

**ANNEX “A”
SPACE/USE PERMIT**

**TO THE AIRLINE OPERATING AGREEMENT
Between
CITY OF OAKLAND,
A MUNICIPAL CORPORATION, ACTING BY AND THROUGH
ITS BOARD OF PORT COMMISSIONERS
And
[AIRLINE]
[DATE]**

For the better promotion of commerce and navigation and the development of the Port of Oakland and Oakland International Airport for the benefit of the public, the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, herein referred to as the “Port”, by its execution of this Space/Use Permit (the “Permit”), hereby authorizes the following entity, hereinafter referred to as “Airline,” to conduct business and/or occupy space at Oakland International Airport, hereinafter referred to as the “Airport,” for the purpose or purposes and on the terms and conditions hereinafter stated. The Port and Airline have entered into that certain Airline Operating Agreement (the “Agreement”) dated October 1, 2013, to which this Permit is attached as Annex “A”. The terms and conditions of the Agreement are hereby incorporated into this Permit, and all capitalized terms not otherwise defined in this Permit shall have the same meaning set forth in the Agreement.

1. **Airline.** The name, addresses, contact information and telephone number of the Airline hereunder are as follows:

Name of Airline: [Complete Legal Name]
Notice Address: [Street Address]
[City, State, Zip Code]
Billing Address: [Street Address]
[City, State, Zip Code]
Contact Name: [Contact Person]
Position/Title: [Contact's Position/Title]
Telephone: [Tel. Number]

Fax: [Fax. Number]
Email: [Email Address]

2. **Business to be Conducted.** Airline is authorized to conduct only the following business from the Assigned Space at the Airport: The operation of a transportation system by aircraft for the carriage of persons, property and/or mail, including activities reasonably necessary for such operations. Airline shall have no right to offer or sell food, beverages or merchandise under this Permit; however, Airline may pre-sell items that will be consumed and/or used on-board its aircraft.

3. **Space to be Occupied.** Airline is authorized to use the assigned space at the Airport described in **Exhibit 1, paragraph A-1** (the “Assigned Space”).

4-a. **Consideration-Space Rental.** In consideration for the rights granted hereunder by Port, Airline hereby agrees to pay to Port monthly, in advance, on the first (1st) day of each calendar month during the Term hereof, the sum shown in **Exhibit 1, paragraph A-2.**

4-b. **Consideration-Percentage of Receipts.** If applicable, Airline hereby agrees to pay to Port a percentage of the gross receipts derived from its business at the Airport as specified in Article 5.A.(6) of the Agreement.

4-c. **Remittance.** All payments due hereunder shall be remitted as specified in Article 5.A.(8) of the Agreement, without demand, set-off or deduction,

In the event that the Term of this Permit shall commence or end on any day other than the first and last day, respectively, of a calendar month, such consideration due hereunder for a portion of such month shall be prorated on a per-diem basis, and the first payment shall be due on or before the effective date hereof.

5. **Term.** This Permit, as approved by the Port Attorney, shall become effective upon execution by the parties hereto and continue until the earlier of (i) the period stated in **Exhibit 1, paragraph A-4,** , (ii) the termination date of the Agreement, (iii) the cancellation of this Permit by either party on thirty (30) days’ prior written notice to the other party, or (iv) September 30, 2016.

6. **Amount of Insurance Required.** Comprehensive general liability, business automobile liability, and workers compensation insurance is required to be carried by Airline under subparagraphs K(1) and K(2) in **Exhibit 2.** The amounts of coverage are specified in **Exhibit 1, paragraph A-5.**

7. **Performance Deposit.** The amount of the performance deposit to be held subject to the provisions of Paragraph T in **Exhibit 2** is shown in **Exhibit 1, paragraph A-6.**

8. **Additional Terms and Conditions.** Airline does hereby further agree to abide by all of the Special Conditions set forth in **Exhibit 1, paragraph A-7** and all of the Other Terms and Conditions of Space/Use Permit contained on **Exhibit 2.**

9. **Amendments.** Amendments to this Permit may be made by a revision to **Exhibit 1** executed by Airline and Port, or unilaterally by Port on prior written notice to Airline accompanied by a revised **Exhibit 1** executed only by Port and specifying an effective date for such revised **Exhibit 1,** which effective date shall not be earlier than thirty (30) days after the date of such written notice.

CITY OF OAKLAND, a municipal corporation acting by and through its Board of Port Commissioners,

By: _____
Director of Aviation

[AIRLINE'S NAME]
[Airline's Status/Entity]

By: _____
(Signature)

[Name & Title of the Signer].....
(Print name and Title)
(If Corporate: Chairman, President
or Vice President)

Attest: _____
(Signature)

[Name & Title of the Signer].....
(Print Name and Title)
(If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer,
or Assistant Treasurer)

**THIS PERMIT SHALL NOT BE
VALID OR EFFECTIVE FOR ANY
PURPOSE UNLESS AND UNTIL IT
IS SIGNED BY THE PORT ATTORNEY.**

Approved as to form and
legality this ___ day
of _____, 20__

Danny Wan
Port Attorney

Port Ordinance No.: 4248

P.A.#: _____

EXHIBIT 1
TO
SPACE/USE PERMIT

A-1. ASSIGNED SPACE TO BE OCCUPIED

| Location | Exclusive, Preferential or Common Use | Class | S.F. | Rate P.S.F. | Initial Monthly Rate |
|----------|---|-------|------|-------------|----------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL | | | | | |

(Space Exhibit(s) Attached)

A-2. ASSIGNED SPACE RENTAL CHARGE

MONTHLY: [Monthly Rental Charge] (\$) Should be same as TOTAL above!

The fee for the use of certain Common Use facilities shall be based on a per Aircraft Turn charge as established by Port Ordinance (Rates and Charges Ordinance) (as defined in paragraph (d) of paragraph A-7).

A-3. PERCENTAGE OF GROSS RECEIPTS

If Applicable; pursuant to Paragraph 4-b of this Permit.

A-4. TERM

The period of occupancy permitted under this Permit will expire 270 days from the date that this Permit is executed by the Port and signed by the Port Attorney (“Commencement Date”); provided, however, that once this Permit has been approved by duly adopted Port ordinance and written notice of such approval has been given by Port to Airline, such period of occupancy will expire pursuant to Paragraph 5 of this Permit.

A-5. INSURANCE REQUIREMENTS

Airline shall maintain the following minimum insurance coverages (applicable to the types of insurance listed if the box is checked) in accordance with the requirements of Paragraph J of Exhibit 2 to this Permit:

| | | |
|-------------------------------------|--|---|
| <input checked="" type="checkbox"/> | Business Automobile Liability | \$5,000,000 combined limit for bodily injury and property damage, each accident |
| <input checked="" type="checkbox"/> | Aircraft Liability | As required in the separate Airline Operating Agreement |
| <input checked="" type="checkbox"/> | Aircraft Hangarkeepers' Liability | As required in the separate Airline Operating Agreement |
| <input checked="" type="checkbox"/> | Commercial General Liability | \$5,000,000 combined limit for bodily injury and property damage each occurrence and \$5,000,000 annual aggregate |
| <input checked="" type="checkbox"/> | Fire Legal Liability | \$100,000 any one fire sublimit to Commercial General Liability above |
| <input checked="" type="checkbox"/> | Premises or Operations liability | Included in Commercial General Liability above |
| <input checked="" type="checkbox"/> | Completed Operations and Products Liability | Included in Commercial General Liability above |
| <input type="checkbox"/> | Pollution Liability | \$1,000,000 per occurrence and annual aggregate |
| <input checked="" type="checkbox"/> | Workers Compensation | Subject to all applicable statutory workers' compensation laws and regulations. |
| <input checked="" type="checkbox"/> | Employer's Liability | \$1,000,000 each accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease |
| <input type="checkbox"/> | Professional (Errors and Omissions) Liability | \$5,000,000 each claim and annual aggregate |
| <input checked="" type="checkbox"/> | All risk property insurance covering Airline's additions, alterations to the leased space (including builder's risk), Airline's furniture, fixtures, equipment and loss of rents | Replacement cost value of the property covered and 12 months loss of rents |

Written binders are acceptable as interim evidence. Operations or occupancy may be interrupted without proper evidence. Send certificates to:

Port of Oakland
 Attn: Risk Manager
 530 Water Street
 Oakland, CA 94607
 Fax #: 510-627-1626
 Email: risktransfer@portoakland.com

Evidence of insurance coverage required by this Section A-5 or by Paragraph J of Exhibit 2 to this Permit is to be kept on file with Port in accordance with the requirements of Paragraph J of said Exhibit 2.

A-6. AMOUNT OF PERFORMANCE DEPOSIT

[Performance Deposit] (\$)

A-7. SPECIAL CONDITIONS

(a) Airline agrees that any Performance Deposit required under this Permit may be applied by the Port to any amount owed by Airline under its Airline Operating Agreement with the Port, and that any Contract Security required under such Airline Operating Agreement may be applied by the Port to any amount owed by Airline under this Permit.

(b) Space identified as “Exclusive” in paragraph A-1 shall be exclusive use space, of which Airline shall have exclusive use for its own aircraft operations during the Term of this Permit.

(c) Space identified as “Preferential” in paragraph A-1 shall be preferential use space, of which Airline shall have first priority of use for its own aircraft operations. The Port shall retain the right to schedule the use of this space on a second priority use basis to other airlines operators. Port also reserves the right to require the removal of an aircraft of Airline from any preferential use space in accordance with the Airport’s “Gate Rules and Procedures”, as may be amended from time to time by a duly issued Airport Directive, the current version of which is available in the “Tenants” section, “OAK Gate Management” subsection of the Airport’s website: www.oaklandairport.com.

(d) Airline agrees that the space identified as “Common” in paragraph A-1 will be in such locations and will be available for use by Airline at such times as shall be designated from time to time by Director. Airline agrees that such Common use space may be assigned by the Director to other airline operators at different times. Port reserves the right to reassign such Common Use space from time to time as may be warranted by then existing operational conditions.

(i) Airline has been advised that the Port may authorize such Common Use space to be used by other airline operators at the Airport at different times; accordingly, Airline agrees that after every use of Common Use space by Airline it will store all of its proprietary equipment and materials in cabinets and lockers temporarily assigned to Airline for its exclusive use after every use.

(ii) The duration of each Common Use of airline ticket office and ticket counter space (“Aircraft Turn”) by Airline shall be consistent with the Gate Rules and Procedures.

(e) Rental rates, including the rate per square foot, monthly rent and fees per Aircraft Turn for the space described in paragraph A-1 may be amended by duly enacted Port ordinance, and such amendment or adjustment shall become effective on the date provided in the Port ordinance.

(f) Port expressly reserves the right to reassign or relocate any Airline from and to any permitted space under this Permit, whether Exclusive, Preferential or Common Use, upon giving of thirty (30) days written notice to the Airline. If such reassignment or relocation will be for a term of more than thirty (30) days, the Port shall provide an amendment to paragraph A-1 of this Permit describing and depicting such revised Assigned Space and recalculating the square footage of each class of Assigned Space and revising the monthly rates.

EXHIBIT 2
OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT

A. **Maintenance of Assigned Space.** Airline accepts the space, if any, assigned under Exhibit 1, paragraph A-1 hereof, hereinafter referred to as “Assigned Space,” in its present condition, “as is.” The taking of possession of the Assigned Space shall, in itself, constitute acknowledgment by Airline that the Assigned Space is in a condition satisfactory for its use, and that the Port has not agreed to undertake any modifications, alterations or improvements to the Assigned Space except as specifically provided in this Permit. Airline specifically acknowledges that except as otherwise may be expressly provided herein, the Port has made no representations concerning the condition of the Assigned Space or the fitness of the Assigned Space for the Airline’s intended use, or the compliance of the Assigned Space with any federal, state or local building codes or ordinance or with any laws or regulations or guidelines regarding disabled or handicapped person, including without limitation the Americans With Disabilities Act of 1990. Notwithstanding the foregoing acknowledgment, the Port acknowledges that the Airline has not conducted an audit or inspection of the Assigned Space that would disclose the presence of, or contamination of the Assigned Space by, Toxic Materials and therefore, except as expressly provided in Section Y, the Airline bears no responsibility for the removal, remediation or clean-up of Toxic Materials that were on the Assigned Space prior to Airline taking possession thereof.

Notwithstanding any provision of this Permit to the contrary, the Port and Airline shall maintain the Assigned Space and Terminal Complex in accordance with the allocation of responsibility set forth in Exhibit 3 to this Permit. Except as otherwise provided in Exhibit 3 to this Permit, the Port shall have no duty to maintain the Assigned Space or any improvements located thereon.

Furthermore, except as otherwise provided in Exhibit 1, paragraph A-7 and Exhibit 3 to this Permit, Airline shall, at its own cost, keep and maintain the Assigned Space, including, but not limited to all windows and other glass, hangar and other doors, and skylights, and the interior walls, in good, clean and attractive condition. Port shall have the right, at any time and from time to time, to cause maintenance to be performed and repairs to be made in and to the Assigned Space and the fixtures, equipment and mechanical systems located therein. If after thirty (30) days written notice from the Port, Airline has failed to commence and diligently pursue completion of any and all maintenance, replacement and repair which may be required to restore the Assigned Space and any of its fixtures, equipment and mechanical systems as a result of the neglect of, or loss or damage caused by Airline or any of its officers, employees, agents, invitees or licensees, or which otherwise results from Airline's use or occupancy of the Assigned Space, normal wear and tear excepted, then Port shall have the right, but not the duty, to perform such maintenance, replacement and repair at Airline’s expense and Airline shall reimburse Port for such costs promptly upon Port’s written demand. The performance of maintenance and repair by the Port shall in no event be construed as a waiver of the Airline’s duty to maintain and repair as herein provided. Unless Port's written approval has been first obtained in each instance, Airline shall not post any signs in the Assigned Space or at the Airport which are in public view, nor shall Airline make any alterations, additions, decorations, improvements, or structural changes in or to the Assigned Space, or alter the point of supply of any utilities therein. Airline shall not permit a work of visual art, as defined in 17 USC § 101, to be installed in the Assigned Space without providing Port with a written waiver, in form acceptable to Port, of the artist’s rights under the Visual Artists Rights Act of 1990, Pub. L. 101-650, and without obtaining Port’s prior written approval. Upon Airline’s completion of any improvements within the Assigned Space, Airline shall submit to the Port a copy of any certificates or permit which may be required by any federal, state, city or other governmental agency in connection with the completion of said improvements or occupancy of said improvements by Airline. Airline shall furnish to the Port a set of reproducible, final “as built” drawings of any all such alterations or improvements. Airline waives the

right to make repairs at the expense of the Port and waives the benefit of the provisions of Section 1941 and 1942 of the California Civil Code.

B. **Airline's Property.** Any and all property belonging to, or brought onto the Airport by Airline or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of Airline. Subject to Port's right of approval as set forth in paragraph A hereof, Airline may place and install trade fixtures and other personal property in the Assigned Space for use in connection with its operations hereunder, and the same shall be and remain the property of Airline. Airline shall, however, be responsible for the cost of repairing any damage to the Assigned Space or any other improvements of Port which are caused by the removal of any such trade fixtures and personal property. Notwithstanding the foregoing, however, if Airline shall at any time be in default hereunder, then Port shall have the benefit of any statutory liens on Airline's property located in the Assigned Space which are available to it under the laws of the State of California, and Airline shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Permit have been cured.

C. **Port's Right to Enter.** Port and its officers, employees and designated agents shall have the right to enter the Assigned Space at any reasonable time for inspection, maintenance, repair, attending to emergencies or any other reasonable purpose. Such entry shall not constitute forcible or unlawful entry or detainer of the Assigned Space. The Port shall make a reasonable effort, except in case of emergency, to provide advance notice of its intent to enter the Assigned Space, which notice (notwithstanding any provision of this Permit to the contrary) may be given in person to Airline's manager on duty, or to Airline by telephone, facsimile transmission, or by email, but Port will have no liability to Airline if Port fails to give such notice or if such notice is given by Port but not received by Airline.

D. **Utilities.** Port shall pay all utilities – except telecommunications charges – applicable to the Assigned Space.

E. **Access.** Airline and its officers, employees, agents and invitees shall, subject to the reasonable rules and regulations of the Port, have the right of ingress and egress to and from the Assigned Space.

F. **Taxes and Assessments.** This Permit may create a property interest that is subject to property taxation and Airline, in whom the possessory interest is vested, may be subject to the payment of property taxes levied on such interest. If the taxing authority assess to Airline a possessory interest tax with respect to any tax year any portion of which is included in the Term of this Permit, then Airline shall be responsible for paying the entire annual possessory interest tax without deduction or proration, notwithstanding the expiration or termination of the Term prior to the close of the tax year. Airline acknowledges the forgoing and that the same constitutes a sufficient statement in accordance with the requirements of Section 10.6 of the California Revenue and Taxation Code. Airline shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges, and any business tax lawfully imposed by the City) and impact fees which are levied against or in connection with the Assigned Space, Airline's interest therein and the property and improvements of Airline for the Term hereof or attributable to Airline's activities at the Assigned Space or at the Airport. For purposes of this Section F, a possessory interest tax shall be deemed a tax and not an assessment. Airline's obligations under this Paragraph F shall survive the expiration or earlier termination of this Permit. Nothing contained herein shall be construed as a release or waiver on the part of the Port, or the City, of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which they, or either of them, may lawfully impose on the business or property of Airline.

G. **Rules and Regulations.** Airline covenants and agrees to observe and comply with all lawful rules and regulations of Port, including all safety, security and operations directives of the Director of Aviation of Port or the Assistant Director of Aviation, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport and the use of facilities at the Airport. Airline further covenants and agrees to observe and comply with any and all valid and applicable requirements of all duly-constituted public authorities and with all federal, state and local statutes, ordinances and regulations applicable to Airline, the Assigned Space or the Airport. Airline agrees to pay or reimburse Port for any fines which may be assessed against Port as a result of the violation by Airline of any applicable security regulation at the Airport, which payment shall be made by Airline within fifteen (15) days from receipt of Port's invoice for such amount and documentation showing that payment of such fine is Airline's responsibility hereunder.

Airline agrees for itself, its successors and assigns that it will not make use of the Assigned Space in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Port reserves the right to enter upon the Assigned Space and cause the abatement of such interference at the expense of the Airline. This Permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking off at the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

H. **Indemnification.** Airline agrees to indemnify, defend and hold completely harmless Port (including, without limitation, members of the Port's Board of Commissioners), officers, employees and agents, from and against all liabilities (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, *et seq.*, or any other federal, state or local environmental statute, ordinance regulation or rule, and any federal, state or local civil rights act, including acts regarding disabled or handicapped persons, including without limitation, the Americans with Disabilities Act), losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable paralegal and attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels), which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to or destruction of any property of Port, or any property of, injury to or death of any person resulting from or arising out of the Airline's use, occupancy, or maintenance of the Assigned Space or any improvements thereto, of Airline's operations thereon, or the acts or omissions of Airline's officers, agents, employees, contractors, subcontractors, subtenants, invitees or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was caused solely by Port's negligence or willful misconduct, or (ii) arising out of the failure of Airline to keep, observe or perform any of the covenants or agreements in this Permit to be kept, observed or performed by Airline. In carrying out its obligations hereunder, Airline shall use counsel reasonably acceptable to the Port Attorney. The provisions of this Paragraph H shall survive the expiration or earlier termination of the Term of this Permit with respect to any acts or omissions occurring during the Term of this Permit.

The foregoing provisions of this Paragraph H are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Airline under this Permit.

I. **Waiver of Damage.** Airline hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect,

deficiency or impairments of any of the services in or to the Assigned Space or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is due to the willful misconduct or gross negligence of Port or its officers, agents or employees.

J. **Insurance Requirements.** Airline shall, at its own cost and expense, purchase and maintain throughout the Term of this Permit the following insurance:

(1) **Business Automobile Liability Insurance.** Such insurance shall cover liability for all owned, non-owned and hired automobiles, trucks and trailers and shall provide coverage not less than that provided in the Business Automobile Liability policy ISO form number CA 00011293, with a combined single limit of not less than \$5,000,000 each accident for bodily injury and property damage. Such insurance shall name as additional insureds the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees; such insurance also shall contain a waiver of subrogation in favor of such additional insureds, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. If Airline's insurance company gives Airline the right to select or recommend counsel, Airline will select or recommend counsel reasonable acceptable to the Port.

(2) **Aircraft Liability.** Refer to separate Airline Operating Agreement.

(3) **Aircraft Hangarkeepers' Liability.** Refer to separate Airline Operating Agreement.

(4) **Commercial General Liability Insurance.** Such insurance shall not be less than that provided in ISO Commercial General Liability Insurance occurrence form number CG 00011093. The limits of such insurance shall not be less than \$5,000,000 per occurrence and annual general aggregate, \$5,000,000 products and completed operations aggregate, \$1,000,000 personal and advertising injury and \$100,000 fire legal liability. Coverage shall include premises and operations liability, blanket contractual liability, broad form property damage and independent contractors' liability. Liquor liability must also be included if liquor is served or sold. Coverage shall also include Contractor's Pollution Legal Liability when work involves construction or digging or aircraft servicing, repair, and maintenance. Such insurance shall name as additional insureds the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees, with additional insured coverage at least as broad as that provided in ISO endorsement CG 20 10 11/85, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. Such insurance shall have a cross liability/separation of insureds provision and a waiver of subrogation in favor of the Port, its commissioners, officers, agents and employees. If Airline's insurance company gives Airline the right to select or recommend counsel, Airline will select or recommend counsel reasonable acceptable to the Port.

(5) **Pollution Liability.** Not applicable.

(6) **Workers Compensation and Employers Liability Insurance.** Such insurances shall be statutory workers compensation coverage and also include employer's liability insurance in the amount of at least \$1,000,000 per accident, \$1,000,000 bodily injury each employee and \$1,000,000 policy limit for bodily injury by disease. Such insurance shall contain a waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

(7) **Professional (Errors and Omissions) Liability Insurance.** Not applicable.

(8) All Risk Property Insurance. Such insurance shall include all risk, 100% replacement cost coverage for Airline's additions, alterations to the Assigned Space, Airline's furniture, fixtures, equipment including coverage for any increased costs of construction resulting from changes in applicable building codes and regulations and include coverage for 12 months loss of rents. Such insurance shall include the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners as additional insured and loss payee as their interests may appear; such insurance also shall contain a waiver of subrogation in favor of such additional insured, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. Additional property insurance requirements are as follows:

(8.1) Airline shall be required to maintain builder's risk insurance during construction of all improvements (additions/alterations). Each policy shall be subject to the approval of Port, which approval shall not be unreasonably withheld.

(8.2) Unless Airline's policy of property insurance contains a rental income endorsement insuring the payment of the Minimum Monthly Payment for a period of not less than twelve (12) months, Airline shall also be required to maintain business interruption insurance insuring that the Minimum Monthly Payment will be paid to Port for a period of not less than twelve (12) months if the Assigned Space is destroyed or rendered inaccessible by a risk insured against by the policy or policies of property insurance Airline is required to maintain under subsection (8) above. Said insurance shall provide that the insurer waives its rights of subrogation against Port. Airline shall maintain on file with Port, commencing with the Commencement Date and thereafter throughout the Term hereof, an endorsement or endorsements evidencing said rental income or business interruption insurance.

(9) California Civil Code Sections 1932 and 1933. Port and Airline hereby waive the provisions of California Civil Code Sections 1932 and 1933, and of any other statutes which relate to the termination of a lease when leased property is destroyed and agree that any such event shall be governed by the terms of this Permit.

(10) Independent Contractors. Airline shall also require its independent contractors to maintain Business Automobile Liability, Commercial General Liability, Workers' Compensation and Employers' Liability as described above and provide evidence reasonably acceptable to Port that such contractor has complied with the provisions of this Paragraph J.

(11) Waiver Against Port. Airline hereby waives any right which it may have against Port on account of any loss or damage occasioned to Airline arising from any risk covered by the insurance that Airline is required to carry under this Paragraph J or covered by any other insurance maintained by Airline insuring the Assigned Space, its contents, or any improvements thereto.

(12) A.M. Best Guide Rating. All policies of insurance required by this Permit to be maintained by Airline or any sublessee shall be issued by insurance carriers whose financial condition is acceptable to Port, but in no event less than an A.M. Best Guide rating of A VII or better.

(13) Cancellation or Reduction of Coverage. The Airline or its agent shall provide at least thirty (30) days' prior written notice to Port (except ten (10) days prior written notice shall be allowed for non-payment of premium) in the event any of the above required insurance is suspended, voided, canceled, or reduced in coverage or in limits.

If Airline fails to provide the required insurance certificates and policies, the Port may without further notice and, at its option, (1) exercise the Port's rights under the terms of the Permit or any

other rights available to the Port; (2) procure such insurance coverage at Operator's expense and Airline shall promptly reimburse the Port for such expense and (3) interrupt or limit Airline's operations or occupancy.

(14) Proof of Coverage. Prior to commencing the services under this Permit and annually thereafter, Airline shall furnish a certificate of insurance, satisfactory to the Port of Oakland Risk Management Department, evidencing that the above insurance is in force in compliance with the terms of these insurance requirements, placed with insurance carriers financially acceptable to the Port, stating the name(s) of the insurance carriers, policy numbers, dates of expiration and limits of liability. In addition to the certificate of insurance, Airline shall provide the Port with copies of the actual insurance policies if requested by the Port of Oakland at any time. The Port reserves the right to approve or disapprove of any deductible or self-insured retention under any insurance required by the Permit.

Written binders may be acceptable as interim evidence of insurance. Send certificates to:

Port of Oakland
Attn: Risk Management Department
530 Water Street
Oakland, CA 94607
Fax #: 510-627-1626 or
Email: risktransfer@portoakland.com

(15) Deductibles and Self-Insured Retentions. Deductibles and self-insured retentions in excess of \$250,000 shall be permitted only at Airline's written request and upon the prior written approval of the Port's Risk Manager, which approval may be granted or withheld in the Port's sole and absolute discretion and shall be subject to the following covenants and conditions:

Airline agrees that for any such deductible or self-insured retention amount, Airline shall provide to the Port defense and indemnification at least equal to the defense and indemnification to which the Port would be entitled as an additional insured had Airline provided the above-specified coverages respectively under Insurance Services Office form number GL 0001, and Insurance Services Office form numbers CA 0001 and CA 0404, or such other successor forms as may be deemed appropriate by the Port's Risk Manager from time to time, as evidenced by a written notice from Port to Airline. It is understood that Airline's agreement to provide such defense and indemnification to the Port includes cases where such defense and indemnification would be required under said insurance policy forms for claimed loss, damage, injury or death which was caused solely by the active or passive negligence or other wrongful conduct of the Port.

K. Assignment and Subletting. Pursuant to Article 11 of the Agreement, Airline may not assign this Permit or any of the rights granted to it hereunder. Airline may not sublet the Assigned Space or any portion thereof except to sublease the right to use no more than forty-nine percent (49%) of the Assigned Space to a handler providing services to the Airline or to another airline pursuant to a handling agreement, provided that the Airline shall (i) charge the sublessee no more than one hundred and twenty-five percent (125%) of the proportionate charges the Airline pays the Port for such portion of the Assigned Space, (ii) provide the Port with a copy of said sublease and handling agreement, and (iii) obtain the prior express written consent of the Assistant Director of Aviation in each instance which may be granted or withheld in the Port's sole discretion. Airline shall indemnify and defend the Port for, from and against any matters which arise as a result of the Airline's failure to disclose any relevant information about the Assigned Space to any sublessee of the Airline.

L. Default. In the event that Airline shall fail to remit any payment due to Port under Paragraph 4 of this Permit, or shall fail to submit any financial report required to be submitted in

connection therewith, within five (5) days after receipt by Airline of the Port's written demand, or in the event that Airline or any of its officers, employees, agents, invitees or licensees violates any other term, covenant or condition of this Permit and such violation continues or reoccurs after Port has given written notice thereof to Airline, or if Airline commits an Event of Default under its Airline Operating Agreement with the Port, the Port may elect to terminate this Permit and resume possession of the Assigned Space, thereafter using the same for its own purposes without having to account to Airline therefor; or Port may elect to retake possession of and relet the Assigned Space as agent for the Airline, collecting and applying the proceeds first, toward the payment of all costs and expenses (including reasonable attorneys fees) incurred in connection with such retaking and reletting, and next, toward the payment of any consideration and other charges due Port under this Permit, in which event Airline shall be responsible for paying any deficiency to Port. In addition, Port shall have any and all other rights or remedies available to it as a landlord under the applicable laws of the State of California by reason of any such default. Airline hereby expressly waives any notice of default from Port as a prerequisite to surrender of possession of the Assigned Space. Any partial payment of any payment due to the Port under Paragraph 4 of this Permit from Airline and accepted by the Port shall not render ineffective any notice given by the Port to the Airline pursuant to the terms of this Permit or California Code of Civil Procedure Section 1161, et. seq., or any successor statute thereto.

M. **End of Term.** At the end of the Term or upon the earlier termination of this Permit, Airline shall deliver to Port possession of the Assigned Space and all of the fixtures and equipment of Port in their original condition in all respects, reasonable use and wear excepted, and Airline agrees to reimburse Port for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition; provided, however, in the event Airline has caused any alterations or improvements to be made to the Assigned Space, including but not limited to the addition, relocation or removal of partitions and doorways (which such alterations or improvements shall be made at Airline's cost and only with the prior express written approval of Port in each instance), the Port may elect, with respect to each such alteration or improvement, to accept it as it was at the time it was made or constructed, reasonable use and wear excepted, or to require the same to be restored to its original condition at Airline's expense.

N. **Holding Over.** If Airline or any assignee or sublessee thereof continues to occupy the Assigned Space after the Term of this Permit has terminated in any manner and the Port has not objected thereto, such holding over shall be deemed a month to month Permit terminable on thirty (30) days notice given by either party (the "Hold-Over Permit") on the same terms and conditions as provided in this Permit, except the monthly rate during any such Hold-Over Permit shall be the monthly rate that is established from time-to-time by Port ordinance for non-signatory airlines (as of the date of this Permit, such rate is 25% above the rate for signatory airlines). In addition to the terms above, the Director of Aviation of Port, upon thirty (30) days written notice to Airline, may change any of the other terms and conditions of the Hold-Over Permit.

Notwithstanding the foregoing, nothing contained in this Permit shall give Airline any right to occupy the Assigned Space at any time after expiration of the Term of this Permit or its earlier termination. Airline acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the Term of this Permit or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this paragraph, and Airline hereby waives and releases to the Port all rights, if any, to which Airline may be entitled under said provisions or other law or regulations

If Airline or any assignee or sublessee thereof shall continue to occupy the Assigned Space after the Term of this Permit has terminated in any manner and the Port has objected thereto, then the

Port shall be entitled to double the monthly rate specified in Paragraph 4 hereof, and acceptance by Port of any sums after any such objection shall not constitute a renewal of this Permit or a consent to such occupancy, nor shall it waive Port's right of re-entry or any other right available to it under the laws of California or the provisions of this Permit.

O. **Notice.** Any notice permitted or required to be given to Airline hereunder shall be in writing and delivered either by hand to the Assigned Space, by nationally recognized overnight courier service or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, to the Notice Address contained in Paragraph 1 of this Permit or such other address as Airline may, by written notice to the Port given in accordance with the requirements of this subparagraph, direct from time to time. Any notice permitted or required to be given to Port hereunder shall be in writing and delivered either by hand to the Office of the Manager, Airport Properties Department, Oakland International Airport, Oakland, California, provided Airline obtains a written acknowledgment of receipt therefor from Port, by nationally recognized overnight courier service or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

Manager, Airport Properties Department
Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, California 94621

or such other address as Port may, by written notice to Airline given in accordance with the requirements of this subparagraph, direct from time to time.

P. **Sums Paid by Port.** If Port has paid any sum or sums or has incurred any obligation or expense which Airline has agreed to pay or reimburse Port for, or if Port is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Airline to perform or fulfill any of the terms or conditions of this Permit, then the same shall be deemed additional rent due hereunder and Airline shall reimburse Port therefor promptly upon demand.

Q. **Interest and Penalty on Sums Due Port.** Any sums payable to Port by Airline under any provision of this Permit which are not paid (i) on or before the tenth (10th) day of the month for fixed amounts (e.g., rental for Assigned Space), (ii) within thirty (30) calendar days for variable billed amounts (e.g., utilities), or (iii) within the time frames specified elsewhere in this Permit, after such sum becomes due and payable shall be subject to a delinquency charge, for violation of this Permit and as liquidated damages, of \$50.00 plus a sum equal to 0.05% (five one-hundredths of one percent) per day of such delinquent payment, but not to exceed the maximum interest rate permitted by applicable law, for each day from the date such payment became due and payable until payment has been received by Port. Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. The delinquency charges provided by this Paragraph R are in addition to all other remedies that Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid.

R. **Performance Deposit.** In the event that a performance deposit is required under Paragraph 7 of this Permit, Airline shall deposit such sum with Port upon execution of this Permit, and such sum shall be retained by Port as security for the faithful performance of Airline's obligation hereunder. Port shall have the right, but not the obligation, to apply said performance deposit to the payment of any sum due to Port which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Port in curing any default of Airline, or to the cost of restoring the Assigned Space or its furnishings, fixtures or equipment to their original condition, reasonable use and wear excepted. In the event that all or any portion of the performance deposit is so applied, Airline shall

promptly upon demand by Port remit to Port the amount of cash required to restore the performance deposit to its original sum, and Airline's failure to do so within fifteen (15) days after its receipt of such demand shall constitute a default under this Permit. If said performance deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Airline, without interest, within ninety (90) days after the end of the Term of this Permit. The Port will not pay any interest on the performance deposit.

In the event that Airline has another agreement or other agreements with the Port that requires or require Airline to maintain a deposit with the Port, Airline, at its election may satisfy the deposit requirements with a single non-cash deposit in the form acceptable to the Port, provided that: (i) the deposit instrument describes each agreement to which it is intended to apply, (ii) the deposit amount is not less than the aggregate of deposit requirements for all of the agreements to which the instrument applies and (iii) if the deposit is insufficient to satisfy the requirements of any of the agreements to which it applies, the Airline shall be in default of each and every agreement to which the deposit applies.

S. **Brokerage Commissions.** Unless otherwise expressly provided in Exhibit 1, paragraph A-7 to this Permit, Airline warrants that no real estate commission is payable by Port to any person or entity in connection with this Permit, and Airline hereby agrees to indemnify, defend and hold Port completely harmless from and against any and all liabilities, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable paralegal and attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels) incurred by Port as a result of any claims therefor.

T. **Port's Reserved Rights.**

(1) Port reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Assigned Space, and to run water, electrical, telephone, gas, drainage, communications and other lines over, under, across and through the Assigned Space and to grant necessary utility easements therefor.

(2) Port reserves the right (a) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to Airline for loss of business or damages of any nature whatsoever to Airline occasioned during the making of such improvements, repairs, alterations and additions, including but not limited to any damages resulting from negligence of the Port or its employees, agents or contractors, and (b) to establish such lawful fees and charges for the use of the Airport by Airline and all others as Port may deem advisable.

(3) Airline covenants and agrees that this Permit shall be subject and subordinate to the provisions of any existing or future agreement between Port and the United States Government relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or Passenger Facility Charges ("PFCs") for the development or operation of Airport. In the event that the Federal Aviation Administration or its successors shall require any modifications to this Permit as a condition precedent to the granting of such federal funds or PFCs, Airline shall promptly consent in writing to such modifications.

U. **Discrimination Not Permitted.**

(1) Airline, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (a) no person on the grounds of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, age (over 40), cancer-related medical condition, known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status, shall be excluded from or segregated for participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Assigned Space or the Airport under the provisions of this Permit; (b) that in the construction of any improvements on, over or under the Assigned Space and the furnishing of services thereon, and in its use of the Airport, no person on the grounds of race, color, religion, sex, actual or perceived sexual orientation, national origin, age (over 40), cancer-related medical condition, known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status, shall be excluded from or segregated for participation in, denied the benefits of, or otherwise be subject to discrimination; and (c) that Airline shall use the Assigned Space and the Airport in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Airline shall comply with laws of the State of California prohibiting discrimination because of race, color, religion, sex, national origin, age(over 40), cancer-related medical condition, known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status.

Should the Airline authorize another person, with Port's prior written consent, to provide services or benefits from the Assigned Space or at the Airport, Airline shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this subparagraph (1). Airline shall furnish the original or a true copy of such agreement to Port. Port may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport, and Airline agrees that it will adopt any such requirement as a part of this Permit.

(2) If Airline shall furnish any services to the public at the Airport, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that Airline shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

(3) Further, Airline assures Port that no person shall be excluded on the grounds of race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Non-discrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended. Airline also assures Port that it will require its covered suborganizations to provide written assurances to the same effect and provide copies thereof to Port.

(4) Airline assures Port that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, religion, sex, actual or perceived sexual orientation, national origin, age (over 40), cancer-related medical

condition, known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status, be excluded from participating in any activity conducted in connection with its operations under this Permit. Airline also assures Port that it will require any contractors and subtenants (to the extent that such subtenants are allowed under other provisions of this Permit) to provide assurances to the same effect and ensure that such assurances are included in subcontracts at all tiers which are entered into in connection with Airline's operations under this Permit.

(5) In furtherance of the Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, it is expressly understood and agreed with respect to Airline's activities upon the Assigned Space and the Airport or other Port properties:

(a) That Airline shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, actual or perceived sexual orientation, national origin, age (over 40), cancer-related medical condition, known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status. Airline shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Airline agrees to post in conspicuous places on the Airport or other Port properties, available to employees and applicants for employment, notices to be provided by the Port's Office of Equal Opportunity setting forth the provisions of this paragraph.

(b) That Airline shall, in all solicitations or advertisements for employees at the Airport or other Port properties placed by or on behalf of Airline, state that it is an equal opportunity employer.

(c) That Airline will send to each labor union or representative of workers at the Airport with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Office of Equal Opportunity, advising the labor union or workers' representative of the Airline's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment at the Airport or at other Port properties.

(d) That Airline shall, with respect to new hires at the Airport or at other Port properties, and elsewhere to the extent required by applicable federal or state law or regulation, maintain work force records showing male, female and minority employees by job category and similar information, and shall permit the Port's Office of Equal Opportunity to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port.

(6) In the event of breach of any of the nondiscrimination covenants in this Section W, Port shall have the right, in addition to all other legal remedies, to terminate this Permit, or to seek judicial enforcement of said covenants. The right granted to Port by the foregoing sentence shall be effective to enforce nondiscrimination requirements under Port, State of California and federal laws and regulations; provided however that such right for the enforcement of federal nondiscrimination law and regulations or termination because of the breach thereof shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, if applicable, are followed and completed, including exercise or expiration of appeal rights; and further provided however that such right of termination for the breach of

California nondiscrimination laws and regulations shall not be effective until thirty (30) days after written notice of termination has been given to Airline.

V. **Federal Aviation Administration Requirements.**

(1) Airline shall comply with all applicable regulations of the Federal Aviation Administration relating to Airport security and shall control the Assigned Space so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport. Airline agrees to pay any fines which may be assessed against the Port as a result of the violation by Airline of any applicable security regulation at the Airport, which payment shall be made by Airline within fifteen (15) days from receipt of the Port's invoice for such amount and documentation showing that payment of such fine is Airline's responsibility hereunder.

(2) Port reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Assigned Space, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport.

(3) Airline expressly agrees, on behalf of itself and its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Assigned Space in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77.

(4) Airline agrees to require any lights in the Assigned Space to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.

(5) Airline expressly agrees, on behalf of itself and its successors and assigns, to prevent any use of the Assigned Space which would interfere with or adversely affect the operation or maintenance of the Airport, or which would otherwise constitute a hazard or nuisance at the Airport.

(6) Airline agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repair) on its own aircraft with its own employees that it may choose to perform.

(7) The Airline agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR, Part 23, Subpart F. The Airline also agrees to include the above statements in any subsequent complementary aeronautical activity agreements that it enters into and to cause those businesses to similarly include the statements in further agreements.

W. **Environmental Responsibilities.** Airline's environmental responsibilities for the Assigned Space are defined in Article 9 of the Agreement.

X. **Prevailing Wage Requirements.**

Airline agrees that in the performance of work under this Permit, if applicable, Airline shall comply with:

(a) The Public Work Prevailing Wage Requirements, which are the applicable prevailing wage requirements of California Labor Code Sections 1720 et seq. and Port Ordinance No. 1606, as amended, and which generally apply to construction, costing more than \$1,000.00, which is made on or to Port property and the cost of which is paid for in whole or in part by the Port's advance or reimbursement to Airline or by credit against rent or other sums due the Port; and

(b) The Private Work Prevailing Wage Requirements of this Permit which generally apply to all construction, other than construction to which the Public Work Prevailing Wage requirements apply, which is made on or to Port property, costing more than \$50,000.00.

“Construction” as used herein shall apply to construction, alteration, demolition or repair work, and the laying of carpet and maintenance work, provided, that Private Work Prevailing Wage Requirements shall not apply to maintenance work. “Construction” includes all construction of building core and shell, tenant improvements and public works that are within the customary jurisdiction of the construction trades and crafts, whether performed on- or off-site. Off-site work, performed by Materialmen, as defined under California Law, is not included in the term “Construction”.

The Private Work Prevailing Wage Requirements shall not apply to tenant improvements costing less than \$50,000.00, nor to tenant improvements for which the initial building permit for such work is issued more than one year after the certificate of occupancy is approved on the core and shell. The \$50,000.00 cost shall be adjusted annually pursuant to the CPI.

The following provisions of this subsection apply only if, and to the extent that, the prevailing wage requirements are applicable.

The prevailing wage requirements shall apply to the employees of any employer including the Airline, any tenant of Airline, any general contractor or subcontractor or other contractor engaged in construction of any improvements in the Assigned Space or at the Airport for Airline, including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the rental, operation or (in the case of Private Work Prevailing Wage Requirements only) maintenance of the Assigned Space.

The Airline shall cause the provisions of this subsection to be incorporated into each contract and subcontract, and lease agreement which would be subject to this subsection. In the event the provisions are not so incorporated, the Airline shall be liable to the worker in any action or proceeding for the difference between the prevailing wage rate required to be paid and the amount actually paid to the worker, including costs and attorney fees, as if the Airline were the actual employer.

The prevailing wage requirements of this subsection will be monitored and enforced by the Port. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the

amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this section shall preclude its enforcement by the California Division of Labor Standards Enforcement.

Nothing in this Permit shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Good faith efforts shall be made to maintain a ratio of apprentices to journeymen of not less than 20%, if the employer is signatory to an agreement to train, or otherwise bound to train, apprentices. When submitting the certified payroll records required hereunder Airline shall submit documentary proof of the valid apprentice status of any worker listed as an apprentice.

Airline agrees that to the extent that Airline is required to comply with the prevailing wage requirements, Airline shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of the Port's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at the Port's principal office and will be made available to any interested party on request. Airline agrees to post a copy of the prevailing rate of per diem wages at each job site.

Airline, as a penalty to the Port, shall forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Airline.

To the extent that there is insufficient money due Airline as an advance, reimbursement or credit to cover all penalties forfeited and amounts due and in all cases where this Permit does not provide for a money payment by the Port to Airline, and except in cases where enforcement authority is vested in the State pursuant to Section 1775 of the California Labor Code, the Port not later than ninety (90) days after the filing of a valid notice of completion in the office of the Alameda County Recorder or not later than ninety (90) days after the Port's acceptance of the work, whichever last occurs, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided for herein. Airline agrees that no issue other than that of the liability of Airline for the penalties allegedly forfeited and amounts due shall be determined in such action, and the burden shall be upon Airline to establish that the penalties and amounts demanded in such action are not due. Out of any money withheld or recovered or both there shall first be paid the amount due each worker and if insufficient funds are withheld or recovered or both to pay each worker in full the money shall be prorated among all such workers.

At least two weeks before the last date Airline accepts initial bids for construction Airline shall file with the Port a written list of the name of all contractors to whom Airline has submitted a request for bids. In addition, Airline shall file with the Port the name of each contractor with whom it proposes to contract, together with the name of the subcontractors of all tiers, at least five (5) working days before entering into the contract.

Airline agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section Z showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the Port within a reasonable time not to exceed fifteen (15) days from close of payroll by the respective employer. The Port has adopted an electronic monitoring system to satisfy certain certified payroll reporting requirements. The web-accessed monitoring system (WAMS) shall be utilized to satisfy said requirements. Access to the system requires registration with Hill International (MyLCM) to submit certified payroll records.

It is understood and agreed that all documents that Airline is required to submit to or file with the Port under this Paragraph X shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

In the event of repetitive breach of the requirements of this subsection by Airline, the Port shall be entitled, in addition to all other remedies hereunder for breach of this Permit, to appoint at Airline's expense a special monitor to oversee Airline's compliance. Fees for said special monitor shall be billed to Airline, which fees Airline agrees to pay as additional rent within 10 days after Airline's receipt of such bill. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after the Port gives to Airline written notice specifying in what respects Airline must comply, Airline shall forfeit as a penalty to the Port for each worker twenty-five dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated.

Airline shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section.

Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this Paragraph X.

Y. Miscellaneous.

(1) The paragraph headings contained in this Permit are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

(2) Notwithstanding anything herein contained that may appear to the contrary, it is expressly understood and agreed that, except for Airline's right to possession of the Assigned Space described as Exclusive in Exhibit 1, paragraph A-1 to this Permit, the rights granted Airline under this Permit are non-exclusive.

(3) Except as expressly prohibited herein, the provisions of this Permit shall bind and inure to the benefit of the successors and assigns of the parties hereto.

(4) Time is expressed to be of the essence of this Permit.

(5) This Permit shall be governed by and construed in accordance with the laws of the State of California (without regard to principles of conflict of laws). It is agreed that if any covenant,

condition or provision contained herein is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

(6) No recourse under or upon any obligation, covenant or agreement contained in this Permit, or any other agreement or document pertaining to the operations of Airline hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Port, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Permit, shall be had against any member (including, without limitation, members of Port's Board and its citizens advisory committees), officer, employee or agent, as such, past, present and future, of Port, either directly or through Port or otherwise, for any claim arising out of this Permit or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Port. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Port member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Permit or the operations conducted pursuant to it, or for the payment for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Permit.

(7) Airline represents and warrants to Port that, to the best of its knowledge, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Port has any material interest, either directly or indirectly (excluding any interest as a stockholder owning less than 5% of the shares of any class of securities), in the business of Airline to be conducted hereunder.

(8) This Permit constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any representation or statements heretofore or contemporaneously made with respect to such subject matter, whether oral or written, are merged herein. Except as otherwise expressly provided in this Permit, this Permit may be altered or amended only by written instrument executed by both parties hereto.

(9) Airline hereby consents to the jurisdiction of the State of California Superior Court of the County of Alameda and of the Federal District Court for the Northern District of California with respect to any action instituted by the Port and arising against Airline under this Permit, and waives any objection which it may have at any time to the laying of venue of any such action brought in any such court, waives any claim that such action has been brought in an inconvenient forum and further waives the right to object, with respect to such action, that such court does not have any jurisdiction over Airline. Airline further irrevocably consents to the service of process by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), or the service of process in any other manner permitted by law, in any action instituted by the Port and arising against Airline under this Permit. Port agrees to serve such process on Airline's registered agent under California law if the name and address of Airline's current registered agent in California has been provided to the Port in advance and in writing.

(10) Airline warrants that no person or agency has been employed or retained to solicit or obtain this Permit upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul or immediately terminate this Permit or recover from Airline the full amount of the contingent fee. As used in this section, "bona fide agency" means an established commercial or selling agency, maintained by Airline for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; "bona fide employee" means a person, employed by Airline and subject to Airline's supervision and control as to time, place, and manner of performance, who neither exerts nor

proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; “contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract; and “improper influence” means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.”

(11) AIRLINE AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS PERMIT.

_____ **[To be initialed by Port]**

_____ **[To be initialed by Airline]**

EXHIBIT 3
MAINTENANCE AND REPAIR RESPONSIBILITY MATRIX
AIRLINES WITHIN THE TERMINAL COMPLEX
OCTOBER 1, 2013

Notwithstanding the terms and conditions of Exhibit 2, paragraph A of this Permit or any provision of the Permit to the contrary, the following chart identifies the responsible Party (either Port or Airline) who shall at its sole cost be responsible for the maintenance, repair and/or providing for the specifically identified Assigned Space location, appurtenance or service. If an Assigned Space location, appurtenance or service is not specifically provided for in the following chart, it shall be Airline’s duty at its sole cost to keep and maintain said Assigned Space location, appurtenance or to provide said service. In the event an item is listed as Port’s responsibility, but it can be definitively determined that a specific airline caused damage to that item, the Port may charge said airline for repair or maintenance by the Bill-to-Other (BTO) or other chargeback process.

| <u>Assigned Space Location/Appurtenance/Service</u> | <u>Responsible Party</u> |
|---|--------------------------|
| <u>Building – Exterior</u> | |
| Doors: Roll-up – Appurtenant to Assigned Space | Airline |
| Doors: Sliding – Appurtenant to Assigned Space | Airline |
| Doors: Swinging – Appurtenant to Assigned Space | Airline |
| Insulation and Weatherstripping | Port |
| Lighting: Mounted on Outside of Building | Port |
| Roof | Port |
| Walls | Port |
| Windows: Appurtenant to Assigned Space | Airline |
| Windows: All Others | Port |
| <u>Building - Interior</u> | |
| Ceiling Tiles – Appurtenant to Assigned Space | Airline |
| Doors: Roll-up – Appurtenant to Assigned Space | Airline |
| Doors: Sliding – Appurtenant to Assigned Space | Airline |
| Doors: Swinging – Appurtenant to Assigned Space | Airline |
| Flooring: Carpet ¹ – Appurtenant to Assigned Space | Airline |
| Flooring: Tile ² – Appurtenant to Assigned Space | Airline |
| Furnishings, Trade Fixtures | Airline |
| HVAC: Building system | Port |
| HVAC: Airline installed | Airline |
| Insulation and Weatherstripping – Appurtenant to Assigned Space | Airline |
| Interior Wall Windows | Airline |
| Walls, including Partitions | Airline |

Baggage Systems

| | |
|---|---------|
| Bag Belt: Terminal 1 Outbound (M101) – Adjacent to Exclusive Use Ticket Counters | Port |
| Bag Belt: Terminal 1 Outbound (M101) – Adjacent to Common Use Ticket Counters: Including United, Volaris and US Airways | Port |
| Bag Belt: Terminal 1 International/Charter Outbound (M102) | Port |
| Bag Belt: Terminal 2 Outbound (M363) | Airline |
| Bag Belt and Carousels: Terminal 1 Inbound | Port |
| Bag Belt and Carousels: Terminal 2 Inbound | Port |
| Bag Belt: Security Doors/Roll-Up Doors (M101) – Exclusive Use Counters | Port |
| Bag Belt: Security Doors/Roll-Up Doors (M101) – Common Use Counters | Port |
| Bag Belt: Security Doors/Roll-Up Doors (M102) | Port |
| Bag Belt: Security Doors/Roll-Up Doors (M363) | Airline |

Communications³

| | |
|--|---------|
| Local Paging System | Port |
| Common Paging/Public Address System | Port |
| White Courtesy Phones | Port |
| Telephone Lines/Conduit: Airline-installed | Airline |
| Telephone Lines/Conduit: Port-provided | Port |

Computer Specialty Systems

| | |
|---|---------|
| Multi-User System Equipment (M.U.S.E.): Ticket Counters & Podiums | Port |
| Airline Proprietary System | Airline |
| Baggage Information Display System (B.I.D.S.) | Port |
| Flight Information Display System (F.I.D.S.) | Port |

Custodial Services

| | |
|--|---------|
| Public Spaces including, Baggage Claim, Corridors, Hallways, Hold Rooms and Lobbies | Port |
| Assigned Space: Including Exclusive and Common-Use Gate Podiums and Ticket Counters and areas behind Ticket Counters. The Port does not provide daily porter/maid services for Common Use facilities. Airlines utilizing any Common Use facilities at the Airport are expected to clean such spaces after each flight operation. | Airline |
| Terminal 2 Lower Level (M130) Restrooms: Rooms 203 & 204; Adjacent to Southwest Training Room | Airline |
| Terminal 2 Lower Level (M363) Restrooms: Rooms 1003A & 1003B at Rear shared by Southwest and TSA | Port |
| Terminal 2 Outbound Baggage Building (M363) | Airline |
| Boarding Bridges: Janitorial/Cleaning within Boarding Bridge | Port |
| Boarding Bridges: Janitorial/Cleaning at Rotunda End | Port |

| | |
|--|---------|
| <u>Doors</u> | |
| Doors: Roll-up (Appurtenant to Assigned Space) | Airline |
| Doors: Sliding (Appurtenant to Assigned Space) | Airline |
| Doors: Swinging (Appurtenant to Assigned Space) | Airline |
| <u>Doors/Frames, Jambs, Door Jamb Bumpers, Operators, and Hardware</u> | |
| Within Assigned Space or on Exterior if Exclusively Used by Airline | Airline |
| All Other | Port |
| <u>Door Lock Cylinders and Keys</u> | |
| Port's Master Key/Lock System | Port |
| Non-Port Master Key/Lock System on Non-Security Program Doors ⁴ | Airline |
| Security Programmed Doors: Lock/Key or Card Key System | Port |
| <u>Electricity – Utilities</u> | Port |
| <u>Electric Outlets and Wiring Within Walls</u> | Port |
| <u>Fire Extinguisher and Portable Fire Protection/Suppression Equipment</u> | |
| Within Assigned Space | Airline |
| Extinguishers/Equipment on Ramp provided by Tenant | Airline |
| All other | Port |
| <u>Fire Alarm and other Port-Provided Emergency Equipment (e.g., Sprinklers, Hoses)</u> | Port |
| <u>Flooring</u> | |
| Flooring: Carpet ¹ – Appurtenant to Assigned Space | Airline |
| Flooring: Tile ² – Appurtenant to Assigned Space | Airline |
| Flooring: At all Ticket Counters (M101, M102 and M130) | Port |
| <u>HVAC System</u> | |
| HVAC: Building system | Port |
| HVAC: Tenant installed (original installation only; if occupied by subsequent Tenant, such system becomes part of Port's system) | Airline |
| <u>Lighting (Fixtures, Ballast, Lenses/Diffusers, Bulbs)</u> | |
| Assigned Spaces Visible to the Public (e.g., Ticketing) | Port |
| Assigned Spaces Not Visible to the Public | Airline |
| Public Spaces and Non-Assigned Space (e.g., TSA Baggage Make-Up) | Port |
| Mounted on Exterior of Building | Port |
| <u>Loading Bridge</u> | |
| Mechanical, Carpeting, etc. | Port |
| Janitorial/Cleaning (within Loading Bridge) | Port |
| Janitorial/Cleaning (at Rotunda end of Loading Bridge) | Port |

Pest Control⁵

| | |
|--------------------|------|
| Mosquito Abatement | Port |
| Rodents | Port |
| Insects | Port |

Plumbing

| | |
|--|---------|
| Incoming Water Line from Common-Use Water Line to Fixture | Airline |
| Sanitary Sewer Line from Common-Use Sewer Line to Fixture | Airline |
| Storm Drains: Except Toxic Materials | Port |
| Restrooms (Fixture Repair and Replacement): Not within Assigned Space | Port |
| Restrooms (Fixture Repair and Replacement): Within Assigned Space ⁶ | Airline |

Podiums in Concourses

| | |
|--|---------|
| Terminal 1 (Port will wipe podium surfaces and empty small trash bins) | Port |
| Terminal 2 | Airline |

Remodeling: See Notes ⁷ and ⁸

Restrooms

| | |
|---|---------|
| Fixture Repair and Replacement: Public or Common Use (including M363) | Port |
| Fixture Repair and Replacement: Within Assigned Space ⁶ | Airline |

Roof

Port

Signs

| | |
|---|---------|
| Ticket Counter: Backwall and Visitron – Terminal 1 | Port |
| Ticket Counter: Backwall and Visitron – Terminal 2 | Airline |
| Curbside | Port |
| Concourse: Podium Backwall (applies to magnetic signs and letters only) | Airline |

Skycap Podiums

Airline

Ticket Counter

| | |
|---|---------|
| Backwall Finish and Signage | Port |
| Counter Shell/Exterior Casement, Countertops and Insert Cabinetry | |
| Terminal 1 (M101) and Terminal 2 (M130) – Exclusive Use | Airline |
| Terminal 1 (M101) – Common Use | Port |
| Terminal 1 – International/Charter (M102) | Port |
| Scales | |
| Terminal 1 (M101) and Terminal 2 (M130) – Exclusive Use | Port |
| Terminal 1 (M101) – Common Use | Port |
| Terminal 1 – International/Charter (M102) | Port |

Trash Removal

| | |
|--|---------|
| Assigned Space including Ticket Counters | Airline |
| Common Use Gates 1 & 3 (Airlines responsible after each operation) | Airline |
| All Other (including F.O.D.) | Port |

Utilities

| | |
|-------------|------|
| Electricity | Port |
| Water | Port |

Walls

| | |
|--------------------------------|---------|
| Exterior | Port |
| Interior, including Partitions | Airline |

Water Common and within Assigned Space

Port

Windows

| | |
|-------------------------------|---------|
| Appurtenant to Assigned Space | Airline |
| Part of Interior Wall | Airline |
| All Others | Port |

Window Washing

| | |
|---|---------|
| Appurtenant to Assigned Space (Interior and Exterior) | Airline |
| Common/Public Spaces | Port |

NOTES

- ¹ Port is responsible for maintenance and repair of Port-installed padded flooring behind Ticket Counters in Terminal 1.
- ² Airline is responsible for any necessary repair or removal of all floor tile, including Airline-installed floor tile and floor tile installed by previous occupants of the Assigned Space.
- ³ Before Airline installs any computer, facsimile, voice communication telephone or other communications lines or conduit, Airline shall (i) provide to the Airport's Information Technology and Telecommunications Department ("IT&T") its written plans of existing and proposed communication lines or conduit between the Terminal Complex's Minimum Point of Entry located in Terminal 1 and Airline's end user equipment (e.g., computer, facsimile machine, telephone); and, (ii) seek and obtain written approval from the IT&T for such installation. Explicit with that approval is compliance with Airport's IT&T Standards of Practice ("SOP") in the installation of technical infrastructure. The SOP may be obtained, in either electronic or hard copy, from the Airport IT&T Manager upon written request.
- ⁴ In the event the Port must gain access to the Assigned Space without Airline's key, Airline hereby agrees to indemnify, defend and hold the Port harmless from and against any damages related to the Port's access to the Assigned Space without Airline's key. Airline shall remove its key and key system and restore the Port's Master Key/Lock System to the Assigned Space upon Airline's vacation thereof.

- ⁵ Airline will be billed for pest control costs where pest problem is attributable to Airline's acts or omissions (e.g., leaving food out).
- ⁶ Restroom fixtures include, but are not limited to, toilets, sinks, towel and soap dispensers, mirrors and related restroom fixtures. Airline shall surrender to the Port any and all restroom fixtures Airline removes from the Assigned Space at the time of said removal. Airline agrees that any and all replacement restroom fixtures affixed to or made a part of the Assigned Space by either the Port or Airline shall remain upon and be surrendered with the Assigned Space as part thereof upon termination of this Space/Use Permit.
- ⁷ All materials and equipment which are shown to be the Airline's responsibility shall be in accordance with Port specifications for style, color, model, etc.
- ⁸ Airline shall submit plans and specifications to the Port's Engineering – Permit Department and the Port must approve them before Airline commences any work on or about the Assigned Space, including, but not limited to, remodeling, signs, and communication cable installation and/or removal.