** “Total and Permanent Disability” means the inability, for reasons other than alcoholism or drug abuse, to perform each and every duty of any gainful occupation or employment for which the Participant is reasonably qualified by education, training or experience.

1.15 ***Disability Date.*** “Disability Date” means the date on which the Participant first incurs a Disability under this Plan (or, if applicable under the Predecessor Plan), as determined by the Administrative Committee. In the case of a Disability described in Section 1.14(a), such date shall be the date as of which the Participant loses his or her Federal Aviation Administration Medical Certificate or the date on which the Participant completes a Company physical examination that the Participant fails to pass, whichever is applicable.

1.16 ***Effective Date.*** “Effective Date” means February 1, 2007, as to this restatement of the Plan. The original effective date of the Plan was April 23, 2002.

1.17 ***Employer.*** “Employer” means the Company and any other subsidiary or affiliate of the Company that adopts the Plan.

1.18 ***ERISA.*** “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

1.19 ***Flow Through Pilot.*** “Flow Through Pilot” means a Company Pilot who, at the time of determination, is subject to the Flow Through Agreement as in effect on April 23, 2002, and as described under the collective bargaining agreement provisions governing such Company Pilot’s employment.

1.20 **Health Care Professional.** “Health Care Professional” means a physician or other health care professional licensed, accredited or certified to perform specified health services consistent with state law.

1.21 **Investment Committee.** “Investment Committee” means the Committee appointed pursuant to the provisions of Section 10.1.

1.22 **Investment Manager.** “Investment Manager” means the one or more investment managers, if any, that are appointed pursuant to the provisions of Section 10.2(c). Pursuant to the provisions of ERISA section 3(38), each Investment Manager must be a registered investment advisor, a bank or a licensed insurance company and must acknowledge in writing its status as a fiduciary to the Plan.

1.23 **Monthly Earnings.** “Monthly Earnings” means the maximum hourly rate the Participant would be entitled to receive under the applicable collective bargaining agreement or otherwise on the Disability Date multiplied by 85.5. Monthly Earnings shall not be increased after the Disability Date.

1.24 **Named Fiduciary.** “Named Fiduciary” means respectively the Company, the Administrative Committee and Investment Committee. The Named Fiduciary shall be the “named fiduciary” for the Plan under ERISA section 402(a)(2). Pursuant to ERISA Section 405(c), a Named Fiduciary or other fiduciary under this Plan may enter into a written agreement with any other Named Fiduciary or fiduciary under this Plan to allocate and delegate fiduciary responsibilities between them.

1.25 **Participant.** “Participant” means a Pilot who meets the eligibility requirements of Article 2, whose participation in the Plan has not been terminated under Section 2.3, and either:

(i) in the case of a Pilot whose most recent employment date or reemployment date is before August 1, 2001, who has elected to participate in this Plan, or

(ii) in the case of a Pilot whose most recent employment date or reemployment date is on or after August 1, 2001, who has not elected not to participate in this Plan.

1.26 **Pension Plans.** “Pension Plans” means the Continental Retirement Plan, the Texas International Airlines, Inc. Fixed Pension Plan for Pilots, the Continental Airlines Fixed Pension Plan for Pilots, the Retirement Income Plan, the Continental Pilots Retirement Plan (effective as of April 30, 2005) or any other plan under which a Participant might be eligible to receive retirement benefits, as may be amended from time to time or the successor plans thereto.

1.27 **Pilot.** “Pilot” means a regular, active full-time or part-time employee of the Employer who is listed on an Employer’s pilots system seniority list.

1.28 **Plan.** “Plan” means the ExpressJet Airlines, Inc. Long Term Disability Program for Pilots described hereunder, as amended from time to time.

1.29 **Plan Year.** “Plan Year” means the calendar year.

1.30 **Predecessor Plan.** “Predecessor Plan” means the Continental Airlines, Inc. Long Term Disability Program for Pilots.

1.31 **Pre-existing Condition.** “Pre-existing Condition” means all mental or physical conditions with respect to which the Participant (a) had knowledge, (b) consulted a physician, or (c) received medical treatment or services, including prescription medication, during the 90 days before the Participant’s coverage under the Plan became effective.

1.32 **Psychological/Cognitive Disorder.** “Psychological/Cognitive Disorder” means any disease or disorder manifested by psychological impairment, but excluding any such disease or disorder arising from a physical or organic cause. The Administrative Committee shall have full discretion to determine whether a Participant’s claim under the Plan is based on a Psychological/Cognitive Disorder.

1.33 **Recovery.** “Recovery” means an amount obtained by or for the benefit of a Participant from a Third Party, such Third Party’s liability carrier, or in the case of uninsured or underinsured motorist coverage, from such Participant’s automobile insurance carrier because of a Disability for which a Third Party is legally liable. In the case of a Recovery which, in whole or in part, includes assets other than cash or cash equivalents, the Administrative Committee shall determine the monetary value thereof.

1.34 **Retired Participant.** “Retired Participant” means a Participant who has received any payment under a Pension Plan.

1.35 **Review Committee.** “Review Committee” means a subcommittee of the Administrative Committee appointed pursuant to the provisions of Section 9.1.

1.36 **Third Party.** “Third Party” means any individual (or entity) who (or which) is or may be liable to a Participant for a Disability or for payment of damages or expenses related to a Disability.

1.37 **Transferred Disabled Pilot.** “Transferred Disabled Pilot” means any individual whose Disability Date is prior to April 23, 2002 and who was last Actively at Work (as between Continental Airlines, Inc. and the Company) with the Company.

1.38 **Transferred Pilot.** “Transferred Pilot” means any individual listed on the Employer’s pilots system seniority list who, as of April 23, 2002, was Actively at Work at the Company or on a leave of absence from the Company.

1.39 **Trust.** “Trust” means the trust created in a separate trust agreement between the Company and the Trustee pursuant to Section 5.1 for the purpose of carrying out the provisions of this Plan.

1.40 **Trust Fund.** “Trust Fund” means all cash and all other assets of whatever nature deposited with or acquired by the Trustee in its capacity as Trustee, together with accumulated income held for the benefit of Participants in the Plan.

1.41 **Trustee.** “Trustee” means the trustee or trustees as appointed pursuant to the provisions of Section 5.1.

ARTICLE 2  
**ELIGIBILITY AND PARTICIPATION**

2.1 **Eligibility.** Each Transferred Pilot who was a Participant in the Predecessor Plan on the date prior to April 23, 2002 automatically became a Participant in the Plan on April 23, 2002. Each Pilot who is not a Transferred Pilot and who was a Participant in the Plan on the day prior to the Effective Date shall automatically become a Participant in the Plan on the Effective Date. From and after the Effective Date, each other Company Pilot is eligible to become a Participant on the date on which he or she completes one month of Company Service.

2.2 ***Election of Coverage and Effective Date of Coverage.***

(a) A Pilot who is eligible to become a Participant under the last sentence of Section 2.1 shall automatically be enrolled as a Participant unless such Pilot elects not to participate (in a manner prescribed by the Administrative Committee) not later than 30 days after he or she becomes eligible for the Plan. Provided such election has not been made and no event described in Section 2.3 has occurred, the effective date of coverage will be the first day of the month following the date the Pilot becomes eligible to become a Participant under Section 2.1. Any Flow Through Pilot shall automatically become a Participant in the Plan as of his first day of Company Service with the Employer if such Flow Through Pilot was a participant in the Predecessor Plan or the Plan as of his most recent date of Company Service.

(b) If a Pilot is not Actively at Work and is Disabled on the date on which any change in benefits under this Plan would be effective, the new Plan benefits will not become effective with respect to such Pilot until the work day following such Pilot's first day Actively at Work following such change. For purposes of this Section 2.2(b), a Participant shall not be deemed to be Actively at Work on any day that is included in a period of temporary recovery between two periods of Disability that are treated as one period of continuous Disability under Section 3.11.

2.3 ***Cessation of Participation.*** A Pilot shall cease to be a Participant in the Plan on the earliest date specified below:

- (a) the date of such Participant's death;
- (b) the date such Participant's employment with the Employer terminates;
- (c) the later of (i) the date such Participant ceases to be a Pilot, or (ii) the 181st day a Participant is on an approved leave of absence due to injury, sickness, or service or duty in the U.S. armed forces (including the U.S. Reserve Components and the National Guard), provided that the Participant made the required contributions immediately prior to such period of absence and continues to make them during the absence;
- (d) the date such Participant retires from the Employer;

- (e) the date such Participant ceases to be on an Employer's pilots system seniority list;
  - (f) the first date for which his or her required Plan contributions are not made;
- or
- (g) the date the Plan terminates.

Required Participant contributions must be received by the Company's Benefits Department in Houston by the first day of each calendar month.

**2.4 *Delayed Participation Provision.*** In the event a Pilot elects not to participate within 30 days of the date he or she is eligible for the Plan as provided in Section 2.2(a) or the Pilot ceases participation under the Plan pursuant to Section 2.3(f), he or she thereafter may elect to become (or again become) a Participant in the Plan at any time.

For a Pilot who has a late entry or a re-entry into the Plan under this Section 2.4, the entry or participation commencement date will be the first day of the calendar month following the date the Pilot's election is made and received in proper form by the Administrative Committee.

The eligibility of a Pilot to commence late entry or re-entry into the Plan under this Section 2.4 is subject to the Pilot's proof of good health at the time of such entry or re-entry into the Plan.

ARTICLE 3  
AMOUNT AND PAYMENT OF DISABILITY BENEFITS

**3.1 *Type of Disability Payment.***

(a) This Plan provides a disability income continuation benefit in the event a Participant incurs a Disability. In no event will a Participant receive benefits for more than one type of Disability described in Section 1.14 at the same time. Further, any benefits paid and periods of Disability under this Plan will be coordinated with benefits paid and periods of Disability (whether occurring before, on, or after April 23, 2002) under the Predecessor Plan as if such benefits were paid from and periods of disability occurred under this Plan at all times and for all purposes (including, but not limited to, the determination of the Disability Date pursuant to Section 1.15, any offset pursuant to Section 3.1(b), 3.3(e) or 3.3(f), the duration of benefits pursuant to Section 3.6, and the temporary recovery provisions of Section 3.11).

(b) In the event a Participant to whom Section 1.14(b) applies incurs a Total and Permanent Disability and, as a result, loses his or her Pilot's License, the Disability benefits payable shall only be the Total and Permanent Disability benefit. However, if such Participant subsequently recovers from the Total and Permanent Disability, but is unable to regain his or her Pilot's license, such Participant may apply for any remaining Loss of License benefits. However, if such benefits are approved, the period of time the Participant received Total and Permanent Disability benefits will be counted as and thereby offset the period of time for which Loss of License benefits will be payable to the Participant. The Loss of License benefits will be paid over any such remaining period in the amount provided in Section 3.2.

(c) If a Participant to whom Section 1.14(b) applies incurs a Loss of License Disability and subsequently incurs a Total and Permanent Disability as a result of a different condition, no benefits are payable under the Total and Permanent Disability section. However, if such a Participant incurs a Loss of License Disability and subsequently incurs a Total and Permanent Disability as a result of the same condition or event that led to the Loss of License Disability, the Participant shall be eligible to convert prospectively from Loss of License Disability benefits to Total and Permanent Disability benefits.

(d) Any change in the Participant's Disability status which affects the type and amount of Disability payment will become effective the first day of the calendar month following the date the Administrative Committee approves the change in Disability status.

**3.2 *Amount of Benefit.*** When a Participant becomes Disabled, the benefit payable to the Participant under this Plan shall be paid on a monthly basis in an amount determined as follows:

(a) *Disability Incurred on or After January 1, 1998 by Company Pilot Employed by Continental Airlines, Inc. or on or After December 14, 1998 by Company Pilot Employed by the Company or Its Legal Predecessors or Successors.* For a Disability described in Section 1.14(a),

the monthly benefit shall be the Participant’s Compensation multiplied by 0.55 and divided by 12. This benefit shall be offset as specified in Section 3.3.

(b) *Other Disabilities.* For a Disability described in Section 1.14(b), the monthly benefit shall be the amount payable for Loss of License Disability or Total and Permanent Disability, as determined in this Section 3.2(b), whichever is applicable:

(i) *Loss of License Disability.* When the Disability is a Loss of License Disability, the monthly benefit shall be equal to the Participant’s Monthly Earnings multiplied by the applicable percentage in Schedule A or B below (whichever produces the greater benefit for the Participant). This benefit shall be offset as specified in Section 3.3:

<u>Schedule A</u>	
<u>Length of Company Service at Disability Date</u>	<u>Applicable Percentage</u>
Less than 1 year	0.0%
1 year	7.5%
2 years	15.0%
3 years	22.5%
4 years	30.0%
5 years	37.5%
6 years	45.0%
7 years	54.5%
8 years or more	60.0%

<u>Schedule B</u>	
<u>Age + Company Service at Disability Date</u>	<u>Applicable Percentage</u>
60 through 64	45.0%
65 through 69	52.5%
70 or above	60.0%

In Schedule B above, Company Service and age shall each be measured in years rounded down to the nearest number of whole years.

(ii) *Total and Permanent Disability.* When the Disability is a Total and Permanent Disability, the monthly benefit shall be the Participant’s Monthly Earnings multiplied by 0.60. This benefit shall be offset as specified in Section 3.3.

(c) *Maximum Amount of Benefit.* Notwithstanding any other provision of this Plan to the contrary:

(i) For a Disability described in Section 1.14(a), the net benefit payable after offsets shall not exceed \$90,000 per year.

(ii) For all other Disabilities, monthly disability benefits shall not exceed an amount equal to the applicable percentage multiplied by the maximum Monthly Earnings a Participant would be paid in any month if such Participant were able to return and be Actively at Work during that month. The amounts determined under Sections 3.2(a) and (b) above shall be reduced in each month to the extent necessary to satisfy the maximum limit in the preceding sentence. For this purpose, maximum Monthly Earnings are determined by multiplying 85.5 by the maximum hourly rate the Participant would then be legally entitled to earn, taking into account the Participant's staffing eligibility given his or her position on the system seniority list and governmental licensing, qualification, and certification requirements and limits.

**3.3 *Coordination and Reduction of Benefits.*** The payment of the Disability benefit determined under Section 3.2 in any month shall be reduced by the amount of any of the following payments paid or payable to the Participant for such month:

(a) Workers' compensation benefits, occupational injury or disease benefits, or any other benefits resulting from legislation of similar purpose including federal veteran's benefits.

(b) Disability benefits under state law or similar government legislation provided that, for a Disability described in Section 1.14(a), if such disability benefits are includable in the Participant's taxable income for federal or state income tax purposes, the offset shall be reduced by the amount of the additional income taxes attributable to such benefits. The Participant seeking to have the offset reduced by the amount of additional taxes is responsible to provide acceptable evidence of the amount of the additional taxes. If the Participant fails to provide the information necessary for a precise calculation, the offset shall not be reduced.

(c) Disability benefits under any employer sponsored plan (including but not limited to, any plan sponsored by Continental Airlines, Inc. or any other employer) other than this Plan.

(d) Federal Social Security or any similar statutory benefits based on the Participant's payroll taxes and wages whether paid or payable to the Participant, his or her spouse or children. Subsequent changes to the initial Social Security benefit entitlements will not affect the benefit payable unless such changes are the result of a change in dependent status, or an error in the determination of the Social Security benefit.

(e) Sick pay and vacation pay paid to the Participant by any Employer and/or Continental Airlines, Inc.

(f) Any compensation paid directly or indirectly to the Participant by any Employer and/or Continental Airlines, Inc., and any compensation paid directly or indirectly to the Participant by a temporary services or other similar agency with respect to services rendered by the Participant to any such Employer or to Continental Airlines, Inc.

The Participant shall have a continuing obligation to promptly report to the Administrative Committee the payment to the Participant of any of the above amounts and benefits in this Section 3.3. The Participant will be considered eligible to receive any of the benefits described in Sections 3.3(a), (b), (c), (d) and (f) above that are deemed applicable by the Administrative Committee. If necessary, the Administrative Committee has the right to estimate the amounts of these benefits prior to written confirmation of such amounts.

**3.4 Proration of Benefits.** The Administrative Committee shall prorate benefits for any Participant who is disabled for a portion of a month. For purposes of this Section 3.4, such proration shall be done on a daily basis.

**3.5 Commencement of Disability Benefits.** The disability benefit shall be effective and commence as of the first calendar month following the Participant's Disability Date. If a Participant incurred a Disability prior to May 1, 2006, then the Participant's monthly disability benefit shall be paid on the first day of each calendar month for which benefits are payable to the Participant under the Plan. If a Participant incurred a Disability on or after May 1, 2006, then the Participant's monthly disability benefit shall be paid on the last day of each calendar month for which benefits are payable to the Participant under the Plan. No interest shall be payable with respect to any retroactive payment hereunder; provided, however, that interest on benefit payments due not less than 60 days following receipt by the Claims Administrators of a properly completed claim for benefits shall be paid at the rate of six percent per annum, compounded annually.

**3.6 Maximum Duration of Disability Benefits.**

(a) *Disability Incurred on or After January 1, 1998 by Company Pilot Employed by Continental Airlines, Inc. or on or After December 14, 1998 by Company Pilot Employed by the Company or Its Legal Predecessors or Successors.* For a Disability described in Section 1.14(a), benefits shall continue until (i) with respect to a Participant who is a second officer on his or her Disability Date, the time when the Participant may no longer serve as a second officer as a matter of law for reasons other than the Participant's medical condition; and (ii) with respect to a Participant who is a captain or first officer on his or her Disability Date, the time when the Participant may no longer serve as a captain or first officer as a matter of law for reasons other than the Participant's medical condition.

(b) *Other Disabilities.* For a Disability described in Section 1.14(b), benefits shall continue until the date specified in this Section for Loss of License Disability or Total and Permanent Disability, whichever is applicable:

(i) *Loss of License Disability.* For a Participant who incurs a Loss of License Disability, benefit payments shall continue for the period determined under the following schedule:

<u>Age at Disability Date</u>	<u>Duration of Benefits</u>
Less than 50	5 years
At least 50 but less than 55	To age 60
At least 55 but less than 60	5 years
At least 60 but less than 62	To age 65
62	3 years and 6 months
63	3 years
64	2 years and 6 months
65	2 years
66	1 year and 9 months
67	1 year and 6 months
68	1 year and 3 months
69	1 year
70 or older	0 years and 0 months

(ii) *Total and Permanent Disability.* For a Participant who is younger than age 62 on his or her Disability Date with respect to a Total and Permanent Disability, benefit payments shall continue until the Participant attains age 65. For a Participant who is age 62 or older on his Disability Date with respect to a Total and Permanent Disability, benefit payments shall continue for the period determined under the schedule set forth in Section 3.6(b)(i).

Notwithstanding the preceding provisions of this Section 3.6(b), the duration of the Disability benefit payable to a Participant who has become Disabled prior to January 1, 1998, shall not be less than the duration of such benefit under the Plan as in effect immediately prior to that date. Further, for purposes of determining the duration of the Disability benefit, all benefits paid from and periods of disability under the Predecessor Plan (whether occurring before, on or after

April 23, 2002) shall be taken into account as if such benefits were paid from and periods of disability occurred under this Plan.

(c) *Events Causing Termination of Benefit Payments.* Notwithstanding the preceding provisions of this Section 3.6, the right to and the payment of the Disability benefit under this Plan shall terminate on the earliest date specified below:

- (i) The date of the Participant's death;
- (ii) The date the Participant becomes a Retired Participant;
- (iii) The date the Participant is no longer Disabled;
- (iv) The date the Participant re-obtains his or her pilot's license;
- (v) The date of the Participant's failure to submit proof of his or her continued Disability or undergo reasonable examinations or medical treatment, as provided in Section 3.8;
- (vi) The date the Participant is notified that he or she has passed a Federal Aviation Administration medical examination, in the case of a Participant who has previously lost his or her Federal Aviation Administration Medical Certificate; or
- (vii) The date the Participant passes a Company physical examination, in the case of a Participant who has previously failed to pass such an examination.

(d) *Disability Incurred on or after January 1, 2006 Based on a Psychological/Cognitive Disorder.* Notwithstanding the provisions of Section 3.6(a), but subject to the provisions of Section 3.6(c), 24 months of Disability benefits under the Plan (whether or not such months are consecutive and whether such benefits relate to one or more separate Disabilities) shall be the aggregate maximum duration for benefits to a Participant for Disabilities based on a Psychological/Cognitive Disorder that are incurred on or after January 1, 2006.

**3.7 Limitation.** This Plan does not cover any Disability or continue to pay a Disability benefit with respect to a Disability:

- (a) incurred in connection with the commission of a violent felonious crime by the Participant;
- (b) attributable to alcohol or drug abuse;
- (c) attributable to a Pre-existing Condition, or medical or surgical treatment of a Pre-existing Condition, unless the Participant's coverage (aggregating coverage under the Predecessor Plan that is continuous with coverage under this Plan) has been in effect

for at least 12 consecutive months during which the Participant missed fewer than 60 days of work (from the Employer under this Plan or, where applicable, the Predecessor Plan) for any reason relating to the disabling condition; provided however, that a condition for which a Participant received payments under this Plan or the Predecessor Plan, but from which he has temporarily recovered as described in Section 3.11 shall not be considered a Pre-Existing Condition;

(d) attributable to agricultural flying (crop dusting);

(e) for any period when the Participant is not seen regularly and treated by a physician (to the extent so required by the Administrative Committee);

(f) for any period when the Participant is confined for any reason in a penal or correctional institution including a halfway house;

(g) if the Participant obtained his or her last Federal Aviation Administration Medical Certificate by fraud or concealment;

(h) in the event of a misrepresentation of any material information in the Participant's application for benefits; or

(i) following the disappearance of the Participant.

**3.8 Proof of Initial or Continued Disability.** The Administrative Committee shall have the right to require a Participant to submit proof that he or she has incurred a Disability or continues to be Disabled. If so specified by the Administrative Committee, such proof shall include evidence of a surrendered FAA medical license, the results of any medical, physical, or other examination(s) required by the Administrative Committee or any Employer, or evidence of and results of a Participant's application for other disability benefits. Such required proof shall be submitted as frequently as required by the Administrative Committee to substantiate continued Disability. During the period that the Participant is receiving benefits under the Plan, the Participant is expected to make every reasonable effort to correct the mental or physical defect which led or contributed to his or her Disability. The Administrative Committee may also request that the Participant undergo reasonable medical treatment which might enable such Participant to avoid, rehabilitate, correct or cure the Participant's Disability. Any failure, as determined by the Administrative Committee, on the part of the Participant to submit proof of continued Disability or to undergo reasonable examinations or medical treatment as described above, shall render the claim void, and the right to and the payment of any benefits under the Plan which would otherwise be payable to such Participant shall cease.

**3.9 Non-Alienation of Benefits.** Except for qualified domestic relations orders (as defined in ERISA Section 206(d)(3)(B)(i)), no benefit payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, garnishment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber any such benefit, whether presently or thereafter payable, shall be void.

Neither benefits nor the Trust Fund shall in any manner be liable for or subject to the debts or liabilities of any Participant entitled to any Disability benefit.

3.10 ***Incompetency.*** Every person receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent until the date on which the Plan receives a written notice, in a form and manner acceptable to the Administrative Committee, that such person is incompetent and for whom a guardian or other person legally vested with the care of his or her estate has been appointed; provided, however, that if the Administrative Committee shall find that any person to whom a benefit is payable under the Plan is unable to care for his or her affairs because of any disability or infirmity, any payment due (unless a prior claim therefor shall have been made by a duly appointed representative of his or her estate) may be paid to the spouse, a child, a parent, or a sibling of such person, or to any person deemed by the Plan to have incurred expense for such person otherwise entitled to payment. Any such payment so made shall be a complete discharge of any liability therefor under the Plan. In the event a guardian of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, benefit payments may be made to such guardian provided that proper proof of appointment and continuing qualification is furnished in a form and manner acceptable to the Plan. Any such payment so made shall be a complete discharge of any liability therefor under the Plan.

3.11 ***Temporary Recovery.*** If the Participant has one or more periods of temporary recovery after Disability benefits become payable, any two periods of Disability from the same cause or causes will be added together and treated as one period of continuous Disability if they are separated by a period of recovery of less than the initial period of Disability. Thus, except as otherwise provided in Section 3.2(c) above, the Participant's Monthly Earnings used to compute the benefit will not change, and the duration of Disability benefits will be the balance of the duration of Disability benefits remaining unused before the period of recovery. Notwithstanding anything in the foregoing to the contrary, for all purposes of this Section 3.11, a Participant's participation, benefits, claims, work history, and any other relevant information with respect to such Participant under the Predecessor Plan shall be taken into account to ensure that benefits under this Plan and the Predecessor Plan are coordinated and taken into account in full. Specifically, and not by way of limitation, a Participant's disability benefits and period(s) of disability and recovery under the Predecessor Plan (whether occurring before, on, or after April 23, 2002) shall be treated as if such benefits were paid from and periods of disability occurred under this Plan for purposes of determining whether a Participant has had one or more temporary recoveries.

3.12 ***Retroactive Reinstatement.*** A Participant who receives Loss of License Disability benefits because of Federal Aviation Administration suspension and then is retroactively reinstated at partial or full pay for the suspension period must, within thirty (30) days following receipt of such partial or full pay, repay the Plan the full amount of such Disability benefits paid to the Participant applicable to the period of Disability.

3.13 ***Recoupment of Erroneous Payments and Overpayments.*** In the event of an erroneous payment or overpayment of a benefit by the Plan, the Participant shall return to the

Plan the erroneous or excess amount. The Administrative Committee shall attempt to recoup the amount of the erroneous or excess payment from the Participant and may reduce the correct amount of future payments hereunder to recover the erroneous or excess payment, in the time and manner and with interest at a rate determined by the Administrative Committee. The Plan may to the maximum extent permitted by law apply the remedy of setoff, garnishment and other collection remedies to receive the erroneous or excess amount (plus any interest).

### 3.14 *Third Party Liability.*

(a) *Application.* This Section 3.14 applies only in the case of a Disability incurred on or after January 1, 2006.

(b) *Third Party Liability is Primary as to Disability Benefits.* The Plan shall not be primarily responsible or liable for the payment of Disability benefits incurred by a Participant because of a Disability caused by the fault of a Third Party, as provided in this Section 3.14. Accordingly, and in accordance with the provisions and subject to the limitations of this Section 3.14, the Plan shall be and is entitled to the benefit of any Recovery or right of Recovery which a Participant may have that relates to a Disability for which a Third Party was, is or may become liable without regard to whether the liability of such Third Party is reduced to a Recovery as a result of legal proceedings, arbitration, compromise, settlement or otherwise.

(c) *Plan's Right of Reimbursement and Right to Reduce Future Disability Benefits.* If the Plan has paid Disability benefits to a Participant because of a Disability caused by the fault of a Third Party and Recovery is obtained by the Participant with respect to such Disability, then the Participant shall be obligated to reimburse the Plan for all such Disability benefits that were paid by the Plan provided, however, that (i) the Participant shall have no obligation of reimbursement in excess of the total amount of such Recovery and (ii) the Participant's obligation of reimbursement shall be limited as described in Section 3.14(d). If a Disability of a Participant is or has been caused by the fault of a Third Party and a Recovery is obtained by the Participant with respect to such Disability, then, subject to the limitations set forth in Section 3.14(d), the Plan shall have no obligation to pay and there shall be excluded from future coverage by the Plan any and all Disability benefits thereafter payable under the Plan to such Participant for, in connection with or relating to such Disability until such benefits exceed in the aggregate the total amount of such Recovery remaining after reimbursement of the Plan pursuant to the preceding sentence.

(d) *Limitation on Plan's Right of Reimbursement and Right to Reduce Future Disability Benefits.* The Plan's right to reimbursement and right to reduce future Disability benefits as described in Section 3.14(c) shall apply only after a Participant has obtained a Recovery. The Plan's right to reimbursement and right to reduce future Disability benefits shall be limited to the difference between (i) the portion of the Recovery determined by the Administrative Committee to be reasonably allocable to the Participant's loss of income resulting from, caused by or otherwise related to his Disability and (ii) a pro rata portion of the attorneys' fees incurred by the Participant in obtaining the Recovery that is allocable to the amount described in clause (i) of this sentence; provided, however, that if the amount described in the

preceding provisions of this sentence is subject to federal or state income taxes, then such amount shall be reduced by the additional income taxes attributable to such amount.

(e) *Obligations of Participant.* The Participant shall have an affirmative obligation to reasonably cooperate in reimbursing the Plan and in otherwise assuring the Plan's rights of reimbursement and offset pursuant to this Section 3.14, shall execute and deliver to the Administrative Committee all assignments and other documents requested by the Administrative Committee for enforcing the Plan's rights under this Section 3.14, shall not take any action which might prejudice the Plan's rights under this Section 3.14, and shall not release any Third Party (even if the release purports to be partial release or release for the excess liability over Plan benefits) without the consent of the Administrative Committee, which consent shall not be unreasonably withheld. The Plan's rights of reimbursement and offset under this Section 3.14 shall not be affected by a release of any Third Party entered into without the consent of the Administrative Committee. If a Participant initiates a liability claim against any Third Party or such Third Party's liability carrier or reimbursement is sought from such Participant's own automobile insurance carrier under the uninsured or underinsured motorist endorsement, then the amounts described in Section 3.14(c) and amounts to cover all future Disability income benefits under the Plan relating to the Disability which is the basis of such liability claim must be included in the claim. If a Participant receives a Recovery, then the Participant shall hold such money in trust for the Plan to the extent of the Plan's rights under this Section 3.14. Each Participant who incurs any Disability shall inform the Administrative Committee whenever it appears that a Third Party is or may be liable to the Participant.

ARTICLE 4  
**APPLICATION FOR BENEFITS AND CLAIMS PROCEDURES**

4.1 ***Filing of Benefit Claim.*** A Claimant must file with the Claims Administrator a written claim for benefits under the Plan with written proof of loss no later than March 31 of the Plan Year following the Plan Year in which the Disability Date occurred on the form provided by, or in any other manner approved by, the Claims Administrator. (For purposes of applying the time periods for benefit determination pursuant to Section 4.4 below, filing a claim with the Claims Administrator will be treated as filing a claim with the Review Committee.) In connection with the submission of a claim, the Claimant may examine the Plan and any other relevant documents relating to the claim, and may submit written comments relating to such claim to the Claims Administrator coincident with the filing of the benefit claim form. Failure of a Claimant to furnish written proof of loss or to comply with the claim submission procedure will invalidate such claim unless the Review Committee in its discretion determines that it was not reasonably possible to provide such proof or comply with such procedure. A Participant shall furnish such pertinent information as the Review Committee may request, together with such documentary evidence as may be required by the Review Committee.

4.2 ***Processing of Benefit Claims.*** Upon receipt of fully completed benefit claim forms from a Claimant, the Claims Administrator shall refer the benefit claim to the Review Committee for review and determination, which referral shall include (a) the application for benefits submitted to the Claims Administrator by the Claimant in connection with the claim and (b) such other information as may be helpful or relevant to the Review Committee in its consideration of the claim. The Claimant may examine any relevant document relating to his claim and may submit written comments or other information to the Review Committee to supplement his benefit claim. Within 30 days of receipt from the Claims Administrator of a benefit claim referral (or such longer period as may be necessary due to unusual circumstances or to enable the Claimant to submit comments), but in any event not later than will permit the Review Committee sufficient time to fully and fairly consider the claim and make a determination within the time period provided in Section 4.4 below, the Review Committee shall consider the referral regarding the claim of the Claimant and make a decision as to whether it is to be approved, modified or denied. If the claim is approved, the Review Committee shall direct the Claims Administrator to process the approved claim as soon as administratively practicable.

4.3 ***Notification of Adverse Benefit Determination.*** In any case of an Adverse Benefit Determination of a claim for a Plan benefit, the Review Committee shall furnish written notice to the affected Claimant within the notification periods described in Section 4.4 below. Any notice that denies a benefit claim of a Claimant in whole or in part shall, in a manner calculated to be understood by the Claimant:

- (a) State the specific reason or reasons for the Adverse Benefit Determination;
- (b) Provide specific reference to pertinent Plan provisions on which the Adverse Benefit Determination is based;

(c) If an internal rule, guideline, protocol or other similar criterion was relied upon in making the Adverse Benefit Determination, either provide such criterion or state that such criterion was relied upon and that a copy of the criterion will be provided free of charge to the Claimant upon request;

(d) If the Adverse Benefit Determination is based on a medical necessity, experimental treatment or similar exclusion or limit, either explain the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's medical circumstances, or state that such explanation will be provided free of charge to the Claimant upon request;

(e) Describe any additional material or information necessary for the Claimant to perfect the claim and explain why such material or information is necessary; and

(f) Describe the Plan's review procedures and time limits applicable to such procedures, including a statement of the Claimant's right to bring a civil action under section 502(a) of ERISA following an Adverse Benefit Determination on review.

**4.4 *Timing of Adverse Benefit Determination Notification.*** The Review Committee shall notify the Claimant of the Adverse Benefit Determination within a reasonable period of time, but not later than 45 days after receipt of the claim. This period may be extended by the Review Committee for up to 30 days, provided that the Review Committee both determines that such extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If, prior to the end of the first 30-day extension period, the Review Committee determines that, due to matters beyond the control of the Plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days provided that the Review Committee notifies the Claimant prior to the expiration of the first 30-day extension period of the circumstances requiring the extension and the date as of which the Plan expects to render a decision. Any extension notice provided to a Claimant shall specifically explain the standards on which entitlement to the benefit at issue is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the Claimant shall be afforded at least 45 days in which to provide the specified information. In the event of such an extension, the period for making the Adverse Benefit Determination will be tolled from the date on which the notification of extension is sent to the Claimant until the date on which the Claimant responds to the request for additional information. The period of time within which an Adverse Benefit Determination shall be made, as described above, shall begin at the time a claim is filed in accordance with the reasonable procedures of the Plan, without regard to whether all the information necessary to make a benefit determination accompanies the filing.

**4.5 *Review of Adverse Benefit Determination.*** A Claimant has the right to have an Adverse Benefit Determination reviewed in accordance with the following claims review procedure:

(a) To exercise the right to request a review of an Adverse Benefit Determination, a Claimant must submit a written request for such review to the Appeals Committee not later than 180 days following receipt by the Claimant of the Adverse Benefit Determination notification;

(b) The Claimant shall have the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits to the Appeals Committee;

(c) The Claimant shall have the right to have all comments, documents, records, and other information relating to the claim for benefits that have been submitted by the Claimant considered on review without regard to whether such comments, documents, records or information was considered in the initial benefit determination;

(d) The Claimant shall have reasonable access to, and copies of, all documents, records, and other information relevant to the claim for benefits free of charge upon request, including (i) documents, records or other information relied upon for the benefit determination, (ii) documents, records or other information submitted, considered or generated without regard to whether such documents, records or other information were relied upon in making the benefit determination, (iii) documents, records or other information that demonstrates compliance with the standard claims procedure in making the benefit determination on the Claimant's claim, and (iv) documents, records or other information that constitutes a statement of policy or guidance with respect to the Plan concerning the denied treatment option or benefit for the Claimant's diagnosis, without regard to whether such statement of policy or guidance was relied upon in making the benefit determination;

(e) The review of the Adverse Benefit Determination shall not give deference to the original decision;

(f) The review of the Adverse Benefit Determination shall be conducted solely by the Appeals Committee, which shall be comprised of individuals other than (i) the persons on the Review Committee who made the Adverse Benefit Determination that is the subject of the review and (ii) the subordinates of the persons referred to in clause (i) of this Section 4.5(f);

(g) If the initial benefit determination was based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug or other item is experimental, investigational or not medically necessary or appropriate, the Appeals Committee shall consult with a Health Care Professional who has appropriate training and experience in the applicable field of medicine who was not consulted, and is not the subordinate of someone who was consulted, during the initial benefit determination; and

(h) The Claimant shall have the right to have identified to him the medical or vocational experts whose advice was obtained in connection with the Adverse Benefit Determination (without regard to whether the advice was relied upon in making such determination).

The decision on review by the Appeals Committee shall be binding and conclusive upon all persons, and the Claimant shall neither be required nor be permitted to pursue further appeals to

the Administrative Committee.

**4.6 Notification of Benefit Determination on Review.** Notice of the Appeal Committee's final benefit determination regarding an Adverse Benefit Determination will be furnished in writing or electronically to the Claimant after a full and fair review. Notice of an Adverse Benefit Determination upon review will:

- (a) State the specific reason or reasons for the Adverse Benefit Determination;
- (b) Provide specific reference to pertinent Plan provisions on which the Adverse Benefit Determination is based;
- (c) State that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the Claimant's claim for benefits, including (i) documents, records or other information relied upon for the benefit determination, (ii) documents, records or other information submitted, considered or generated without regard to whether such documents, records or other information were relied upon in making the benefit determination, (iii) documents, records or other information that demonstrates compliance with the standard claims procedure in making the benefit determination on the Claimant's claim; and (iv) documents, records or other information that constitutes a statement of policy or guidance with respect to the Plan concerning the denied treatment option or benefit for the Claimant's diagnosis, without regard to whether such statement of policy or guidance was relied upon in making the benefit determination;
- (d) If an internal rule, guideline, protocol or other similar criterion was relied upon in making the Adverse Benefit Determination, either provide such criterion or state that such criterion was relied upon and that a copy of the criterion will be provided free of charge to the Claimant upon request;
- (e) If the Adverse Benefit Determination is based on a medical necessity, experimental treatment or similar exclusion or limit, either explain the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's medical circumstances, or state that such explanation will be provided free of charge to the Claimant upon request;
- (f) Describe the Claimant's right to bring an action under section 502(a) of ERISA; and
- (g) Include the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

Such notice will be furnished within a reasonable period of time but not later than 45 days following receipt of a request for a review (which period may be extended for up to 45 additional days provided that the Appeals Committee both determines that such an extension is necessary

due to special circumstances and notifies the Claimant prior to the expiration of the initial 45-day period of the special circumstances requiring an extension and the date by which the Appeals Committee expects to render the determination on review). The period of time within which a benefit determination on review will be made begins at the time an appeal is filed in accordance with the reasonable procedures of the Plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event an extension of time is necessary due to the Claimant's failure to submit necessary information, the period for making the Adverse Benefit Determination will be tolled from the date on which the notification of the extension is sent to the Claimant until the date on which the Claimant responds to the request for additional information.

**4.7 Exhaustion of Administrative Remedies.** Completion of the claims procedures described in this Article 4 will be a condition precedent to the commencement of any legal or equitable action in connection with a claim for benefits under the Plan by a Claimant or by any other person or entity claiming rights individually or through a Claimant. Any suit or legal actions initiated by a Claimant for benefits under the Plan must be brought by the Claimant no later than one year following a final decision on the claim for benefits. The one year statute of limitations on suits for benefits shall apply in any forum where a Claimant initiates such a suit.

**4.8 Payment of Benefits.** If the Review Committee or Appeals Committee, as applicable, determines that a Claimant is entitled to a benefit hereunder, payment of such benefit will be made to such Claimant (or commence, as applicable) as soon as administratively practicable after the date the Review Committee or Appeals Committee, as applicable, determines that such Claimant is entitled to such benefit or on such other date as may be established pursuant to the Plan provisions or, as applicable, designated by the Review Committee or Appeals Committee.

**4.9 Authorized Representatives.** An authorized representative may act on behalf of a Claimant in pursuing a benefit claim or an appeal of an Adverse Benefit Determination. An individual or entity will only be determined to be a Claimant's authorized representative for such purposes if the Claimant has provided the Administrative Committee with a written statement identifying such individual or entity as his authorized representative and describing the scope of the authority of such authorized representative. In the event a Claimant identifies an individual or entity as his authorized representative in writing to the Administrative Committee but fails to describe the scope of the authority of such authorized representative, the Administrative Committee shall assume that such authorized representative has full powers to act with respect to all matters pertaining to the Claimant's benefit claim under the Plan or appeal of an Adverse Benefit Determination with respect to such benefit claim.

ARTICLE 5  
**THE TRUST FUND AND THE TRUSTEE**

5.1 *Establishment of a Trust Agreement.* The Company shall execute a Trust Agreement with the Trustee to manage and operate a Trust Fund and to receive, hold, invest and reinvest contributions made under this Plan, together with interest and other income, and to pay the benefits provided under the Plan. The Trustee (or successor Trustee) shall be appointed by the Company and shall be a fiduciary with respect to its responsibilities under the Plan and must be a bank or trust company incorporated under the laws of the United States or any State thereof and qualified to operate in trust capacities.

5.2 *Investment of Funds.* The Trust Funds administered by the Trustee may be invested in each and every kind of property authorized for the investment of the corpus of the trust fund of a voluntary employees' beneficiary association exempt from Federal income taxation pursuant to the provisions of sections 501(a) and 501(c)(9) of the Code; provided, however, in no event shall the Trust Fund be directly invested in property and/or equity of the Company nor any of its affiliates or subsidiaries. The Trust Agreement shall provide that the Investment Committee may at any time cause the Trustee to purchase from any legal reserve life insurance company or companies a contract or contracts providing for any Participant or Participants all or any part of the benefits provided by and on the conditions set forth in the Plan and, for such purposes, may cause the Trustee to transfer or pay over to such insurance company or companies all or such part of the Trust fund as may be required therefor.

5.3 *Removal of the Trustee.* The Company may, in accordance with the applicable provisions of the Trust Agreement, at any time remove the Trustee and designate a successor Trustee to serve under the Trust Agreement.

ARTICLE 6  
CONTRIBUTIONS TO THE TRUST

6.1 *Contributions.*

(a) With respect to Participants who are Company Pilots, the Plan shall be funded by contributions which shall be calculated to be sufficient to (i) fully fund the actuarial liability for all benefits projected to be paid to such Participants becoming Disabled in the applicable year, and (ii) fund over three years any surplus or shortfall in the trust with respect to such Participants as of the beginning of the applicable year.

As of the beginning of each Plan Year, the required contribution with respect to Participants who are Company Pilots shall be determined. The Company shall pay 55 percent of such amount and such Participants shall contribute the remainder of such amount on an after-tax basis. All contributions to the Plan on behalf of Participants who are Company Pilots shall be included in the taxable income of such Participants in the calendar year in which such contributions are made.

(b) With respect to Participants other than Company Pilots, the Employer shall contribute to the Trust such amounts as are established on an actuarial basis to be reasonable and necessary to provide the Disability benefits under the Plan after taking into account the Participant Contributions made under Section 6.4 below. Allocation of surplus, if any, between Participants who are Company Pilots and Participants other than Company Pilots shall be in proportion to the liability of disabled Participants in each group.

(c) Contributions by Employers shall be made at least annually. Contributions by Participants shall be made by payroll deduction whenever feasible. When a Participant's contributions are not made by payroll deduction, the Participant shall be responsible for delivery of the required payment to the Plan representative designated by the Administrative Committee not later than the first day of the month for which coverage under the Plan is in effect.

6.2 *Limitation of Company's Obligations.* The payment of benefits under the Plan shall be made only from the Trust Fund held by the Trustee. Any contracts of insurance purchased by the Trustee shall be considered part of the Trust Fund. No liability for the payment of benefits under the Plan shall be imposed upon any Employer or the shareholders, directors, officers, or other employees of any Employer.

6.3 *Irrevocability of Employer Contributions.* All contributions made by the Employer to the Trust shall be irrevocably appropriated for the exclusive benefit of Participants as provided in the Plan. No part of the Trust shall revert to the Employer or be used for, or diverted to, purposes other than the exclusive benefit of such Participants and the reasonable expenses of administering the Plan and Trust. Notwithstanding the foregoing, if the Employer shall make a contribution to the Trust Fund under a mistake of fact, such erroneous contribution may be returned to the extent permitted by law.

6.4 ***Participant Contributions.*** As a condition of participation in the Plan, each Participant shall make contributions to the Plan. For Participants who are Company Pilots, contributions shall be calculated as required by Section 6.1(a), but for such Participants no contributions will be required with respect to Compensation in excess of \$163,636.36 per year. For all other Participants, the amount of the mandatory employee contributions shall be determined from time to time by the Administrative Committee and may be changed at any time by the Administrative Committee upon advance notice to the Participants. No Participant shall be required to make a contribution for any period after formally applying for Plan benefits but while such Participant is receiving Plan benefits from the Trust.

ARTICLE 7  
CONCERNING THE EMPLOYER

7.1 *Limit of Employer's Obligation.* All benefits payable under the Plan shall be paid or provided for solely from the Trust Fund, and except as required by law, no Employer shall have any liability or responsibility other than to make contributions to such fund as provided in Article 6 and to perform such other duties as are herein specifically provided.

7.2 *Effect of Plan Termination and Other Contingencies Affecting the Company.* In the event the Plan is terminated, the Trust Fund shall be distributed as described in the Trust Agreement. In the event the Company is consolidated or merged with another company, or the Company sells all or substantially all of its assets to another company, provision may be made by which this Plan may be continued by the successor to the Company or any purchaser of all or substantially all of its assets, and in that event, such successor or purchaser shall be substituted for the Company hereunder.

ARTICLE 8  
DIVISION OF RESPONSIBILITY

8.1 ***The Trustee.*** The Trustee shall be a fiduciary with respect to the Plan and, except as otherwise provided in Section 8.3, shall have the exclusive responsibility for the Trust Fund and all the powers necessary to receive, hold, preserve, manage, invest and reinvest the Trust Fund as provided generally in the Trust Agreement and to pay all costs and expenses incident thereto. The Trustee shall be responsible only for such sums actually received by it as Trustee and shall not be responsible for collecting any contributions from the Employer or any Participant.

8.2 ***The Administrative Committee.*** The Administrative Committee shall be charged with the administration of the Plan and shall interpret the terms of the Plan and resolve questions pertaining to its administration, interpretation and application. In this regard it is contemplated that the Administrative Committee shall delegate portions of its ministerial functions to the Claims Administrator provided that any such arrangement shall comply with the applicable provisions of Part 4 of Subtitle B of Title I of ERISA and, further provided, that the Administrative Committee shall always retain the ultimate control of and the responsibility for the administration of the Plan. The Trustee shall not be responsible for or in any way concerned with the administration of the Plan. The Review Committee and the Appeals Committee shall have the responsibilities and duties provided for in Article 4.

8.3 ***The Investment Committee.*** The Investment Committee or any Investment Manager appointed by the Investment Committee is hereby expressly given the power to direct the Trustee with respect to the management, investment and reinvestment of the Trust Fund. The Trustee shall be subject to all proper written directions of the Investment Committee or of such Investment Manager regarding the management, investment and reinvestment of the Trust Fund provided that such direction(s) are made in accordance with the terms of the Plan, the Trust Agreement and ERISA.

8.4 ***Overlap of Responsibilities.*** If there is any overlap of responsibilities of the Administrative Committee and the Investment Committee under the Trust or the Plan, the decision of the Administrative Committee shall prevail and be determinative of the issue.

ARTICLE 9  
ADMINISTRATION OF THE PLAN

9.1 ***Appointment.*** The President of the Company shall appoint an Administrative Committee which shall consist of such number of persons, not less than six, as the President shall from time to time determine. The Association shall have the right to nominate two members of the Administrative Committee, and the President shall appoint the persons, if any, so nominated. The President of the Company may also appoint one or more alternate members of the Administrative Committee who may attend meetings of the Administrative Committee and may vote in place of a regular member who is absent from the meeting. Members of the Administrative Committee shall hold office at the pleasure of the President and without compensation, and may be removed by the President of the Company with or without cause. Any person appointed a member of the Administrative Committee shall signify his or her acceptance by filing a written acceptance with the Company. Any member of the Administrative Committee may resign by giving notice thereof to the Company and to the Administrative Committee, and such resignation shall become effective at delivery or at any later date specified therein. Any member of the Administrative Committee who is an employee of the Employer shall automatically cease to be a member of the Administrative Committee as of the date he or she ceases to be employed by the Employer or a subsidiary or affiliate of the Employer.

When a vacancy on the Administrative Committee occurs, the President of the Company may thereafter appoint a new member to occupy the vacant position, subject to the right of the Association to nominate two members of the Administrative Committee.

The President of the Company shall appoint the members of both the Appeals Committee and the Review Committee, each of which committees shall (a) consist of not less than three individuals who are members of the Administrative Committee and (b) include at least one member of the Administrative Committee who was nominated by the Association. In addition, the Appeals Committee shall be comprised of individuals other than (i) the persons on the Review Committee and (ii) the subordinates of the persons on the Review Committee. When a vacancy on the Appeals Committee or Review Committee occurs, the President of the Company may thereafter appoint a new member to occupy the vacant position, subject to the requirements set forth in the two preceding sentences.

9.2 ***Chairman and Secretary.*** The President of the Company shall designate a member of the Administrative Committee to serve as its chairman. The chairman shall preside at all meetings of the Administrative Committee and shall select a secretary, without regard as to whether that person is a member of the Administrative Committee, who shall keep all records, documents and data pertaining to its responsibilities under the plan.

9.3 ***Quorum and Voting.*** A majority of the Administrative Committee then in office shall constitute a quorum for the transaction of business. Any determination of the Administrative Committee shall be made by a majority of the members present at any meeting at which there is a quorum. In addition, the Administrative Committee may decide any question by a vote, taken in or without a meeting of a majority of its members. The Administrative

Committee may authorize any one or more of its members to sign on its behalf any orders, requests or instructions of the Administrative Committee to the Trustee and the Trustee shall be fully protected in acting thereon. The provisions of this Section 9.3 shall also apply equally and separately to each of the Appeals Committee and the Review Committee.

**9.4 Powers and Duties.** The Administrative Committee shall be a fiduciary and, subject to the powers granted the Investment Committee, shall be responsible for the general administration of the Plan and for carrying out the provisions thereof. The Company shall be the “plan administrator” within the meaning of ERISA Section 3(16)(A). The Administrative Committee may, from time to time, establish rules for the administration of the Plan, which rules shall be consistent with the provisions of the Plan. In addition to any powers and authority conferred on the Administrative Committee elsewhere in the Plan or by law, the Administrative Committee shall have, but not by way of limitation, the following powers and authority:

- (a) to direct and instruct the Trustee in all matters relating to the payment of Plan benefits and the return of contributions with related earnings to Participants or to the Employer in reimbursement of such payments made to Participants by the Employer on behalf of the Trust;
- (b) to determine a Participant’s entitlement to a benefit;
- (c) to designate agents to act on its behalf, exercise its powers, and carry out responsibilities relating to the Plan, other than fiduciary responsibilities;
- (d) to employ such legal, actuarial, consulting, medical, accounting, clerical and other assistance as it may deem appropriate in carrying out the provisions of the Plan, including one or more persons to render advice with regard to any responsibility any fiduciary may have under the Plan; and
- (e) to perform or cause to be performed such further acts as it may deem to be necessary, appropriate or convenient in the efficient administration of the Plan.

**9.5 Appointment of a Claims Administrator.**

(a) The Administrative Committee shall have the option to appoint one or more Claims Administrators who shall handle claims under the Plan in accordance with its terms. The Administrative Committee reserves the right to change Claims Administrators at any time.

(b) The Claims Administrator, if appointed, may be granted some or all of the following powers in processing claims for benefits under the Plan:

- (i) to make benefit payments directly to Participants or their legal representative entitled to benefits under the Plan, with eligibility for and amount of such entitlement being determined by the Administrative Committee;

(ii) to obtain from the Employer, Participants, and others such information as shall be necessary for the proper administration of the Plan including the power to require physical examinations of Participants, but any Participant of whom a physical examination is required shall be given an opportunity to appeal that requirement to the Administrative Committee;

(iii) to keep records regarding the administration of the Plan;

(iv) to furnish the Employer upon request such data, with respect to the administration of the Plan, as is reasonable and appropriate;

(v) to evaluate, analyze and prepare statistical and other data with respect to the administration of the Plan; and

(vi) to refer or assign Participants to wellness programs and disability rehabilitation programs that the Administrative Committee may establish for this purpose.

(c) The Claims Administrator shall have no power to add or subtract from or to modify any of the provisions of the Plan, to change or add to any benefit provided by the Plan, or to waive or fail to apply any requirement for eligibility for a benefit under the Plan.

9.6 **Records.** The Administrative Committee shall keep a record of its proceedings with respect to the Plan and shall keep, or cause to be kept, all such books, accounts, records or other data as may be necessary or advisable in its judgment for the administration of the Plan and properly to reflect the affairs thereof. The members of the Administrative Committee may, but are not required to, rely upon all records of the Company and/or Employer with respect to any matter or thing whatsoever, and may likewise treat such records as conclusive with respect to all Pilots, Participants, and any other persons whomsoever, except as otherwise provided by law.

9.7 **Discretionary Authority of Administrative Committee.** The Administrative Committee shall have sole, complete and absolute discretion in performing its duties and exercising its powers under this Plan including interpreting and applying the terms of the Plan to all matters including claims for benefits under Article 4. The determination of the Administrative Committee (either directly or through its delegates and agents) shall be conclusive and binding upon all persons having or claiming to have any interest or right under the Plan and shall be given maximum deference allowed by law. The provisions of this Section 9.7 shall also apply to any other fiduciary acting within the scope of their authority under this Plan; provided, however, that no decision by such other fiduciary shall be final and binding on the Company.

9.8 **Self Interest.** No member of the Administrative Committee shall have any right to vote or decide upon any matter relating solely to himself or herself or solely to any of his or her rights or benefits under the Plan, unless, to the extent permitted by ERISA, such member is the only member of the Administrative Committee.

9.9 **Liability Insurance.** Consistent with the terms and conditions upon which such insurance is generally available in the marketplace, members of the Administrative Committee shall be insured against personal liability and legal expenses arising out of claims against them for actions taken when acting in their official capacity. Notwithstanding the immediately preceding sentence, each member of the Administrative Committee shall have the right to waive (with respect to himself or herself only) the insurance coverage described therein.

9.10 **Compensation.** The Administrative Committee shall serve without compensation for their services, but shall be reimbursed by the Trust for all expenses properly and actually incurred in the performance of their duties under the Plan to the extent permitted by law unless such expenses are paid by the Company and/or the Employers.

ARTICLE 10  
INVESTMENT COMMITTEE

10.1 *Establishment of the Investment Committee.* The President of the Company shall appoint an Investment Committee of not less than three persons, the members of which shall serve until their resignation, death or removal. Any member of the Investment Committee may resign at any time by mailing written notice of such resignation to the President of the Company. Any member of the Investment Committee may be removed by the President of the Company with or without cause. Any member of the Investment Committee who is an employee of the Employer shall automatically cease to be a member of the Investment Committee as of the date he or she ceases to be employed by the Employer or a subsidiary or affiliate of the Employer. Vacancies in the Investment Committee arising by resignation, death, removal or otherwise shall be filled by such persons as may be appointed by the President of the Company.

10.2 *Duties and Powers of the Investment Committee.* The Investment Committee shall be a Named Fiduciary with respect to its responsibilities under the Plan, and subject to the powers herein granted the Trustee and the Administrative Committee in this Plan and Trust, shall have the responsibility of monitoring the management and investment of the assets of the Plan, which shall include the power to direct the acquisition and disposition of all assets; and shall have all powers necessary to accomplish purposes, including but not by way of limitation, the right, power, and authority:

(a) To correct any defect, supply any omission, or reconcile any inconsistency which may appear in the Plan or Trust in those areas granted specifically to the Investment Committee in such manner and to such extent as it shall deem expedient to carry the Plan and Trust into effect for the greatest benefit of all parties at interest, and its judgment in such matters shall be final and conclusive as to all parties at interest;

(b) To select, employ, and compensate from time to time such consultants, actuaries, accountants, attorneys, and other agents and employees as the Investment Committee may deem necessary or advisable for the proper performance of duties under the Plan and Trust;

(c) To direct and instruct or to appoint and dismiss one or more Investment Managers for the Plan. Each Investment Manager shall have the power to direct and instruct the Trustee in all matters relating to the preservation, investment, reinvestment, management and disposition of the Trust Fund or the portion of the Trust Fund over which each such Investment Manager has been given responsibility;

(d) To delegate by written notice such of the clerical and recordation duties of the Investment Committee under the Plan as the Investment Committee shall deem necessary or advisable for the proper and efficient administration of its duties under the Plan and Trust;

(e) To establish and review funding policies as required by law including ERISA Section 402(b);

(f) To adopt an investment policy statement in accordance with Department of Labor ERISA Interpretative Bulletin 94-2, to the extent the Investment Committee deems appropriate;

(g) To monitor the performance of any Investment Manager or if none, the Trustee;

(h) To evaluate the performance of the Trustee and any Investment Manager and report such evaluation to the Board of Directors; and

(i) To report from time to time, but not less often than annually, to the Board of Directors on the investment performance of the Trust Fund.

10.3 ***Chairman and Secretary.*** The Investment Committee shall select from among its members a chairman, who shall preside at all of its meetings and shall select a secretary, without regard as to whether that person is a member of the Investment Committee, who shall keep all records, documents and data pertaining to its supervision of the investments of the Plan and Trust.

10.4 ***Quorum and Voting.*** A majority of the members of the Investment Committee constitutes a quorum for the transaction of business, and the vote of a majority of the members present at any meeting will decide any question brought before that meeting. In addition, the Investment Committee may decide any question by a vote, taken in or without a meeting, of a majority of its members.

10.5 ***Delegation of Power.*** The chairman, the secretary and any one or more of the members of the Investment Committee to which the Investment Committee has delegated the power, shall each, severally, have the power to execute any document on behalf of the Investment Committee, and to execute any certificate or other written evidence of the action of the Investment Committee. The Trustee, after being notified of any such delegation of power in writing, shall thereafter accept and may rely upon any document executed by such member or members as representing the action of the Investment Committee until the Investment Committee files with the Trustee a written revocation of that delegation of powers.

10.6 ***Investment Committee and Plan Members.*** A member of the Investment Committee who is also a member of the Plan shall not vote or act upon any matter relating solely to himself.

10.7 ***Omissions.*** No member of the Investment Committee shall be liable for any act or omission of any other member of the Investment Committee, the Administrative Committee, the Trustee, the Plan Administrator, the Company and the Investment Manager appointed by the Investment Committee or any other agent appointed by the Administrative Committee or the Investment Committee nor any act or omission on his or her own part except to the extent

required by the terms of ERISA, and any other applicable state or federal law, which liability cannot be waived.

10.8 ***Self Interest.*** No member of the Investment Committee shall have any right to vote or decide upon any matter relating solely to himself or herself or solely to any of his or her rights or benefits under the Plan, unless, to the extent permitted by ERISA, such member is the only member of the Investment Committee.

10.9 ***Compensation.*** The Investment Committee shall serve without compensation for their services, but shall be reimbursed by the Trust for all expenses properly and actually incurred in the performance of their duties under the Plan to the extent permitted by law unless such expenses are paid by the Company and/or the Employers.

ARTICLE 11  
**LIABILITY OF OFFICERS, DIRECTORS,  
EMPLOYEES AND COMMITTEE MEMBERS**

11.1 **Personal Liability.** To the extent permitted by law, the Employers, their officers, directors, employees and agents, the Plan, and the members of the Administrative, Appeals, Review and Investment Committees shall be entitled to rely upon all tables, valuations, certificates and reports furnished by any duly appointed Trustee, actuary, consultant and/or accountant, and upon all opinions given by a duly appointed legal counsel and/or investment counsel. To the extent permitted by law, the Employers, their officers, directors, employees and agents, and the members of the Administrative, Appeals, Review and Investment Committees shall be fully protected against any liability in respect of any action taken in good faith in reliance upon any such tables, valuations, certificates, reports or opinions. Except as may be required by law, no officer or director of the Employers or member of the Administrative Committee, Appeals Committee, Review Committee or Investment Committee or person acting on behalf of any Employer shall be personally liable by virtue of any instrument executed by him or her or on his or her behalf or for any mistake of judgment made by him or her or any other officer or director of the Employers or member of the Administrative Committee, Appeals Committee, Review Committee or Investment Committee, or person while acting on behalf of any of the Employers, as the case may be, or for the neglect, omission, or wrongdoing of any other officer or director of any Employer or of any member of the Administrative Committee, Appeals Committee, Review Committee or Investment Committee, or person acting on behalf of any Employer, as the case may be, or for any loss, unless resulting from his or her own gross negligence or willful misconduct. No person shall be liable for any breach of fiduciary responsibility resulting from the act or omission of any other fiduciary or any person to whom fiduciary responsibilities have been allocated or delegated, except to the extent required by ERISA Sections 405(a) and 405(c)(2)(A) or (B). No action or responsibility shall be deemed to be a fiduciary action or responsibility except to the extent required by ERISA. Any person or corporation having any fiduciary responsibilities under or related to the Plan shall exercise them solely in the best interest of the Participants and in a manner consistent with the “prudent man” requirement of ERISA.

11.2 **Indemnification.** To the extent not covered by insurance, the Employers shall indemnify and hold harmless each member of the Administrative Committee, Appeals Committee, Review Committee and Investment Committee and any officer, director or employee of the Employers against any and all liabilities or expenses, including all legal fees relating thereto, arising in connection with the exercise of their duties and responsibilities to the Plan, provided however that the Employers shall not indemnify any person for liabilities or expenses due to that person’s own gross negligence or willful misconduct.

ARTICLE 12  
AMENDMENT AND TERMINATION OF THE PLAN

12.1 ***Amendment or Termination of the Plan.*** Except as provided in Section 12.2(c) or as provided by the collective bargaining agreement between the Company and the Association, the Company (or any Employer) may, in its sole and absolute discretion, discontinue making any contributions to the Plan, amend any Plan provisions or terminate the Plan at any time without any liability whatsoever for such discontinuance, termination or amendment. Such action may be implemented through a written resolution of the Board of Directors, of the Executive Committee of the Board of Directors, or of the Human Resources Committee of the Board of Directors, or by an instrument in writing signed by both the President and General Counsel of the Company.

12.2 ***Restrictions on Amendments.*** No amendment shall be made at any time, the effect of which would be:

(a) To cause any assets of the Trust Fund, at any time prior to the satisfaction of all liabilities with respect to the Participants, to be used for or diverted to purposes other than providing benefits to the Participants, refunding Participant contributions and related earnings to Participants, and defraying reasonable expenses of administering the Plan and Trust;

(b) To increase the responsibilities or liabilities of a Trustee, without the Trustee's written consent; or

(c) Reduce the Disability Benefit payable under the Plan to a Participant who has become Disabled prior to the date of the adoption of the amendment or termination of the Plan.

12.3 ***Retroactive Amendments.*** The Plan may be amended prospectively or retroactively.

12.4 ***Withdrawal by Employer.*** If an Employer withdraws from the Plan, the Trustee shall cease accepting Participant contributions from employees of that Employer as of the date of withdrawal. All employees of the Employer who are not disabled as of the date of withdrawal shall cease to be Participants on that date. The withdrawing Employer shall be liable to the Plan for the following contributions:

(a) a prorated Employer contribution for the portion of the applicable year for which the Employer's employees were covered by the Plan;

(b) the excess, if any, by which the actuarial value of claims by the Employer's employees during the portion of the applicable year for which coverage was in effect exceeds the sum of the Employer and Participant contributions made for that portion of the applicable year; and

(c) any amounts assigned to the Employer as its share of prior year's shortfalls or surpluses that have not already been contributed to the Plan.

ARTICLE 13  
**CONTINENTAL PLAN TRANSITION AND COORDINATION**

Contrary provisions of the Trust and of Articles 1 through Article 13 and Article 14 of the Plan notwithstanding, the Plan and Trust shall be administered in accordance with all provisions of that agreement entitled "Employee Benefits Separation Agreement by and among Continental Airlines, Inc., ExpressJet Holdings, Inc., XJT Holdings, Inc. and ExpressJet Airlines, Inc." (the "Separation Agreement") which are applicable to the Plan and the Trust, which provisions shall be and are hereby incorporated by reference herein and made a part of the Plan and Trust as if fully set forth within the text of each of the Plan and the Trust. Specifically, and in accordance with the terms and provisions of the Separation Agreement, from and after April 23, 2002, the Plan shall be liable for and shall pay disability benefits to (i) any Participant whose Disability Date occurs on or after such date, and (ii) any Transferred Disabled Pilot. In no event shall any benefits be paid under the Plan to the extent that the Administrative Committee, in its sole discretion, determines that the obligation to pay such benefit is an obligation of the Predecessor Plan or of any replacement of or successor to such plan, it being the intent of the Company and understanding of the parties to the Separation Agreement that in no event would any individual be entitled to receive benefits under both the Plan and the Predecessor Plan or of any replacement of or successor to such plan. Provisions of the Plan and Trust further to the contrary notwithstanding, the Plan and Trust shall be coordinated with the Predecessor Plan and its related trust or with any replacement of or successor to such plan and its related trust (including any successor trust thereto) so that each takes into account a Participant's benefits and rights under the other with respect to any provision regarding Participant benefits or rights which, in the determination of the Administrative Committee in its sole discretion, could in the absence of such coordination result in any Participant receiving greater benefits or rights than would have been the case had the employees of the Company and the employees of Continental Airlines, Inc. continued as being covered under a single plan in the form of the Predecessor Plan or any replacement of or successor thereto.

ARTICLE 14  
GENERAL PROVISIONS

14.1 **Interpretation.** This Plan is executed and will be performed in the State of Texas; its validity, construction and all rights thereunder shall be governed by that state's laws to the extent not preempted by federal law. If any provision of this Plan shall be in conflict with federal law, the Plan shall be interpreted in accordance with federal law. If any provision of this Plan shall be invalid or unenforceable, unless otherwise determined by the Company, the remaining provisions hereof shall continue to be fully effective.

14.2 **Qualification.** This Plan and the Trust created hereunder are intended to qualify as the plan and trust of a voluntary employees' beneficiary association within the meaning of section 501(c)(9) of the Code. No part of the net earnings of the Trust shall in any manner whatsoever (other than through the payment to Participants of the benefits described in Article 3) inure to the benefit of any private shareholder or individual. In the event that any revision of the Plan is necessary to secure or retain Internal Revenue Service approval, the Company shall make such revisions as may be necessary to secure or retain such approval. The Company shall be responsible for requesting Internal Revenue Service approval of the Plan and Trust as constituting an organization exempt from federal income taxation under section 501(c)(9) of the Code.

14.3 **Employment Rights.** The Employer's right to discipline or discharge Pilots shall not be affected by reason of any of the provisions of the Plan.

14.4 **Participant's Responsibilities.** Each Participant shall be responsible for providing the Administrative Committee with his or her current address. Any notices required or permitted to be given hereunder shall be deemed given if directed to such address and mailed by regular United States mail.

In the event a Participant becomes entitled to a payment under the Plan and such payment cannot then be made (i) because the current address referred to above is incorrect, (ii) because such Participant fails to respond to the notice sent to the current address referred to above, (iii) because of conflicting claims to such payment, or (iv) because of any other reason, the amount of such payment, if and when made, shall be that determined under the provisions of Article 3 hereof without interest thereon.

14.5 **Unclaimed Benefits.** If the whereabouts of the Participant due benefits under this Plan becomes unknown and the benefit payments cannot be made, and the benefits remain unpaid for a period of five years, the benefits of such Participant shall be forfeited and the Plan shall have no further liability to such Participant.

14.6 **Fidelity Bonds.** To the extent required and necessary under section 412 of ERISA, fidelity bonds shall be purchased covering Plan fiduciaries and other parties having authority to handle Plan funds.

14.7 **Expenses.** To the extent permitted by law, the expenses of the Plan shall be paid from the Trust Fund unless paid by the Company and/or Employer. The Company and/or Employer may elect to pay expenses chargeable to the Plan and then, when permitted by law, obtain reimbursement from the Plan for the advanced expenses. Expenses of the Plan include, but are not limited to, investment management, custodial, legal, accounting, actuarial, recordkeeping, reporting and disclosure, insurance and bonding, consulting expenses, and the expenses of the plan sponsor in administering the Plan.

14.8 **Multiple Fiduciary Capacity.** Any person may serve in more than one fiduciary capacity with respect to this Plan, including the ability to serve simultaneously as Trustee, as a member of the Administrative Committee and as a member of the Investment Committee.

14.9 **Rules of Interpretation.** In applying and interpreting the provisions of this Plan, unless the context clearly indicates otherwise, the masculine gender includes the feminine and vice versa, and the plural number including the singular and vice versa.

14.10 **Agent for Service.** Except to the extent otherwise provided in the summary plan description for the Plan, the office of the General Counsel shall be the agent to receive legal service with respect to the Plan.

IN WITNESS WHEREOF, the Company has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2007, to be effective as of the Effective Date, except as otherwise specified or as otherwise required to comply with applicable provisions of the Code, any statute amending the Code, or any other applicable statute, regulation, or ruling.

**EXPRESSJET AIRLINES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_