

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
AIRLINE OPERATING AND LEASE AGREEMENT AT S.D.I.A.

SAN DIEGO, CALIFORNIA

WITH

SOUTHWEST AIRLINES COMPANY

FOR FIVE (5) YEARS

COMMENCING JULY 1, 2013

AND ENDING JUNE 30, 2018

**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
AIRLINE OPERATING AND LEASE AGREEMENT**

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- Exhibit B – Cost Centers
- Exhibit C – Exclusive Use Premises
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- Exhibit E – Shared Use Premises
- Exhibit F – Common Use Premises
- Exhibit G – Terminal Adjacent Aircraft Parking Positions
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- Exhibit I – Methodology of Calculating Airline Rent, Fees and Charges
- Exhibit J – Affiliate Airline Operating Agreement
- Exhibit K – Security Checkpoint
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- Exhibit M – Commuter Terminal Regional Jet Policy
- Exhibit N – RON Committee Over-Riding Principles
- Exhibit O – Repair and Maintenance Matrix
- Exhibit P – Insurance Requirements
- Exhibit Q – SDCRAA Letter of Credit Format
- Exhibit R – Memorandum of Understanding Between the Attorney General of California and the San Diego County Regional Airport Authority Regarding the San Diego International Airport Master Plan

**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
AIRLINE OPERATING AND LEASE AGREEMENT**

THIS AIRLINE OPERATING AND LEASE AGREEMENT ("Agreement"), made and entered into on _____, _____, by and between the San Diego County Regional Airport Authority, a local government entity of regional government, existing under §170000 *et seq.* of the California Public Utilities Code ("Authority Act") and SOUTHWEST AIRLINES, CO., a corporation under the laws of the State of Texas.

WITNESSETH:

WHEREAS, the San Diego Unified Port District is the trustee of certain tidelands owned by the State of California, including the San Diego International Airport at Lindbergh Field, located in the City and County of San Diego, California; and

WHEREAS, the Authority Act establishes Authority as a local governmental entity of regional government, with the exclusive power and authority to oversee the establishment, operation and coordination of airport facilities within the County of San Diego, as well as study, plan and implement any improvements, expansion or enhancements at existing or future airports within its control; and

WHEREAS, pursuant to the Authority Act, District and Authority entered into a ground lease dated December 17, 2002 bearing Lessor's Document No. AA-0008, whereby District leased to Authority San Diego International Airport and other real property related thereto ("Airport"); and

WHEREAS, Authority operates Airport, a map of which is attached hereto as "Exhibit A" and by this reference made a part hereof; and

WHEREAS, Airline is engaged in the Air Transportation Business as a federally certificated commercial air carrier; and

WHEREAS, Authority and Airline desire to enter into this Agreement, whereby Authority will (1) lease certain designated Airport Terminal premises, if said leased premises are stated herein, to Airline, and (2) grant Airline certain rights and privileges to operate at and use Airport for the use of its aircraft and other related activities, upon the terms and conditions hereinafter provided; and

WHEREAS, it is contemplated that Authority will enter into the same or similar agreements with other federally certificated commercial air carriers operating at Airport; and

WHEREAS, Authority and Airline acknowledge that the continued operation of the Airport as a safe, convenient and attractive facility is vital to the economic health and welfare of Authority and the San Diego region and that the Authority's right to monitor the performance of Airline under this Agreement is a valuable right incapable of quantification.

NOW, THEREFORE, for and in consideration of the covenants, terms and conditions herein contained to be kept and performed by the respective parties hereto, and for other valuable consideration, the parties hereto covenant and mutually agree as follows:

ARTICLE 1

DEFINITIONS

The capitalized terms used in this Agreement and any reference to the Indenture shall, for all purposes of this Agreement, have the meanings specified in this Article 1, unless a different definition is given such term in said Indenture or the context clearly requires otherwise.

“Affiliate” shall mean, any airline that (a) is designated by Airline to operate at Airport as its Affiliate, (b) has executed an Affiliate Airline Operating Agreement with Authority and Airline, (c) operates its air service at Airport as Airline under a shared International Air Transportation Association (“IATA”) flight designator code, (d) is either wholly-owned by Airline, a subsidiary of the same corporate parent as Airline, or under contract to Airline with respect to its operations as an Affiliate at Airport, (e) does not sell seats in its own name on any aircraft operated at Airport, and (f) sells all seats on any aircraft operated at Airport in the name of Airline. While designated an Affiliate, such Affiliate (a) shall have the same rights to use the Exclusive Use Premises and the Airport as Airline; (b) shall be charged at the same landing fee rates as Airline without payment of any Non-Signatory Airline premiums; (c) shall participate in the reconciliation process whereby Airlines share in the true-up of projected against actual costs whereby Affiliate’s operations shall be included in the Airline’s reconciliation; and (d) shall not be counted as a separate air transportation company from Airline for purposes of allocating the *per capita* portion of any cost allocation formula, but such Affiliate’s passengers shall be counted as passengers of Airline for purposes of any passenger- based portion of such formula.

“Affiliate Airline Operating Agreement” shall mean, the agreement substantially in the form included in “Exhibit J,” attached hereto and by this reference made a part hereof.

“Agreement” shall mean this Airline Operating and Lease Agreement, including any future amendments or supplements.

“Air Transportation Business” shall mean the carriage by aircraft of persons, property, cargo or mail as a federally certificated air carrier and common carrier for compensation or hire, in interstate, intrastate or foreign commerce, as defined in the Federal Aviation Act of 1958, as amended.

“Airfield Area” shall mean (1) the Cost Center of the same name, as described in “Exhibit B”, a copy of which is attached hereto and by this reference made a part hereof, (2) the land identified as Airfield Area on “Exhibit A”, (3) all facilities, equipment, improvements, runways, taxiways, and control towers, for the purpose of controlling or assisting arrivals, departures and operations of aircraft, (4) other airport-related facilities operated and maintained by the FAA or any other federal agency, (5) security fences and service roads located on the Airport and part of the Airfield Area, and (6) signals, beacons, wind indicators, flood lights, landing lights, boundary lights, construction lights, radio and electronic aids or other aids to operations, navigation or ground control of aircraft whether or not of a type herein mentioned and even though located away from but related to the rest of the Airfield Area, except as otherwise provided herein.

“Airline” shall mean SOUTHWEST AIRLINES, CO., who is named on the signature page hereof and operates at Airport as a federally certificated air carrier.

“Airlines” shall mean Airline and other Airlines who are federally certificated air carriers, who have signed Signatory Agreements, and who are engaged in an Air Transportation Business at Airport.

“Airline Rent, Fees and Charges” shall mean, for Airline and all Airlines, the rentals, fees, charges and other amounts payable hereunder pursuant to Article 8, as estimated, adjusted, or determined pursuant to “Exhibit I”, attached hereto and by this reference made a part hereof.

“Airline Leased Premises” shall mean those areas, if any, assigned to Airline as Exclusive Use Premises, Joint Use Premises, Shared Use Premises, and/or Common Use Premises, as defined herein and shown on “Exhibits C, D, E, F and G”, respectively, attached hereto and by this reference made a part hereof, and as they may be amended from time to time.

“Airport Facilities” or “Airport Facility” shall mean a facility, group of facilities, or category of facilities which constitute or are part of the Airport.

“Amortization Charges” shall mean the amounts properly allocated, whether directly or indirectly, and included in the calculation of Airline Rent, Fees and Charges to repay the Authority for costs incurred by the Authority for a Capital Project which are not otherwise being repaid in the calculation of Airline Rent, Fees and Charges as Annual Debt Service, or being repaid through Passenger Facility Charges (“PFCs”), or a federal, state, or local grant. The amount to be included in the calculation of Airline Rent, Fees and Charges for each Capital Project shall be in substantially equal annual installments of principal and interest for the term of the asset’s useful life as estimated by Authority, with interest calculated by Authority at a rate equal to the Thirty-Year Revenue Bond Index at the time the Capital Project is placed in service.

“Annual Debt Service” shall mean the aggregate amount of principal and interest and all other related requirements becoming due and payable during the Fiscal Year for Bonds or Other Debt Service of the Authority.

“Authority” shall mean the San Diego County Regional Airport Authority, created under the provisions of the Authority Act, and any successor or assignee.

“Authority Act” shall mean §§170000 *et seq.* of the California Public Utilities Code, and as it may be amended from time to time. “Authority Act” shall also have the same meaning as the “San Diego County Regional Airport Authority Act”.

“Authority–Controlled Facilities” shall mean those areas operated, managed and controlled by the Authority.

“Baggage Handling Systems” shall mean the baggage handling systems at Airport owned and controlled by Authority.

“Bankruptcy” shall mean bankruptcy as defined in the United States Bankruptcy Code, Title 11 U.S.C. §101 *et seq.*, as amended or supplemented from time to time, or any successor federal act.

“Board” shall mean the Board of Directors of Authority established pursuant to the provisions of the Authority Act.

“Bond” or “Bonds” shall mean any debt obligation of Authority issued under and in accordance with any Indenture involving the Authority.

“Capital Project” shall mean any project with a cost greater than One Hundred Thousand Dollars (\$100,000) that is undertaken and funded by Authority, with a useful life in excess of one (1) year as reasonably determined by Authority, which is acquired, purchased, or constructed to improve, maintain, or develop the Airport, including any extraordinary or substantial expenditure whose objective is to preserve, enhance or protect the Airport which can qualify as a capital expenditure.

“Common Use Equipment” shall mean the definition found in Section 15.09.

“Common Use Formula” shall mean the formula specified in Section 8.03.

“Common Use Premises” shall mean those areas described in “Exhibit F,” attached hereto and by this reference made a part hereof, for use by airlines on a non-exclusive common use basis, subject to the provisions of Article 5, including but not limited to Gates, Common Use Ticket Counters, free-standing self-service kiosks, skycap podiums, curbside positions, and queuing areas associated with Common Use Ticket Counters and curbside positions, in or adjacent to CUPPS-equipped terminals, for which Authority assesses charges based on the Common Use Formula.

“Common Use Passenger Processing Systems” or “CUPPS” shall mean information technology based systems owned by the Authority and which accesses an airline’s proprietary passenger processing network for passenger departure or arrival processing. CUPPS includes, if any, such systems and related equipment installed at curbside check-in locations, Common Use Ticket Counters, Gates, baggage claim areas, or free-standing self-service kiosks and other areas as determined by Authority.

“Common Use Systems Support” shall mean the Cost Center of the same name, as described in “Exhibit B”, attached hereto and by this reference made a part hereof.

“Common Use Ticket Counter” or “Common Use Ticket Counters” shall mean the ticket counter(s) in the CUPPS-Equipped Terminals which are controlled, operated or assigned by the Authority as set forth in Article 5.

“Cost Centers” shall mean the direct and indirect cost areas to be used in the accounting and assignment of Revenues, Operation and Maintenance Expenses, Annual Debt Service, Amortization Charges, and other deposits or reserves required by the Indenture as further defined in “Exhibit B”.

“CUPPS-Equipped Terminals” shall mean terminals equipped with Common Use Passenger Processing Systems (“CUPPS”).

“Daily Average Utilization” shall have the meaning defined in Article 5.

“Direct Cost Centers” shall mean those functionally or physically discrete areas established by Authority as primary revenue producing areas and to which costs shall be attributable or allocable under Authority’s accounting system, as more fully identified in “Exhibit B”.

“District” shall mean the San Diego Unified Port District, created by that certain act of the State of California, Stats. 1962, 1st Ex. Sess., c. 67, as amended, entitled “San Diego Unified Port District Act.

“Domestic Flight” means an aircraft: (a) arriving at the Airport from a city located within the United States or from a city located outside of the United States designated as a pre-clearance location and which has passengers and/or cargo on board that do not require clearance by the Federal Inspection Services (“FIS”) at the Airport, or (b) departing from the Airport to a city located within the United States.

“Effective Date” shall mean July 1, 2013.

“Enplaned Passengers” shall mean all originating and all outgoing on-line transfer and off-line transfer revenue passengers departing from the Airport. The term “Enplaned Passengers” does not include through passengers.

“Exclusive Use Premises” shall mean those areas described in “Exhibit C”, attached hereto and by this reference made a part hereof, used solely by Airline, including, but not limited to, certain ticket counters (excluding Common Use Ticket Counters), associated passenger queuing areas, ticket and baggage service offices and operational support areas.

“Federal Aviation Administration” (“FAA”) shall mean the Federal Aviation Administration created by the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

“Federal Inspection Services” (“FIS”) shall mean those services at Airport provided by federal agencies, including, but not limited to, U.S. Customs and Border Protection, U.S. Department of Agriculture and U.S. Department of Public Health, responsible for the clearing and/or inspection of passengers, baggage and cargo entering the United States.

“Federal Inspection Services Facilities” (“FISF”) shall mean those facilities at Airport provided to federal agencies, including but not limited to, the U.S. Customs and Border Protection, the U.S. Department of Agriculture and/or the U.S. Department of Public Health for the purpose of clearing and/or inspection of passengers, baggage or cargo entering the United States.

“Federal Inspection Services Use Charges” or “FIS Use Charges” has the meaning set forth in Section 8.03.

“First Priority Use” shall mean the right of an Airline to use its Preferential Use Gate for a specific assigned Scheduled Operation for a scheduled Period of Use, subject to the provisions of Article 5.

“Fiscal Year” or “FY” shall mean the period of time beginning on July 1 of each given year and ending on June 30 of the immediate subsequent year, or such other similar period as Authority designates as its Fiscal Year.

“Fund Deposits” shall mean those deposits required for any fund established pursuant to the Indenture or any supplemental indenture.

“Gate” or “Gates” shall mean the area(s) on the secure side of the Airport Facilities that transition the passenger from a Terminal to an airline’s aircraft parked in a Terminal Adjacent Aircraft Parking Position, which are controlled, operated or assigned by the Authority as set forth in Article 5.

“Indenture” shall mean, collectively, the Master Trust Indenture, dated as of November 1, 2005, by and between Authority and the trustee thereto, together with all supplemental indentures thereto, and the Master Subordinate Trust Indenture, dated as of September 1, 2007 by and between the Authority and the trustee thereto, together with any supplemental indentures thereto, or any other indenture or financial instrument which creates a debt obligation of the Authority.

“Indirect Cost Centers” shall mean those functional areas and related facilities established by Authority as areas that are not generally revenue producing areas and for which costs are not allocated to any Direct Cost Center under Authority’s accounting system, as more fully identified in “Exhibit B”.

“Joint Use Formula” shall mean the formula specified in Article 8.03.

“Joint Use Premises” shall mean those areas described in “Exhibit D”, attached hereto and by this reference made a part hereof, including but not limited to Terminal hold rooms, and baggage claim areas for which Authority assesses charges based on the Joint Use Formula.

“Landing Fee” shall mean the fee charged by the Authority for each aircraft landing by an airline at the Airport, calculated by multiplying the Landing Fee Rate by the Maximum Gross Landing Weight (“MGLW”), stated in one-thousand pound units. A Landing Fee shall not be charged for any aircraft landing that originated from the Airport but returned to Airport for emergency or maintenance reasons without having first landed at another airport.

“Landing Fee Rate” shall mean, in any Fiscal Year, the landing fee rate established by Authority and subject to adjustment pursuant to Section 8.03.

“Master Lease” shall mean the ground lease entered into between District and Authority dated December 17, 2002 bearing Lessor’s Document No. AA-0008, whereby District leased to Authority the Airport and other real property related thereto.

“Maximum Gross Landing Weight” (“MGLW”) shall mean the maximum certificated weight, in one thousand (1,000) pound units, that each aircraft operated by an airline is authorized by the FAA to land at airports, as recited in each airline’s flight manual governing that aircraft type.

“Minimum Daily Average Utilization ” shall mean six hundred and twenty five (625) or seven hundred and fifty (750) departing seats per day (as further described in Article 5, Section 5.01) conducted by an airline on Scheduled Operations at a single Preferential Gate assigned to the airline, subject to being adjusted by Authority from time to time to accommodate Airport operations and promote equity.

“Non-Signatory Airline” shall mean any federally certificated commercial air carrier using the Airport which is not a party to a Signatory Agreement.

“Non-Signatory Airline Revenues” shall mean revenues derived or received by the Authority from Non-Signatory Airlines.

“Operation and Maintenance Expenses” or “O & M Expenses” shall mean all reasonable and necessary current expenses of Authority, paid or accrued, for operating, maintaining, and repairing the Airport, including administrative expenses and other Authority expenses reasonably allocated to the Airport, as more specifically defined in the Indenture.

“Other Debt Service” shall mean any debt obligation for other than Bonds, including commercial paper, other indebtedness of the Authority, and all other related requirements.

“Passenger Facility Charges” or “PFCs” shall mean charges collected by Airline and which are due to the Authority pursuant to the Aviation Safety and Capacity Expansion Act of 1990 and 14 CFR Part 158, as amended.

“Passenger Loading Bridges” shall mean the passenger loading bridges at Airport owned and controlled by Authority.

“Period of Use - Gate” shall mean a maximum of two and one-half (2 ½) hours for a wide-body aircraft (for the purpose of this Agreement wide bodies include A300, A330, A340, A350, Boeing 747, 767, 777, 787 and others as designated in writing by the President/CEO from time to time), and a maximum of two (2) hours for all other legally permitted aircraft.

“Period of Use – Common Use Ticket Counter” shall mean a maximum of two and one-half (2 ½) hours immediately prior to the scheduled departure time of a flight.

“Preferential Use” means the scheduling preference given to Airline over similar operations by other airlines for the use of a Preferential Use Gate or Preferential Common Use Ticket Counter during applicable Periods of Use for its Scheduled Operations. An Airline assigned a Preferential Use Gate shall have the right to use the Joint Use Premises and Common Use Premises in the Terminal where the assigned Gate is located. Preferential Use Gates, together with the adjacent Joint Use Premises and Common Use Premises, shall be used only for the purpose of the Airline’s Air Transportation Business.

On the Effective Date of this Agreement, Airline is entitled to one (1) Preferential Use Gate for the first 625 Scheduled Departing Seats Per Day and one additional Preferential Use Gate for every additional 750 Scheduled Departing Seats Per Day, subject to the condition that no more than six (6) Preferential Use Gates shall be assigned to any one Airline at one time. The Authority may annually or more frequently if necessary, reset the minimum number(s) of Scheduled Departing Seats Per Day used in the Daily Average Utilization formula to ensure the allocation of Gates to Airlines is fair and that the Authority retains a sufficient number of Authority-Controlled Facilities. In calculating the Scheduled Departing Seats Per Day, Authority may refer to various months of an Airline’s Scheduled Operations to ensure the calculation is equitably set and applied. Article 5 shall govern the interpretation of this definition.

“Preferential Common Use Ticket Counter” shall mean a Common Use Ticket Counter that is assigned to Airline on a Preferential Use basis, subject to the provisions of Article 5.

“Preferential Use Gate” shall mean a Gate that is assigned to Airline on a Preferential Use basis subject to the provisions of Article 5.

“President/CEO” shall mean the President/Chief Executive Officer of Authority as referenced in the Authority Act, or the duly appointed and authorized designee or representative of the President/CEO.

“Remain Overnight Parking Position” or “RON Position” shall mean a location at Airport shown on “Exhibit H”, attached hereto and by this reference made a part hereof, designated for parking an aircraft, including use as a hardstand operation, temporary aircraft parking location, or the overnight storage of aircraft.

“Remain Overnight Parking Position Charges” or “RON Charges” shall mean the amount calculated for each Fiscal Year pursuant to “Exhibit I” to determine the charge imposed pursuant to Article 8 by Authority for parking an aircraft on an overnight basis at a Remain Overnight Parking Position.

“Rentable Premises” shall mean those areas and offices within the Terminals that are (1) available for lease to Airlines designated as Exclusive Use Premises, Joint Use Premises, Shared Use Premises, or Common Use Premises; (2) available for lease to other tenants; (3) used for passenger screening; and (4) used by Authority, excluding all areas used by Authority on the 2nd and 3rd floors of the Commuter Terminal and the third floor of Terminal 2.

“Requesting Airline” means an airline desirous of operating a Scheduled Operation at the Airport and who requests the use of a Gate.

“Reserve Requirements” shall mean any Fund Deposit (1) required for any fund established pursuant to the Indenture or any supplemental Indenture, or (2) any deposit for self-insurance or other purposes upon notice to the Airlines whose object is to preserve or protect the Airport related to an extraordinary or substantial expenditure event.

“Rules and Regulations” shall mean (1) the Rules and Regulations of the San Diego International Airport, (2) directives issued by the President/CEO, and (3) such other regulations, resolutions, or ordinances that may be enacted from time to time for the use of Airport.

“Scheduled Departing Seats Per Day” shall mean the (a) total number of seats available for sale to the public, (b) on an airline’s aircraft departing (outbound flight) from Airport at a single Gate, (c) on scheduled flight operations as published for sale in the Official Airline Guide (“OAG”), (d) on flights operated by an Airline during a normal seven (7) day consecutive day period (beginning on Sunday), divided by six (6). In determining the total number of Scheduled Departing Seats Per Day, an Airline may include the Scheduled Departing Seats Per Day from Airport of the Airline’s Affiliate, if the operations are conducted at one of the Airline’s Preferential Use Gates.

“Scheduled Operation” shall mean the scheduled arrival and/or departure operation of an airline which operation is currently published for sale in the OAG.

“Second Priority Use” shall mean the limited right of an airline to use an Authority-Controlled Facility or Preferential Use Gate or Preferential Common Use Ticket Counter of another Airline for a Scheduled Operation for an authorized Period of Use.

“Security Surcharges” shall mean the amount calculated by Authority for each Fiscal Year pursuant to “Exhibit I” to provide (1) security and access control services at Airport, and (2) dedicated Terminal areas assigned to the TSA for security screening.

“Shared Use Premises” shall mean those areas described in “Exhibit E”, attached hereto and by this reference made a part hereof, including but not limited to outbound bag makeup areas and the areas staffed by TSA within any baggage screening area before, baggage is routed to a baggage make-up carousel, for which Authority assesses charges based on the Shared Use Formula.

“Shared Use Formula” shall mean the formula specified in Section 8.03.

“Signatory Agreement” shall mean an Airline Operating and Lease Agreement signed by Airline and Airlines, under the same or substantially similar terms and conditions.

“Small Airline” shall mean an air carrier that operates at Airport solely using aircraft with less than ten (10) seats.

“State” shall mean the State of California.

“Terminal(s)” shall mean those airline passenger Terminal buildings at Airport, including but not limited to the Commuter Terminal, Terminal 1 and Terminal 2.

“Terminal Adjacent Aircraft Parking Position” shall mean a Common Use Premises shown on “Exhibit G”, attached hereto and by this reference made a part hereof, located adjacent to a Terminal and not separated from the Terminal by a taxiway or aircraft maneuvering area.

“Terminal Adjacent Aircraft Parking Position Charges” shall mean the amount calculated by Authority, in any Fiscal Year pursuant to “Exhibit I”, for parking an aircraft on an overnight basis at a Terminal Adjacent Aircraft Parking Position.

“Terminal Rental Rate” shall mean, in any Fiscal Year, the rental rate established for such Fiscal Year pursuant to “Exhibit I”.

“Transportation Security Administration” or “TSA” shall mean the Transportation Security Administration or its authorized successor(s).

ARTICLE 2

TERM

Section 2.01 – Term of Agreement. The term of this Agreement shall be for the period commencing July 1, 2013, and terminating at 11:59 p.m. on June 30, 2018, unless sooner terminated as herein provided.

Section 2.02 – Termination without Cause. Notwithstanding Section 2.01, above, this Agreement may be terminated by the Board or the President/CEO or by Airline with or without cause or default upon the giving of no less than ninety (90) days' notice in writing to the other party of the intention to so terminate. No liability shall incur whatsoever for any damage or loss occasioned by either party exercising the right to terminate, subject however to the payment of all Airline Rent, Fees and Charges, if any, as expressly provided herein.

Section 2.03 – Termination for Cause or Default. Notwithstanding Section 2.01, this Agreement may be earlier terminated by Authority for Airline’s default in accordance with the provisions of Article 21 and such other provisions of this Agreement as are applicable.

ARTICLE 3

USES, RIGHTS AND PRIVILEGES

Section 3.01 – Use of Airport. Airline shall have the right to use Airport, in common with others so authorized, for the purpose of conducting its Air Transportation Business, subject, however, to the covenants, terms and conditions of this Agreement, the requirements of applicable laws, rules, and regulations, and the rules, policies, procedures and directives of Authority. In connection with Airline’s use of the Airport, Airline may perform functions and conduct operations at the Airport reasonably necessary to conduct its Air Transportation Business. In accordance with the foregoing, Airline’s right of use of the Airport shall include, but not be limited to, the following specific rights:

- A. The right to land and takeoff its aircraft on Airport runways;
- B. The right to move its aircraft on the ground on Airport taxiways and taxi-lanes;
- C. The right to process enplaning and deplaning passengers in the Terminals and adjacent locations as designated by Authority for such use;
- D. The right to park, load, unload, service, cater, fuel, tug, tow, and repair its aircraft, or aircraft of its Affiliates, in areas designated by Authority for such use;
- E. The right to purchase fuels, lubricants and any other goods and services required by Airline for the conduct of its Air Transportation Business at Airport, from any approved supplier, contractor or other airline holding an agreement from Authority to provide such services to others at Airport, subject to the provisions of this Agreement;
- F. The right to operate radio equipment necessary to conduct its Air Transportation Business;
- G. The right to perform training of employees;
- H. The right to provide sky cap services; and
- I. The right to maintain such portable equipment and facilities as may be required for the handling of passengers and cargo and ramp servicing of its aircraft in such locations as may be designated from time to time by the President/CEO. Provided, however, Airline is not permitted to store maintenance parts and supplies or any other items unrelated to ramp servicing or loading of aircraft on the Airfield Area. Airline acknowledges that the Airline Leased Premises may include a portion of property that may be used by other persons under agreement with Authority and agrees that in all uses of the Airline Leased Premises it will recognize the rights of such other persons and so conduct its activities as not materially to interfere in any way with such rights of other persons.

Section 3.02 – Restrictions.

- A. Air Transportation Business. Airline agrees for itself, its successors, and assigns that it will use the Airport and the Airline Leased Premises described in this Agreement only for the purpose of conducting its Air Transportation Business. Airline shall not use or permit the use of any portion of its Airline Leased Premises for any unlawful purpose. It shall not sell or offer for sale any product or service other than one directly related to its Air Transportation Business.
- B. Protection of Services. Airline shall not do or permit to be done anything that may interfere with the safe and efficient operation of any of the systems installed on or serving any portion of the Airport, including, but not limited to, drainage, water, sewer, fire protection, communications, electrical, plumbing, heating, ventilation, air conditioning, CUPPS technology and natural gas.
- C. Ground Handling. Ground handling services shall include passenger processing functions and aircraft supporting activities for airlines whether occurring in the Terminals, in, on or around the aircraft, or elsewhere to enable airlines to conduct their Air Transportation Business at Airport. Airline agrees to use only ground handling companies that meet the minimum standards set by the Authority for all ground handling companies providing services at Airport.

Airline shall not perform ground-handling services, except:

- (1) for its own aircraft or those of its Affiliates as provided in Section 3.01.D of this Agreement or
 - (2) for the aircraft of other Airlines or air carriers, provided it holds a separate ground-handling services agreement approved by the Authority.
- D. In-Flight Catering. Airline shall not perform in-flight catering except for its own aircraft or those of its Affiliates as provided in Section 3.01.D of this Agreement.
 - E. Non-Air Transportation Business. Airline shall not conduct any non-Air Transportation Business on Airport without the prior written consent of Authority. Airline is expressly prohibited from using the Airline Leased Premises for commercial advertising, duty free sales, or retail operations, sales, and services, whether it is purported to be in addition to or in lieu of the uses expressed herein, without the prior written consent of the Authority.

ARTICLE 4

AIRLINE LEASED PREMISES

Section 4.01 – Airline Leased Premises. Authority hereby leases to Airline, subject to the provisions of this Agreement, the Airline Leased Premises described and shown on “Exhibits C, D, E, F, and G”.

Section 4.02 – Demolition, Reconstruction, or Relocation.

- A. Airline and Authority agree in order to accommodate any new construction or remodeling, or for the orderly expansion, operation and/or development of Airport Facilities, that Authority, upon ninety (90) days' advance written notice, may require the demolition or reconstruction of certain Airline Leased Premises, or, the relocation, in whole or part, of Airline from its Airline Leased Premises. Such demolition, reconstruction or relocation shall be necessary, as determined in the sole discretion of the President/CEO. In the event of any relocation, Authority will provide, if available and requested by Airline, as comparable a location and facility as possible and, in the event of a partial relocation, a location reasonably adjacent to the existing Airline Leased Premises. The exact number of square feet of Airline Leased Premises to be demolished, reconstructed, or relocated shall be determined following Authority's review with Airline of those portions of the affected Airline Leased Premises. "Exhibits C, D, E, F, and G", describing Airline's Airline Leased Premises, shall be revised immediately after the time the Airline Leased Premises have been completely modified and/or relocated to incorporate the modified or relocated Airline Leased Premises which shall constitute a modification to this Agreement that shall be fully binding on both parties upon written confirmation by both parties.
- B. Any space leased to Airline as substitution or additional space shall be included as part of the Airline Leased Premises on the same terms and conditions and at the same rental rate as is provided for similar leased space as defined and provided for herein.
- C. In the event Authority serves notice to Airline under this Section 4.02, and removes any portion of the Airline Leased Premises from this Agreement, Authority shall reimburse Airline for its cost to relocate and/or construct and install improvements in the new Airline Leased Premises.
- D. After the reimbursement is issued to Airline, the Authority may collect the entire reimbursement amount from the Airlines, including Airline, based on a *pro-rata* per-square-foot Terminal rental surcharge, collected over a reasonable period of time as determined by the Authority. Authority shall assess an interest rate equivalent to the yield on its own investments as reported in its latest quarterly investment report to the Authority's Board.
- E. A reimbursement under this Section 4.02 shall be based on the square footage of the smaller of either the existing or new Airline Leased Premises multiplied by a per-square-foot dollar amount agreed to between Authority and Airline.
- F. This reimbursement may not exceed Airline's actual cost to relocate and construct "like-for-like" improvements (i.e., for the same use or activity as existed in the vacated space). Reimbursement shall be in the form of a one-time rent credit to Airline.
- G. The reimbursement shall be issued to Airline after Airline provides "as-built" plans for all construction and improvements, documentation of costs and paid receipts for the "like-for-like" improvements to Authority. Airline shall provide to Authority

such plans, documentation and receipts within ninety (90) days after substantial completion of construction. Authority shall issue the rent credit invoice within thirty (30) days after receipt of all such plans, documentation and receipts and after verification of the reimbursement costs being requested.

- H. The reimbursement provided above, if any, shall be Airline's sole and exclusive remedy and only form of compensation, costs or damages, including relocation assistance benefits (Cal. Gov. Code §7260 *et seq.*), due to termination, re-entry, condemnation, acquisition, or reacquisition by Authority.

Section 4.03 – Assignment and Sublease.

- A. Airline shall not assign, sublet, transfer, convey, sell, mortgage, pledge or encumber, in whole or in part, (hereinafter "Transfer") this Agreement, the Airline Leased Premises hereunder, nor will Airline allow the use of such Airline Leased Premises or Terminal Adjacent Aircraft Parking Positions hereunder by any other entity or person, without in each instance having first obtained the prior written consent of Authority. The consent of Authority shall be required for any Transfer. Consent by Authority to any type of Transfer described in this Article or elsewhere in this Agreement shall not in any way be construed to relieve Airline from obtaining further authorization from Authority for any subsequent Transfer of any nature whatsoever. As a condition to Authority's consent to any proposed Transfer, the proposed sub-lessee, assignee, user or other party shall execute a license agreement, sublease, or other written document in a form consistent with the terms and conditions of this Agreement acceptable to and approved by Authority.
- B. In the event Airline subleases all or any portion of its Airline Leased Premises, Airline shall charge the sub-lessee a reasonable amount sufficient for Airline to recover its direct costs, if any, of such sublease or use, including a reasonable allocation of tenant improvement costs and equipment costs for property and equipment owned by Airline. Airline shall have the right to petition Authority for approval of any increase in the amount, which approval shall be in the reasonable discretion of Authority. The rates charged by Airline hereunder shall not be less than the rates charged by Authority for the use of Authority-Controlled Facilities.
 - 1. Airline recognizes that the Authority retains rights to Terminal Adjacent Aircraft Parking Positions and RON Positions which Airline may not sublease as they are common use with monthly allocation by Authority.
 - 2. Airline and Authority agree that Authority shall have the right to waive or amend the restrictions and requirements contained in this subsection applicable to Airline's sublease and use charges.
- C. Notwithstanding any Transfer, Airline shall remain fully liable for the payment of all of its Airline Rent, Fees and Charges and fully responsible for the performance of all of its other obligations hereunder. Any and all requests by Airline for consent under this Section 4.03 shall be made in writing by certified mail to Authority and shall include copies of the proposed documents of Transfer.

Said documents of Transfer shall completely disclose any and all considerations made or to be made to Airline for said Transfer.

- D. Any sublease or assignment shall require the sub-lessee or the assignee to be bound by all of the applicable terms and provisions of this Agreement. Any sublease or assignment under this Section must (i) expressly name Authority as a third-party beneficiary of the sub-lessee's or the assignee's obligations under the sublease or assignment, and (ii) grant a direct right of enforcement hereunder to Authority.

Section 4.04 – Quiet Enjoyment. Authority covenants that if Airline performs all of its obligations and make all payments as provided herein, Airline shall peaceably have and enjoy the Airline Leased Premises and all the rights, privileges, appurtenances and facilities granted herein.

Section 4.05 – Peaceable Surrender. Airline covenants and agrees to yield and deliver peaceably to Authority possession of the Airline Leased Premises on the expiration date or earlier termination of this Agreement, promptly and in as good condition as at the commencement of this Agreement or, if improved, in as good condition as of the completion date of the last improvement made to the Airline Leased Premises, but in either case with reasonable wear and tear excepted.

Section 4.06 – Authority's Title. Authority's title is derived from the provisions of the Authority Act and the Master Lease. This Agreement is granted subject to the terms and conditions of the Authority Act and the Master Lease. Subject to the provisions of this Article 4, Authority's title to the Airline Leased Premises and Airport is and always shall be paramount to the interests of Airline. Nothing herein empowers Airline to commit or engage in any act which can, shall or may encumber the title and interest of Authority, the San Diego Unified Port District, or the State of California.

Section 4.07 – Authority's Right of Entry. Authority, its officers, employees, agents, representatives, contractors and providers shall have the right at all reasonable times to enter the Airline Leased Premises for the purposes of inspection, emergency repairs to utility systems, environmental testing, remedying health or safety issues, and for any other purpose necessary or incidental to or connected with the performance of Authority's contractual obligations, exercise of its governmental functions, or its responsibilities as Airport proprietor. To accomplish said purposes, the Authority's activities may include, without limitation, erecting scaffolding, columns, and supports and/or using any necessary equipment. Any such entry and the activities resulting therefrom shall not be deemed to constitute an interference with possession of the Airline Leased Premises and shall be without abatement of rent; provided, however, Authority shall use its best efforts to ensure as little interruption to the Airline's operations as possible. Furthermore, Airline shall not claim or be entitled to damages for loss of business or profits or any other injury or inconvenience resulting directly or indirectly from any such entry or activities; provided, however, Authority shall repair any damage to the Airline Leased Premises or to Airline's property and indemnify and hold Airline harmless from any damage to person or property or injury to person caused by Authority during such inspections, repairs, additions, modifications, and/or alterations. To the extent permitted under applicable law, Authority shall preserve the confidentiality of all confidential or privileged information obtained through such inspections, unless Airline has consented, in writing, to disclosure or has publicly released such information.

ARTICLE 5

ASSIGNMENT AND USE OF COMMON USE PREMISES AND RON POSITIONS

Section 5.01 – No Exclusive Use. The provisions of this Article 5 set the rules for Airline and all other airlines for the use and assignment of skycap positions, curbside positions, Common Use Ticket Counters, Gates, Terminal Adjacent Aircraft Parking Positions, RON Positions, and other Common Use Premises. All Gates within the Terminal and all Common Use Ticket Counters, free-standing self-service kiosks, and sky cap podiums within the CUPPS-Equipped Terminals at Airport are Common Use Premises. However, Airline may be assigned a Gate or Common Use Ticket Counter for Preferential Use, as defined herein, in accordance with the terms of this Article. No Gate or Common Use Ticket Counter may be assigned as Exclusive Use Premises. The use of a Gate or Common Use Ticket Counter shall at all times be subject to this Article and the Rules and Regulations, which may be unilaterally amended from time to time by Authority after consultation with the Airlines. Possession and control of all Common Use Premises and adjacent facilities rests with the Authority.

Section 5.02 – Accommodation. The parties intend by this Article to ensure open access and balanced utilization of Airport Facilities to the airlines. To achieve these goals, and to facilitate the orderly use and planning of Airport, the Authority (a) assigns Preferential Use Gates or Preferential Common Use Ticket Counter to eligible airlines based on the Daily Average Utilization to facilitate the orderly use and planning of Airport; (b) permits currently assigned Scheduled Operations to continue to be conducted at the times and on days of the week currently scheduled; (c) establishes procedures for the consensual reallocation of Gates, Common Use Ticket Counters and other facilities among the airlines; (d) reserves the right to require sharing and temporary use of Airline Leased Premises; (e) establishes priorities to accommodate requests for Gates, Common Use Ticket Counters and facilities by the airlines seeking to initiate, change or expand operations at Airport; (f) establishes minimum utilization requirements for the use and continued use of Preferential Use Gates or Preferential Common Use Ticket Counters, (g) establishes criteria and guidelines for Gate or Common Use Ticket Counter assignments, and (h) sets the Period of Use for the use of Authority-Controlled Facilities by the airlines.

Furthermore, in order to support these goals, Authority will provide and install standardized podia shells, inserts, and CUPPS equipment at all Gates, flight information display systems (FIDS), gate information display systems (GIDS), Common Use Ticket Counters, and curbside check-in positions in Terminal 2 West. These Authority-Controlled Facilities will be utilized by the airlines without modification. Airlines may not implement non-CUPPS compliant equipment. Further, in the event Airline previously installed non-CUPPS compliant, non-compatible, or other proprietary equipment and the Authority elects to install CUPPS compliant equipment in the locations where Airline has installed such equipment, Authority may require and Airline agrees Airline shall remove said equipment within ninety (90) days following the Authority's written request therefor. The removal of said equipment will be at Airline's sole expense.

Section 5.03 – Authority-Controlled Facilities, Gates, Common Use Ticket Counter Assignments, and RON Parking Positions.

- A. Authority-Controlled Facilities. Authority reserves the right at all times to retain under its exclusive control a minimum of four (4) Gates in Terminal 1, two (2) Gates in Terminal 2 East, and three (3) Gates in Terminal 2 West. Authority further reserves the right at all times to retain under its exclusive control a

minimum of four (4) ticket counters in Terminal 1, a minimum of two (2) ticket counters in Terminal 2 East, and a minimum of three (3) ticket counters in Terminal 2 West as Authority-Controlled Facilities. During the first year of this Agreement and each year thereafter, following the annual assignment of Preferential Use Gates, Preferential Common Use Ticket Counters or other allocations or reallocations pursuant to the procedures herein, the Authority shall also retain any Exclusive Use Premises, Gates or Common Use Ticket Counters not assigned as Exclusive Use Premises, Preferential Use Gates or Preferential Common Use Ticket Counters, as Authority-Controlled Facilities.

It is the intention of Authority to use, at its sole discretion, Authority-Controlled Facilities to accommodate (i) airlines serving Airport; (ii) airlines whose premises have been relocated by Authority as a result of construction, renovation or maintenance by Authority; (iii) airlines not requiring permanent facilities, (iv) airlines requiring temporary accommodations pending allocation of permanent facilities; and (v) other space requirements of the airlines. Any airline may request and Authority may grant to the airline the right to use, in common with other airlines as designated by Authority, Authority-Controlled Facilities.

- B. Notice of Determination(s). Authority shall notify Airline in writing of its determination(s) of assignments of Preferential Use Gates and Preferential Common Use Ticket Counters, Authority-Controlled Facilities, First Priority Use rights, and Second Priority Use rights annually or more frequently if necessary.
- C. Discretion of President/CEO. Provided the procedures of this Article 5 are followed, the use, location and status of Preferential Use Gates and Preferential Common Use Ticket Counters, Authority-Controlled Facilities, First Priority Use, Second Priority Use and temporary use shall be designated in the sole discretion of Authority by its President/CEO.
- D. Preferential Use Gates - Assignment. As of the effective date of this Agreement, the Authority shall assign Preferential Use Gates to Airline in accordance with the Minimum Daily Average Utilization which initially shall be based on the 625 and 750 Scheduled Departing Seats per day calculations as described in the definition of Preferential Use. The initial assignments are listed in "Exhibit L", attached hereto and by this reference made a part hereof. In no event may more than six (6) Preferential Use Gates be assigned to Airline. Those Gates not assigned shall be Authority-Controlled Facilities. After airlines have relocated with the opening of all gates within the expansion of Terminal 2 and periodically thereafter, the Authority may reconsider the assignment of Preferential Use Gates as set forth herein and based on the Minimum Daily Average Utilization, the total number of which may at Authority's sole discretion be increased or decreased to ensure the proper number of Gates are reserved as Authority-Controlled Facilities controlled by the Authority. An airline operating international flights, requiring the use of FIS Facilities, shall not qualify for assignment of a Preferential Use Gate but shall be assigned Second Priority Use rights at Airport to protect its Scheduled Operations.

E. Assignment and Use of Preferential Use Gates - First Priority and Second Priority User.

1. Use of Gates for Scheduled Operations. Use of Preferential Use Gates may be assigned by Authority to an Airline for its Scheduled Operations on a First Priority Use or Second Priority Use. Use of Authority-Controlled Facilities may be assigned by Authority to an airline for its Scheduled Operations on a Second Priority Use. Non-scheduled and charter operations will be assigned Gates on a temporary use basis only as described below.
2. Use of Preferential Use Gates by the First Priority User. An Airline shall be assigned First Priority Use rights by the Authority for its Scheduled Operations at its assigned Preferential Use Gates. An Airline, if the holder of a Preferential Use Gate, shall have preference to add First Priority Use Scheduled Operations at the Preferential Use Gate subject to provisions of this Article. Once assigned a First Priority Use at its Preferential Use Gate by the Authority, an Airline shall continue to have the right to such use so long as the Airline continues to operate the Scheduled Operation. However, an Airline with a Preferential Use Gate has no right to force out another airline with an assigned Second Priority Use on the Gate.
 - i. Second Priority Users shall be permitted to remain at the assigned Preferential Use Gate for a complete operation, provided the operation does not exceed the allowed Period of Use.
 - ii. Should the Second Priority User's operation exceed the Period of Use, then the Second Priority User may be required to vacate the Preferential Use Gate, at its sole expense, upon notification by the Authority. The Second Priority User may be reassigned to any available Gate or Authority-Controlled Facility to complete its operation.
3. Use of Authority-Controlled Facilities. At Authority-Controlled Facilities, all Gate use assignments to an airline for a Scheduled Operation shall be Second Priority Use.
4. Temporary Uses. Notwithstanding the above, the Authority may assign the temporary use of any Gate, or Authority-Controlled Facility on a temporary basis to any airline for any operation provided it does not interfere with any First and Second Priority Use and with the understanding that airline's use of the Gate is "at will".
5. Common Use Premises. When an airline is assigned a Gate, the airline shall have the right to use the Common Use Premises, Joint Use Premises and the Terminal Adjacent Aircraft Parking Positions adjacent thereto with the condition that such use not interfere with the rights of the airline. Authority shall have the exclusive right and control to assign and move Gate locations to ensure the balanced use of Airport Facilities. Authority may require an Airline using a Gate associated with Common

Use Premises to relocate to an alternative Gate, the cost of which shall be at Airline's sole cost and expense.

F. Reassignment and Use of Preferential Use Gates.

1. An Airline must meet the Daily Average Utilization for each assigned Preferential Use Gate. In the event the airline fails to maintain the Daily Average Utilization to meet this requirement, the airline has sixty (60) days after written notification from Authority to add operations to meet the Daily Average Utilization. Should the airline fail to increase its scheduled operations to meet the Daily Average Utilization within the sixty (60)-day period, the President/CEO may thereafter reassign the Preferential Use Gate as an Authority-Controlled Facility. At all times a Preferential Use Gate may be assigned to and be used by a Second Priority User or temporary user during any time period that the First Priority User has no assigned Scheduled Operations.
2. Use of Preferential Use Gates by Others. The Authority may assign Second Priority Use or temporary use to other airlines for their Scheduled Operations to a Preferential Use Gate. When a Scheduled Operation of an airline is assigned a Second Priority Use right at the Preferential Use Gate of another airline, the Second Priority User is thereby assured that its Scheduled Operation will be accommodated at the Preferential Use Gate or at another Airport Facility at the same time on the same day of the week.
3. Adding a First Priority Use to a Preferential Use Gate. An Airline assigned a Preferential Use Gate shall have the right to add additional Scheduled Operations to such Gate as a First Priority Use, after giving thirty (30) days' prior written notice to Authority, provided the requested time slot does not conflict with an assigned use of such Gate by a Second Priority User.
 - i. Notice. Should Airline choose to add an operation on its Preferential Use Gate that conflicts with the schedule of a Second Priority User, Airline shall provide Authority with at least ninety (90) days' written notice of its intention to add the additional operation.
 - ii. Right to Remain. In the event the Second Priority User cannot be relocated due to the unavailability of another Airport Facility, then the Second Priority User shall retain the right to use the Preferential Use Gate until a replacement Airport Facility is identified and available for Second Priority User.
 - iii. Duty to Move. Should a replacement Airport Facility become available for the Second Priority User, the Authority shall cause the Second Priority User to move to the identified new Airport Facility.

- iv. Continuing Notice. Should a Second Priority User not be moved to a replacement Airport Facility within ninety (90) days after the airline with the Preferential Use Gate requests the move, said request shall automatically expire unless the airline files a new request notice with the Authority.
 - 4. Assignment of Second Priority Use to Other Airlines at Preferential Use Gates. As provided above, Authority has the right to assign a Second Priority Use to a Preferential Use Gate provided the schedule of the Second Priority User does not conflict in any material respect with the schedule of the First Priority User.
 - i. Conflicts – Duty to Vacate. When Airline, as a First Priority User, occupies a Preferential Use Gate for more than the Period of Use for a Gate it may be required by Authority to vacate the Gate at the Airline's sole expense to allow a Second Priority Use of said Gate.
 - ii. Operations Completed at Gate. When Airline is a First Priority User and has completed its Scheduled Operation at a Preferential Use Gate, it may be ordered by Authority to remove its aircraft from the Gate to facilitate the use of the Gate by another airline, provided the use by the other airline does not interfere with the First Priority User's other Scheduled Operations at the Gate.
 - 5. No Right to Profit. It is understood that the purpose of designating Preferential Use Gates is to create efficiency and stability in the utilization of Airport. Assignment of Preferential Use Gates and First Priority Use is not intended to permit an airline to cause the cancellation of any Scheduled Operation.
 - 6. Loss of Preferential Gate Assignment.
 - i. Conversion of First Priority Use. Upon the loss of a Preferential Use Gate assignment, as provided in Section 5.03 D., the assigned First Priority Use rights of the airline at the Gate shall automatically revert to Second Priority Use rights and will be subject to the rules applicable to such users.
- G. Preferential Common Use Ticket Counter - Assignment. As of the Effective Date of this Agreement, Authority shall designate the number, if any, of Common Use Ticket Counters at Airport for the use of an airline on a Preferential Use basis. Common Use Ticket Counters may be designated for Preferential Common Use, Common Use, or unassigned. Ticket counters initially available are described in "Exhibit F" and those designated for Preferential Common Use, are listed in "Exhibit L". Assignment of ticket counters as they may become available in the future will be based on reasonable and non-discriminatory procedures set by Authority. The assignment of one or more ticket counters to any airline does not include the right to use any specific skycap podium, curbside position, Gate, ticketing office or operational support space at Airport. Authority shall have the exclusive right and control to assign and move ticket counter locations to ensure

the balanced use of Airport Facilities. Authority may require an Airline using a Common Use Ticket Counter to relocate to an alternative position, the cost of which shall be at Airline's sole cost and expense.

- H. Assignment of Other Common Use Premises or Other Authority-Controlled Facilities. Airline shall submit a written request to Authority to use other Common Use Premises or Authority-Controlled Facilities, including, but not limited to free-standing kiosks, skycap podiums, and other curbside check-in locations. An Airline's written request for other Common Use Premises shall be submitted to Authority at least sixty (60) days prior to the proposed date of use of the other Common Use Premises with the following information: name of airline, Common Use Premises being requested, desired time of day and day of week for the use of the other Common Use Premises, number of airline staff assigned to the facility, and estimated amount of time needed at the other Common Use Premises. Other Common Use Premises will be assigned and allocated by Authority based on reasonable and non-discriminatory procedures set by Authority. Authority shall have the exclusive right and control to assign and move airline from other Common Use Premises or Authority-Controlled Facilities to ensure the balanced use of Airport Facilities. If Authority requires an Airline to relocate to an alternative location, cost of which shall be at Airline's sole cost and expense.
- I. Assignment and Use of Second Priority Use Gate and Common Use Ticket Counter Rights. If an airline is designated as a Second Priority User of a Gate or to a Common Use Ticket Counter, whether the Gate or Common Use Ticket Counter is at a Preferential Use Gate, Common Use Ticket Counter, or an Authority-Controlled Facility, then the following shall apply:
1. Replacement Rights. Should an airline be required to vacate a Gate or Common Use Ticket Counter pursuant to the Authority's written notice or for any reason, subject to the provisions herein, other than default or termination as provided for in this Agreement, then Authority shall provide the airline with a replacement location for the same time and day of the week.
 2. Notice to Vacate. An airline must agree to vacate the Gate or Common Use Ticket Counter upon thirty (30) days' written notice from Authority.
 3. Time on Gates. An airline with a Second Priority Use shall be permitted to remain at the assigned Gate for a complete operation provided the operation does not exceed the Period of Use - Gate. Should an airline's operation exceed the above-referenced time periods, then the airline may be required to vacate the Gate, at the airline's expense, upon notification by Authority. The airline may be reassigned to a different location to complete its operation provided the originally assigned Gate is not available.
 4. Common Use Ticket Counters. An airline assigned to Common Use Ticket Counters (excluding Preferential Common Use Ticket Counters) shall be permitted to remain at the assigned Common Use Ticket Counter

provided it does not exceed the Period of Use - Common Use Ticket Counter on positions:

Aircraft Category	Number of Ticket Counters Allowed per Aircraft Turn (2 positions per counter)	Maximum Ticket Counter Occupancy Times (hours)*
72 seats or less	1	2.0
73 seats to 110 seats	2	2.5
111 seats to 150 seats	3	3
151 seats to 180 seats	4	3.5
Greater than 180 seats	5	4

* Additional time may be allowed for international flights.

The Authority may in its sole discretion, extend the above times depending on flight activity schedules and demand. Any airline exceeding the above stated occupancy time will promptly vacate the area when directed by the Authority.

Airlines occupying the facilities beyond the allotted times will be subject to additional facility fees.

5. Request for Gate or Common Use Ticket Counter for Added Operations. Should an airline choose to add operations at Airport, the airline must provide Authority with a minimum of sixty (60) days' prior written notice and submit a notice as defined herein.
6. Unavailability of Gate or Common Use Ticket Counter. Should no Gate, Common Use Ticket Counter, or other Airport Facility be available at the desired time period and day requested by the airline, Authority shall not be obligated to provide a Gate, Common Use Ticket Counter, or other Airport Facility.

Section 5.04 – Priorities and Procedures for Obtaining an Assignment to Gates and Common Use Ticket Counters. If an airline is in need of a Gate or Common Use Ticket Counter for a proposed Scheduled Operation, it shall submit its written request to the Authority with the following information: name of airline, type of aircraft, desired time of day and day of week for the Scheduled Operation, the city and airports to be served by the Scheduled Operation, estimated amount of time needed at the Gate or Common Use Ticket Counter for the operation, the names of the code share and Affiliate carriers currently operating at Airport.

- A. Notice. An airline's written request for a Gate or Common Use Ticket Counter shall be submitted to Authority at least sixty (60) days prior to the proposed commencement date of the new Scheduled Operation.

- B. Consensual Accommodations Encouraged. If an airline is in need of a Gate or Common Use Ticket Counter for a proposed Scheduled Operation at Airport, the Authority will encourage the airline after submitting its written request to the Authority requesting a Gate or Common Use Ticket Counter for a proposed Schedule Operation, to pursue an arrangement with one or more Airlines to promote efficiencies, cooperation, and positive working relationships.
- C. Request for Assignment at Preferential Use Gate or Preferential Common Use Ticket Counter. If no Authority-Controlled Facility is suitable and available for the Scheduled Operation of a Requesting Airline, the Requesting Airline may submit its request to the Authority to use a Preferential Use Gate or Preferential Common Use Ticket Counter at the Airport.
- D. Alternative Accommodation of Request by Authority. In the event the Authority cannot accommodate the Requesting Airline's request, the Authority shall attempt to find an alternative time and/or day (as applicable) at Authority-Controlled Facilities to accommodate the request.
- E. Request by Airline with Preferential Use Gates or Preferential Common Use Ticket Counters. A request by an airline for a Gate or Common Use Ticket Counter, if it currently holds one or more assigned Preferential Use Gates or Preferential Common Use Ticket Counters, shall not be processed by the Authority unless such airline provides satisfactory evidence that the proposed Scheduled Operation cannot be accommodated on one of the airline's assigned Preferential Use Gates or Preferential Common Use Ticket Counters.
- F. Accommodation through Sharing and Temporary Use of Airline Leased Premises. In the event (i) Authority receives a written request from an airline for a proposed Scheduled Operation using Airport Facilities which Authority cannot accommodate, and (ii) the airline has unsuccessfully attempted in good faith to reach consensual accommodation and demonstrates to Authority that it has contacted the Airlines at Airport and has exhausted all reasonable efforts to find reasonable accommodations for its proposed Scheduled Operation; and (iii) Authority determines that such airline remains in need of an Airport Facility to accommodate its Scheduled Operation and such need cannot be met by use of Authority-Controlled Facilities, Authority may grant the airline, in accordance with the priorities set forth herein, the right of temporary or shared use of a Gate, Common Use Ticket Counter or other Airline Leased Premises, as may be required.
- G. Authority Considerations. In designating Gates, Common Use Ticket Counters, Airport Facilities, and Airline Leased Premises for use by an airline, Authority shall take into account the following (in the following order of importance):
1. Fleet mix on the Gates and Common Use Ticket Counters;
 2. The number of total daily schedule departing seats from each Gate or Common Use Ticket Counter;
 3. Scheduling considerations;

4. Terminal Adjacent Aircraft Parking Positions;
 5. Proximity to adjacent airline ticket office space within the terminal; and
 6. Other operational and labor relations considerations.
- H. Duty to Consult. Authority shall consult with an affected airline before designating any specific Airline Leased Premises of said airline to be utilized by another airline.

Section 5.05 – Interpretation and Priorities for Accommodation. If Authority receives a written request from an airline seeking the use of a Gate or Common Use Ticket Counter to commence serving Airport as a new entrant airline or to expand service as an existing airline at Airport, Authority shall use the following priorities in attempting to accommodate such request:

- A. “First in Time”. The Authority will process requests in the order they are received.
- B. Existing Gates and Common Use Ticket Counters. Authority shall take into account the existing use of Gates and Common Use Ticket Counters and assignments currently assigned to an airline.
- C. Airline Leased Premises. Authority shall take into account the Airline Leased Premises currently used by an airline.
- D. Terminal Location. Authority shall attempt to assign Gates and Common Use Ticket Counters to an airline in the same Terminal or CUPPS-Equipped Terminal location, if feasible, provided it is in the best interests of the Authority and other users.
- E. International Gates and Common Use Ticket Counters. For the assignment of international Gates or Common Use Ticket Counters as identified by Authority, the Authority shall accommodate a request of an airline considering the following criteria:
 1. Will the airline be operating its Scheduled Operation international flight utilizing a Group V aircraft?
 2. Will the airline be operating a non-stop international Scheduled Operation?
 3. Will the airline be operating an international Scheduled Operation?
 4. What is the size of the aircraft to be operated by airline and the size of the aircraft already assigned to adjacent gates or Common Use Ticket Counter?
 5. Will the airline be operating a Domestic Flight Scheduled Operation?
- F. Commuter Terminal. It is the policy of the Authority that an airline when operating an aircraft with a passenger capacity of 72 seats or less (except

aircraft without a built-in air-stair), on a flight of 100 nautical miles or less, must operate such aircraft from the Commuter Terminal as shown on "Exhibit A". Gate assignments and operations at the Commuter Terminal are subject to additional rules below and as delineated in "Exhibit M," a copy of which is attached hereto and by this reference made a part hereof:

1. The Commuter Terminal utilization requirement is not subject to the Daily Average Utilization stated above for Terminal 1 and 2.
2. The Commuter Terminal Daily Average Utilization shall be 170 departing seats on Scheduled Operations per parking position adjacent to a Gate.
3. Although Gates are assigned in the Commuter Terminal, it is understood and agreed by Airline that the carriers operating there will accommodate each other in the actual use of the Gates depending on conditions.
4. The Commuter Terminal Policy is subject to change at Authority's option.

G. Loss of Gate or Common Use Ticket Counter Use Rights. An airline, if assigned a First Priority Use or Second Priority Use right at a Preferential Use Gate, Preferential Common Use Ticket Counter, Authority-Controlled Gate or Common Use Ticket Counter at Airport, shall immediately inform the Authority upon determining to terminate a Scheduled Operation at Airport.

1. Expiration of Requests. Authority shall use its best efforts to respond to an airline's written request for the assignment of a Gate or Common Use Ticket Counter for a Scheduled Operation. An airline's written request for the assignment of a Gate for a Scheduled Operation shall automatically expire after a period of one hundred and twenty (120) days. At the conclusion of the one hundred twenty (120)-day period, should the airline continue to want the Gate or Common Use Ticket Counter assignment, airline shall resubmit a new request. If the new request is the same request as the original, the new request shall retain the submission date of the original request.
2. Incomplete Request. The Authority has no obligation to process an incomplete request. A complete request shall include the name of airline, type of aircraft, desired time of day and day of week for the Scheduled Operation, the city and airports to be served, estimated time needed at the Gate or Common Use Ticket Counter, and the name of any Affiliate carriers at Airport.
3. Right to Void Request. The Authority reserves the right to void the request of an airline if it files such request in bad faith or without the intention to conduct the requested Scheduled Operation. Before taking such action, the Authority will provide an opportunity to the airline to prove the request was made in good faith and is proper.
4. Terminations. The termination of a Scheduled Operation at an assigned Gate or Common Use Ticket Counter by an airline shall open a Second Priority Use Gate or Common Use Ticket Counter assignment to

provisions of this Policy. If the airline holds a Second Priority Use Gate or Common Use Ticket Counter assignment, it shall not have the automatic right to substitute another Scheduled Operation for the terminated one without the consent of the Authority. If the airline holds a First Priority Use Gate or Common Use Ticket Counter assignment at a Preferential Use Gate or Preferential Common Use Ticket Counter, it shall have the right to replace the terminated Scheduled Operation with another within thirty (30) days. If no replacement is made by the airline as the First Priority Use Gate or Common Use Ticket Counter user, then the Authority may assign a Second Priority Use Gate or Common Use Ticket Counter use at such gate to another airline.

5. Schedule Changes. Airline shall notify the Authority in writing of any change to a Scheduled Operation at Airport at least thirty (30) days in advance.

Section 5.06 – Revisions to Gate or Common Use Ticket Counter Assignment or Airline Leased Premises. Revisions pursuant to this Article 5 to the Airline Leased Premises shall be reflected in revised “Exhibits C, D, E, F and G”. Revisions to Preferential Use Gate or Preferential Common Use Ticket Counter assignments shall be reflected in a revised “Exhibit L”, as may be appropriate and approved by Authority.

- A. Determination for FY 2014 Preferential Use Gate and Preferential Common Use Ticket Counter Assignments. Airline acknowledges that as of the Effective Date of this Agreement, Authority has made the annual determination of the number of Preferential Use Gates and Preferential Common Use Ticket Counters for Fiscal Year 2014 as listed on the attached “Exhibit L” and that Authority has provided each airline operating at Airport with notice of such determination.
- B. Annual Determination of Preferential Use Gates and Preferential Common Use Ticket Counters. Effective (i) July 1, 2014, and (ii) after airlines have relocated as a result of the completion of the expansion of Terminal 2, and (iii) July 1st of each Fiscal Year thereafter during the term of this Agreement, the President/CEO shall have reasonable discretion to determine the total number of Gates and Common Use Ticket Counters to be reserved for use as Preferential Use Gates or Preferential Common Use Ticket Counters during that year (after taking into consideration any recommendations by the Airlines).
- C. Remaining Gates and Common Use Ticket Counters. All remaining Gates and Common Use Ticket Counters not assigned as Preferential Use Gates or Preferential Common Use Ticket Counters by July 1st of each Fiscal Year shall be deemed Authority-Controlled Facilities and will be offered by Authority to airlines for use as Second Priority Use or temporary use to be allocated in accordance with this Article.
- D. Reservation of Available Preferential Use Gate or Preferential Common Use Ticket Counters. Any Preferential Use Gate or Preferential Common Use Ticket Counters first becoming available for use after July 1st of each Fiscal Year shall be reserved for use as an Authority-Controlled Facility for the remainder of that Fiscal Year unless, after taking into consideration any recommendations of the Airlines, the President/CEO, in the President/CEO’s sole discretion, assigns the

Gate or Common Use Ticket Counter to an Airline as a Preferential Use Gate or Common Use Ticket Counter based on the terms of this Article.

- E. Refusal of Preferential Use Gate or Preferential Common Use Ticket Counter. If an airline does not accept assignment of a Preferential Use Gate or Preferential Common Use Ticket Counter, such Preferential Use Gate or Preferential Common Use Ticket Counter shall be designated as an Authority-Controlled Facility. In such a situation, Authority may elect to reassign a Preferential Use Gate or Preferential Common Use Ticket Counter not accepted by the airline to another airline if Authority determines the number of Authority-Controlled Facilities is adequate to accommodate all airline Scheduled Operations needing to use Gates or Common Use Ticket Counters at the Airport. The Authority may reallocate such Gates or Common Use Ticket Counters using the methodology described in this Article until all Gates or Common Use Ticket Counters available for assignment as Preferential Use Gates or Preferential Common Use Ticket Counters are allocated to Airlines or rejected for assignment as a Preferential Use Gate or Preferential Common Use Ticket Counter. Any Gate or Common Use Ticket Counter rejected for assignment as a Preferential Use Gate or Preferential Common Use Ticket Counter by all eligible Airlines under this subsection will become an Authority-Controlled Facility.

Section 5.07 – RON Parking Positions. The Authority shall designate the number, if any, of RON Positions at Airport for the use of airlines. The initial number of designated RON Positions is described in “Exhibit H”. For each RON position assigned to Airline, Airline agrees to pay the charges pursuant to Article 8.

The assignment of one or more RON Positions to any airline does not include the right to use any specific RON Position or Gate at Airport. Specific RON Positions shall be assigned using a separate process under the control of Authority through a committee comprised of one or more airline representatives (the “RON Committee”) and Authority staff. A copy of the RON Committee Over-Riding Principles for the assignment of individual specific RON Positions is attached hereto as “Exhibit N,” attached hereto and by this reference made a part hereof. Assignment of RON Positions, as they may become available in the future, will be based on reasonable and non-discriminatory procedures set by the Authority. Notwithstanding the foregoing, all FIS designated Terminal Adjacent Aircraft Parking Positions shall have priority for international flight activity and RON parking.

The Authority shall have the exclusive right and control to assign and relocate RON Positions to ensure the maximum use of Gates and other Airport Facilities. Authority may require an airline using a RON Position to relocate its aircraft from its assigned RON Position to an alternative position. All movements to and from a RON Position shall be at Airline’s sole cost and expense.

ARTICLE 6

TRANSITION PROVISIONS

Section 6.01 – Transition Provisions. Airline and Authority acknowledge and agree that upon execution and delivery of this Agreement by Airline, the Airline Rents, Fees and Charges for Airline’s use of the Airport are effective July 1, 2013.

ARTICLE 7

SUBORDINATION OF AGREEMENT

Section 7.01 – Subordination to the Indenture. This Agreement and any obligations owed by the Authority to Airline that may arise under this Agreement or as it may be amended are subordinate in all respects and at all times to the Fund Deposits and other funding requirements under the Indenture and any supplemental Indenture then in effect.

ARTICLE 8

AIRLINE RENTS, FEES AND CHARGES – COMMENCING JULY 1, 2013

Section 8.01 – Consideration. The Airline Rent, Fees and Charges stated and required herein are consideration for Airline's use at Airport of the Airfield, Airline Leased Premises, Terminal Adjacent Aircraft Parking Positions, and RON Positions.

Section 8.02 – Cost Centers. In order to allocate the costs of operating, maintaining and developing the Airport, the following Cost Centers shall be utilized by the Authority, as more fully described in "Exhibit B":

- A. Airfield Area
- B. Terminal Area
- C. Other Airline Support
- D. Common Use Systems Support
- E. Landside Commercial
- F. Ancillary
- G. Indirect Cost Centers
 - 1. Access Roads
 - 2. Operating Support – Pool Allocations
 - 3. General and Administrative

In order to calculate Airline Rent, Fees and Charges, Authority shall account for and allocate annual O & M Expenses, Annual Debt Service, Amortization Charges, and other reserve requirements between the Cost Centers as set forth in "Exhibit B".

While the Authority may elect to create additional cost centers and sub-cost centers during the term of this Agreement, the Authority shall consult with Airlines prior to the inclusion of any direct or indirect cost assigned to these new cost centers or sub-cost centers in the calculation of Airline Rents, Fees, and Charges to the Airline as outlined in "Exhibit I" of this Agreement.

Section 8.03 – Airline Rent, Fees and Charges. The Airline Rents, Fees and Charges include the following:

- A. Terminal Rentals – Exclusive Use Premises. For the Exclusive Use Premises as set forth in “Exhibit C”, Airline will pay to Authority, on an equal monthly installment basis, rentals in the amount of the Terminal Rental Rate, calculated as described in “Exhibit I” of this Agreement, multiplied by the square footage of Airline’s Exclusive Use Premises shown as Airline Leased Premises on “Exhibit C”.
- B. Terminal Rentals - Joint Use Premises. For the Joint Use Premises set forth in “Exhibit D”, Airline will pay to Authority, on an equal monthly installment basis, a *pro-rata* share of the rentals in the amount of the Terminal Rental Rate, calculated as described in “Exhibit I” of this Agreement, multiplied by the square footage of the Joint Use Premises shown on “Exhibit D”. The *pro-rata* share of rentals allocated to Airline shall be determined for July 1 and January 1 of each Fiscal Year, based on the projected enplaned passengers for the upcoming or current Fiscal Year, respectively, using the Joint Use Formula, defined as:

Twenty percent (20%) of the monthly rent payable for the Joint Use Premises shall be pro-rated in equal amounts among all passenger Airlines, excluding Affiliates and Small Airlines, and eighty percent (80%) of the monthly rent payable for the Joint Use Premises shall be allocated among all passenger Airlines, based on each Airline’s percentage share, including Affiliates and Small Airlines, of the total projected Enplaned Passengers at Airport.

The Joint Use Formula, where R_A is Airline's monthly rent payable for the Joint Use Premises, is:

$$R_A = (20\% \times R_J / N) + (80\% \times R_J \times [P_A / P_T])$$

N is the total number of passenger Airlines, excluding Affiliates and Small Airlines, serving Airport during the calculation period.

P_A is the number of total projected Enplaned Passengers by Airline during the calculation period.

P_T is the number of total projected Enplaned Passengers by all airlines during the calculation period.

R_J, the “total monthly rent payable” for the Joint Use Premises for all Airlines for each month, shall be the calculated as follows:

$$R_J = R_M \times S_J / 12$$

R_M is the annual rental rate per square foot calculated as per the provisions described in “Exhibit I” of this Agreement.

S_J is the number of square feet in the Joint Use Premises.

- C. Terminal Rentals – Shared Use Premises. For the Shared Use Premises set forth in “Exhibit E”, Airline will pay to Authority, on an equal monthly installment basis, a *pro-rata* share of the rentals in the amount of the Terminal Rental Rate, calculated as described in “Exhibit I” of this Agreement, multiplied by the square footage of the Shared Use Premises shown on “Exhibit E”. The *pro-rata* share of rentals allocated to Airline shall be determined for July 1 and January 1 of each Fiscal Year, based on projected Enplaned Passengers for the upcoming or current Fiscal Year, respectively, using the Shared Use Formula, defined as:

Each Airline’s Enplaned Passengers as a percentage of the total Enplaned Passengers of all Airlines using the Shared Use Premises unless an alternative arrangement is mutually agreed to by Authority and Airline.

The Shared Use Formula, where R_B is Airline's monthly rent payable for the Shared Use Premises. is:

$$R_B = (R_S \times [EP_A / EP_T])$$

EP_A is the number of total projected Enplaned Passengers by Airline during the calculation period.

EP_T is the number of total by all Airlines using the Shared Use Premises during the calculation period.

R_S, the total monthly rent payable for the Shared Use Premises for all airlines using the Shared Use Premises for each month, shall be the calculated as follows:

$$R_S = R_M \times S_S / 12$$

R_M is the annual Terminal Rental Rate calculated as per the provisions described in “Exhibit I” of this Agreement.

S_S is the number of square feet in the Shared Use Premises.

- D. Terminal Rentals - Common Use Premises. Airline will pay to Authority, on an equal monthly installment basis, a *pro-rata* share of the rentals in the amount of the Terminal Rental Rate, calculated as described in “Exhibit I” of this Agreement, multiplied by the greater of 14,655 square feet, or the actual Common Use Premises square footage assigned to the Airlines (as identified on “Exhibit F”). The *pro-rata* share of rentals allocated to Airline shall be determined for July 1 and January 1 of each Fiscal Year, based on projected Enplaned

Passengers for the upcoming or current Fiscal Year, respectively, using the Common Use Formula, defined as:

Twenty percent (20%) of the monthly rent payable for the Common Use Premises shall be pro-rated in equal amounts among all passenger airlines located in the CUPPS-Equipped Terminals, excluding Affiliates and Small Airlines, and eighty percent (80%) of the monthly rent payable for the Common Use Premises shall be allocated among Airlines located in CUPPS-Equipped Terminals, based on each Airline's percentage share, including Affiliates and Small Airlines, of the total projected enplaned passengers for those airlines located in the CUPPS-Equipped Terminals.

The Common Use Formula, where R_C is Airline's monthly rent payable for the Common Use Premises, is:

$$R_C = (20\% \times R_{CU} / N_{CU}) + (80\% \times R_{CU} \times [P_A / P_{TCU}])$$

N_{CU} is the total number of airlines located in CUPPS-Equipped Terminals, excluding Affiliates and Small Airlines, serving Airport during the calculation period.

P_A is the number of total Enplaned Passengers by Airline during the calculation period.

P_{TCU} is the number of total Enplaned Passengers by all Airlines located in CUPPS-Equipped Terminals during the calculation period.

R_{CU} , the total monthly rent payable for the Common Use Premises for all Airlines located in CUPPS-Equipped Terminals for each month, shall be calculated as follows:

$$R_{CU} = R_M \times S_{CU} / 12$$

R_M is the annual Terminal Rental Rate per square foot calculated as per the provisions described in "Exhibit I" of this Agreement.

S_{CU} is the number of square feet in the Common Use Premises.

- E. Common Use Systems Support Charges. Common Use Systems Support Charges will be calculated by totaling all O & M Expenses attributable or allocable to the Common Use Systems Support cost center and will be paid for by the airlines located in the CUPPS-Equipped Terminals. Common Use Systems Support Charges will be allocated based on projected enplaned passengers for the upcoming Fiscal Year, using each Airline's total number of Enplaned Passengers as a percentage of the total Enplaned Passengers of all Airlines located in CUPPS-Equipped Terminals pursuant to the provisions described in "Exhibit I".
- F. Landing Fees. For the Airfield Area set forth in "Exhibit B", Airline agrees to pay on a monthly basis Landing Fees in an amount equal to the Landing Fee Rate,

as calculated in "Exhibit I", multiplied by the Airline's Maximum Gross Landing Weight for the monthly period.

- G. Terminal Adjacent Aircraft Parking Position Charges. For aircraft parked overnight at Terminal Adjacent Aircraft Parking Positions as set forth in "Exhibit E", Airline will pay to Authority, on a monthly basis 1/12th of the Terminal Adjacent Aircraft Parking Position Charge, as calculated in "Exhibit I" of this Agreement, multiplied by the number of such Terminal Adjacent Aircraft Parking Positions assigned to Airline for the monthly period.
- H. Security Surcharges. For each Fiscal Year, charges for the costs related to security services or areas shall be calculated per the provisions described in "Exhibit I" of this Agreement. Security Surcharge costs include security and access control services provided by Authority to both the Airfield Area and Terminal, including but not limited to the law enforcement, private guard services, maintenance of the access control system, and other security expenses as defined by Authority from time to time. Security Surcharge costs also include an annual amount equal to the Terminal Rental Rate multiplied by the square footage assigned to the TSA for passenger security screening purposes, as shown on "Exhibit K", which is attached hereto and by this reference made a part hereof. Airline will pay to Authority, on an equal monthly installment basis, the *pro-rata* share of both Airfield Area and Terminal security costs as provided in "Exhibit I".
- I. RON Charges. For the RON Positions set forth in "Exhibit H", Airline will pay to Authority, on an equal monthly installment basis, an amount equal to the RON Charge as calculated in "Exhibit I" of this Agreement, multiplied by the number of RON Positions assigned to Airline for any portion of the monthly period.
- J. Federal Inspection Service ("FIS") Use Charges. For each Fiscal Year, Authority shall charge for use of its FIS Facilities an amount equal to \$2.00 per each arriving international seat. The President/CEO or a representative appointed by the President/CEO may make adjustments to this charge on a semi-annual basis.

Section 8.04 – Late Payment of Airline Rent, Fees or Charges. In the event Airline is delinquent in remitting to Authority the Airline Rents, Fees and Charges due in accordance with the provisions of this Agreement, said delinquency or non-payment is a breach and default of this Agreement for which Authority may terminate the Agreement and/or take such other legal actions as it deems necessary.

Without waiving any rights available under the Agreement or by law, in the event of a late or delinquent payment, Airline recognizes that Authority will incur certain expenses, the amount of which is difficult to ascertain. Therefore, in addition to the Airline Rents, Fees and/or Charges owing, Airline agrees to pay the liquidated damages set forth below to compensate Authority for all expenses and/or damages and loss resulting from said late or delinquent payment(s) by Airline.

The liquidated damages for late or delinquent payments shall be 10% *per annum*, or that percent *per annum* equal to the prevailing rate on the 25th day of the month preceding the execution of this Agreement as established by the Federal Reserve Bank of San Francisco on

advances to member banks under §13 and §13A of the Federal Reserve Act, plus 4 ½% *per annum*, whichever is greater, on the balance of the unpaid monthly amount calculated from the date of the delinquency until the close of the business day upon which the delinquent payment is received by the Authority. The President/CEO shall have the right to waive for good cause the assessment and/or collection of any liquidated damages upon a timely written application by Airline.

Section 8.05 – Airline Rents, Fees, and Charges for Affiliate and Small Airlines.

- A. An Affiliate, as defined herein (or the affiliated Airline on their behalf), shall pay Airline Rents, Fees and Charges during any period in which the Affiliate (i) has their own Affiliate Airline Operating Agreement in effect with the Authority, (ii) is providing scheduled air service at the Airport, and (iii) is operating from any Terminal identified under lease to an airline.
- B. A Small Airline shall pay Airline Rents, Fees and Charges during any period in which the Small Airline (i) has its own Airline Operating Agreement in effect with Authority, (ii) is providing scheduled air service at the Airport, and (iii) is operating from any Terminal under lease.

Section 8.06 – Payment Provisions.

- B. Terminal Rentals, Security Surcharges, FIS Use Charges, Terminal Adjacent Parking Position Charges and RON charges for such overnight aircraft parking positions assigned to Airline during the preceding month shall be due and payable on or before the tenth (10th) day of each month during the term of this Agreement, in advance, without invoice, deduction, or setoff.
- C. Landing fees shall be due and payable on or before the fifteenth (15th) day of each month for the prior month during the term of this Agreement, without invoice, deduction, or setoff, accompanied by an accurate, verifiable activity report on such form as the Authority may provide. Authority reserves the right to require Airline to utilize an electronic system for the transmittal of said reports.
- D. Any amounts due shall be paid by check or electronic transfer by Airline to Authority, which check shall be delivered or mailed, postage prepaid, to the Treasurer of the Authority at Post Office Box 81323, San Diego, California 92138-1323. The designated place of payment may be changed at any time by Authority upon ten (10) days' written notice to Airline. The acceptance by Authority of any payment made by Airline shall not preclude the Authority from verifying the accuracy of Airline's report submitted to the Authority or from recovering any additional payment actually due from Airline or from crediting any overpayment due to Airline.

ARTICLE 9

RENT CREDITS

Section 9.01 – Rent Credits. From time to time, Authority will allow Airline to earn rent credits to be applied to the rent due under this Agreement by performing certain work or projects at the Airport. The rent credits shall be made available provided that Airline receives prior

written authorization from the President/CEO to earn said credits. Such prior written authorization must contain:

- A. A description of the project;
- B. An estimated completion date; and
- C. A dollar amount that the said credits may not exceed.

Receipt of rent credits shall be conditioned on Airline providing to the Authority written proof of said actual cost to Airline for the project and proof of payment. Issuance of rent credits shall not preclude the Authority's recovery from the Airlines for the rent credits through Airline Rents, Fees and Charges.

ARTICLE 10

UTILITIES AND COMMUNICATIONS

Section 10.01 - Utilities. Authority shall provide water, sewer, gas, electric, and drainage to the outer perimeter of the Airline Leased Premises. Airline, at its sole cost, shall tie into the utility lines at the locations specified by Authority. Other utilities required by Airline in excess of that which is customarily available in the Airport Facilities will be, if approved by Authority, installed at the expense of Airline.

Section 10.02 – Telecommunications. Telecommunications to Airline's Leased Premises may be provided by Airline. Authority may also implement a shared telecommunications system for telephone, facsimile, local access, long distance service, internet, intranet, or other such services. Airline may use such systems as and when implemented by Authority; provided, however, that the cost of all such services used by Airline shall be at the sole cost of Airline. Airline shall have the right to install its own high-speed wireless local area network ("WLAN") in accordance with any rights under the Federal Communications Commission and with the written approval by Authority provided it does not interfere with Authority's equipment.

Section 10.03 - Television and Radio. Television and radio may be provided by Airline. Authority may also implement shared television and radio systems. If Airline desires television and radio services, Airline may use such systems as and when implemented by Authority; provided, however, that the cost of all such services used by Airline shall be at the sole cost of Airline. Airline shall have the right to install its own television and radio systems in accordance with any rights under the Federal Communications Commission and with the written approval by Authority provided it does not interfere with Authority's equipment. Airline is responsible for obtaining permission to transmit any copyrighted music, including but not limited to radio broadcasts, recorded music, and television broadcasts, in the Airline Leased Premises at the Airport in compliance with all laws.

ARTICLE 11

MASTER KEY SYSTEM

Section 11.01 – Master Key System. Except as provided below, locks on doors with access to or located within the Airline Leased Premises shall be included in the Master Key

System used by Authority. Authority shall supply Airline with a maximum number of keys for each door in the Airline Leased Premises as reasonably determined by the President/CEO. Airline agrees to pay a sum of Twenty Dollars (\$20) each for additional keys required or for keys lost. All lock installations, modifications, and/or repairs shall be conducted by Authority.

Section 11.02 - Exclusions. Airline shall have the right to request that a lock be excluded from the Master Key System, provided Airline submits a written request identifying the lock and giving a reason said lock shall be excluded from the Master Key System. The Authority shall reasonably determine which lock and or locks may be excluded from the Master Key System. Airline acknowledges and agrees that Authority will retain a copy of the key and or combination of said lock with Authority's Airside Operations Department, and with any other party mutually agreed upon between Authority and Airline.

Section 11.03 – Replacements. Authority shall have the right at any time, and without prior notice, to replace those locks that are not on the Master Key System and were not approved, as provided for above, with a lock that is on the Master Key System.

ARTICLE 12

ACKNOWLEDGEMENT OF AUTHORITY IMPROVEMENTS

Section 12.01 – Improvements. Airline agrees that it has examined the Airline Leased Premises and the condition thereof, that the improvements thereon in their present condition are satisfactory and usable for Airline's purposes, and that no representations as to value or condition have been made by or on behalf of Authority.

ARTICLE 13

CONSTRUCTION OF IMPROVEMENTS

Section 13.01 – Consent for Construction. Airline shall not construct any improvements or facilities upon the Airport or the Airline Leased Premises without the prior written consent of Authority. All proposed improvements or facilities shall be submitted to the Authority for review prior to commencement of construction, and shall be completed in accordance with the plans and specifications as reasonably approved by the President/CEO in writing. Within ninety (90) days after substantial completion of construction, Airline agrees to provide Authority with a hard copy and compact disc ("CD") of the "as-built" drawings.

Section 13.02 – Performance and Payment Bonds for Construction. No major construction shall be commenced upon the Airline Leased Premises by Airline until Airline has secured and submitted to Authority performance and payment bonds in the amount of the total estimated construction cost of improvements to be constructed by Airline. In lieu of said bonds, the President/CEO of Authority may at the President/CEO's reasonable discretion accept the performance and labor and material bonds supplied by Airline's contractor or subcontractors. Said bonds must be issued by a company qualified to do business in the State of California, be in a form acceptable to Authority, and comply with the requirements of California law.

ARTICLE 14

TITLE TO IMPROVEMENTS

Section 14.01 – Improvements on Expiration of Term. Any structures, installations, improvements of any kind, machines, equipment, and baggage handling systems placed on the Airline Leased Premises by Airline, including without limitation, walls, partitions, ceilings, built-in counters and cabinets, carpeting, and permanently attached electrical installations and lighting fixtures (“Airline’s Improvements”), shall be removed by Airline, if requested by Authority at its sole option (unless the parties had previously agreed in writing that removal would not be required), within ten (10) days after the expiration of the term of this Agreement or sooner termination thereof. Airline further agrees to repair any and all damage occasioned by the removal thereof. In the event of termination by either Airline or the Authority, Airline and Authority shall use their best efforts to meet within ten (10) days of receiving or issuing such termination notice to determine which, if any, of Airline’s Improvements Authority shall request to be removed, and Authority shall provide Airline written notice of its determination within ten (10) days of such meeting.

Section 14.02 – Authority’s Option. If Authority exercises its option under 14.01, above, and Airline fails or refuses to remove such structures, installations, improvements, machines, equipment, and systems and repair the premises within said ten (10) days after the termination of this Agreement, the Authority shall have the following options: (1) consider the property abandoned whereupon the Authority shall become owner of the improvements without cost to Authority and without any payment to Airline, or (2) remove or cause the removal of the property or improvements at the sole expense of Airline who shall reimburse Authority within thirty (30) days of receiving an invoice for the cost for removal and repair, including administrative costs of fifteen percent (15%).

Section 14.03 – Rent. During any period of time employed by Airline under this Article 14 to remove structures, installations, improvements, machines, equipment, and systems, Airline shall pay applicable Airline Rent, Fees and Charges to Authority in accordance with this Agreement, said rent to be prorated daily.

ARTICLE 15

REPAIR AND MAINTENANCE OF FACILITIES, IMPROVEMENTS, AND EQUIPMENT

Section 15.01 – Buildings and Airfield Area. Authority, in its sole discretion, shall maintain and keep in good order and repair the Terminal building structure, its appurtenances, and the Airfield Area as they were originally constructed, modified, acquired and/or installed by Authority in accordance with “Exhibit O,” attached hereto and by this reference made a part hereof. In addition, Authority, shall maintain, in a manner determined in its sole discretion, utility services (television, radio and data services are not considered “utilities” for purposes of this Section) , and, where applicable, building systems, as they were originally constructed, modified and/or installed by the Authority in accordance with “Exhibit O”.

Section 15.02 – Repair and Maintenance Specifications. Airline shall repair and maintain all facilities, improvements and equipment it is obligated to under Agreement in compliance with manufacturer’s specifications, in accordance with “Exhibit O”. In the case where no such manufacturer’s specifications exist, then Airline shall repair and maintain all facilities, improvements and equipment it is obligated to under this Agreement in compliance

with the specifications provided by Authority, which shall be consistent with industry practices. In the event Airline contracts with a third party for the repair and/or maintenance provided for herein, Airline agrees said third party shall be required to comply with the aforementioned specifications. Airline shall perform such repair and/or maintenance responsibilities in a good and workmanlike manner, consistent with industry practices. If Airline fails to perform its obligations under this Section of the Agreement within thirty (30) days after written notice from Authority (or, in the case where such repair and/or maintenance responsibility cannot be reasonably completed within thirty (30) days, or where Airline has not begun to pursue a remedy during that time period), Authority may affect such repairs and/or maintenance and recover its costs plus a fifteen percent (15%) administrative charge, in addition to all other remedies provided for in this Agreement.

Section 15.03 – Repair and Maintenance of Airline Improvements. Improvements, structures, and appurtenances created and installed by Airline shall be maintained by Airline in a clean, safe, sound, and presentable condition at all times. Such maintenance shall include, but not be limited to, repair, replacement, and refinishing of interior walls, ceilings, and floors. Airline shall not commence any Airfield Area maintenance activities without the prior written approval of the President/CEO.

Section 15.04 – Airline Repair and Maintenance of Airline Leased Premises and Authority Property. Airline hereby agrees that it will maintain and keep in good order and repair its Airline Leased Premises and appurtenances thereto, including any personal property belonging to Authority, in accordance with “Exhibit O”. However, Airline shall not perform maintenance and/or repairs in the Joint Use Premises, Shared Use Premises or Common Use Premises, except as it is obligated to under this Agreement. All damage or injury done to the Airline Leased Premises or Authority property by Airline, or the Airline's employees, contractors, or agents, shall be paid for by Airline. Airline, at the termination of this Agreement, shall surrender to Authority the Airline Leased Premises with the appurtenances and other personal property belonging to Authority in as good condition and repair as when received, normal and ordinary wear and tear excepted.

Section 15.05 – Repair and Maintenance of Shared Use Premises, Joint Use Premises and Common Use Premises. All damage or injury done to Shared Use Premises, Joint Use Premises or Common Use Premises, by Airline, or Airline's contractor's employees, and/or agents, shall be paid for by Airline. Airline, at the termination of this Agreement, shall surrender to Authority such premises and space with the appurtenances and other personal property belonging to Authority in as good condition and repair as when received, normal and ordinary wear and tear excepted.

Section 15.06 – Repair and Maintenance of Passenger Loading Bridges. Notwithstanding the above, the Authority, in its sole discretion, may require Airline, collectively with all other scheduled passenger airlines, to maintain the Passenger Loading Bridge(s) at their sole cost and expense, including, but not limited to, the loading bridge structure(s) and all appurtenances thereto. Airline shall repair and maintain the Passenger Loading Bridges(s) in compliance with the manufacturer's specifications. In the case where no such manufacturer's specifications exist, then Airline shall repair and maintain the Passenger Loading Bridges in compliance with Authority-provided specifications, which shall be consistent with industry practice. In the event Airline contracts with a third party for the repair and/or maintenance provided for herein, Airline agrees said third party shall be required to comply with the aforementioned specifications. Airline shall provide such repair and/or maintenance responsibilities in a good and workmanlike manner, consistent with industry practices. If Airline

fails to perform its obligations under this Section of the Agreement within thirty (30) days after written notice from Authority (or, in the case where such repair and/or maintenance responsibility cannot be reasonably completed within thirty (30) days, or where Airline has not begun to pursue a remedy during that time period), Authority may affect such repairs and/or maintenance and recover its costs plus a fifteen percent (15%) administrative charge, in addition to all other remedies provided for in this Agreement.

Authority, however, may elect to maintain one or more of the Passenger Loading Bridges. Upon such election, Authority shall establish a fee for the use of such Passenger Loading Bridges and shall include both the revenues collected through the fees and the maintenance costs in the rates and charges calculations for the Terminal Area Cost Center.

Section 15.07 – Repair and Maintenance of Baggage Handling Systems. Notwithstanding the above, Authority, in its sole discretion, may require Airline, collectively with all other scheduled passenger airlines, to repair and maintain the Baggage Handling Systems(s) at their sole cost and expense, including, but not limited to, all appurtenances thereto. Airline shall repair and maintain the Baggage Handling Systems(s) in compliance with the manufacturer's specifications. In the case where no such manufacturer's specifications exist, then Airline shall repair and maintain the Baggage Handling Systems in compliance with the specifications provided by Authority, which shall be consistent with industry practices. Airline shall perform such repair and/or maintenance responsibilities in a good and workmanlike manner, consistent with industry practices. If Airline fails to perform its obligations under this Section of the Agreement within thirty (30) days after written notice from Authority (or, in the case where such repair and/or maintenance responsibility cannot be reasonably completed within thirty (30) days, or where Airline has not begun to pursue a remedy during that time period), Authority may affect such repairs and/or maintenance and recover its costs plus a fifteen percent (15%) administrative charge, in addition to all other remedies provided for in this Agreement.

Authority, however, may elect to maintain one or more of the Baggage Handling Systems or portions thereof. Upon such election, Authority shall establish a fee for the use of such Baggage Handling Systems and shall include both the revenues collected through the fees and the maintenance costs in the rates and charges calculations for the Terminal Area Cost Center.

Section 15.08 – Janitorial Services. It is mutually understood that Authority, in its sole discretion, may provide janitorial services to the Terminal area, or may require Airline, collectively with all other scheduled passenger airlines utilizing the Terminal area, to contract with a contractor to provide janitorial services to the Terminal area. If Airline with the other scheduled passenger airlines utilizing the Terminal area provides the janitorial services to the Terminal area, including non-leased Authority areas, Authority shall issue to said airlines on a monthly basis a per-square-foot credit to reimburse Airline and the other scheduled passenger airlines for the janitorial costs incurred to clean said space that is not leased by any airline. The estimated per-square-foot rate shall be calculated at the beginning of each Fiscal Year. After the close of each Fiscal Year, Authority shall calculate the actual per-square-foot rate based on the actual janitorial costs for the Fiscal Year in which the rates were charged, and any under or over credit shall be reimbursed to, or repaid by, Airline together with all other scheduled passenger airlines.

Janitorial services performed by Airline shall be in compliance with the scope of work and specifications approved by Authority, consistent with industry practices, and in a good and

workmanlike manner. In the event Airline contracts with a third party to provide janitorial services, Airline agrees said third party shall be required to comply with the aforementioned scope of work and specifications. If Airline fails to perform its obligations under this Section of the Agreement within thirty (30) days after written notice from Authority (or, in the case where such janitorial responsibility cannot be reasonably completed within thirty (30) days, or where Airline has not begun to pursue a remedy during that time period), Authority may affect such janitorial services and recover its costs plus a fifteen percent (15%) administrative charge, in addition to all other remedies provided for in this Agreement. If Airline fails to perform its obligations under this Section of the Agreement immediately in the event of a health and/or safety matter, Authority may affect such janitorial services and recover its costs plus a fifteen percent (15%) administrative charge.

Section 15.09 - Common Use Equipment and Stock

- A. Common Use Equipment and Consumable Stock. In the event Authority elects to install common use equipment and associated systems in areas such as, but not limited to, ticket counters, ticket lobbies, skycap podiums, other curbside check-in locations, gate podiums, other gate and/or passenger holdroom locations, and/or FIS re-check areas (“Common Use Equipment”), Authority may in its sole discretion assume responsibility for the maintenance and repair of the Common Use Equipment or require Airline, collectively with all other scheduled passenger airlines, to be responsible for the maintenance and repair of any such Common Use Equipment including the expense thereof. In the event Authority elects to assume such responsibility, the sole extent of liability of Authority with respect to the Common Use Equipment shall be limited to repair and/or replacement of malfunctioning Common Use Equipment. Authority shall respond as expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment, after Airline has notified Authority, of such difficulties, in a manner and process which shall be prescribed by Authority. Airline shall ensure the same level of responsiveness and assistance to Authority and/or Authority’s third party service provider to identify and resolve Airline and/or Airline-vendor issues relating to Airline’s applications that run in conjunction with the Common Use Equipment. Airline will work cooperatively with Authority in the implementation of other new technologies to improve the efficiency of the Airport.

Whether the responsibility to maintain and repair the Common Use Equipment is that of Authority or Airline, Authority shall provide the consumable stock (i.e., boarding pass receipts and bag tag stock), necessary for the operation of common use self-service kiosks, both free-standing and those installed in ticket or curbside passenger check-in counters. Airline may only elect to install proprietary stock in Preferential Common Use Ticket Counters. Should Airline elect not to use proprietary stock in its ticket counter kiosks, Authority will provide the common use stock. Authority reserves the right to provide stock for the ticket counter kiosks. Authority shall also provide the printer paper and ribbons for document control printers provided by Authority.

In the event that Authority assigns Airline’s Preferential Use Gates and/or Preferential Common Use Ticket Counters to another air carrier, Airline shall remove its proprietary stock.

Airline provided consumable stock shall be consistent with IATA stock specifications and subject to approval by Authority. In the event that Authority deems the consumable stock provided by Airline to be injurious to Authority's Common Use Equipment, Airline will immediately cease usage of the offending consumable stock upon such receipt of notice by Authority. Authority reserves the right to sell advertising on and collect the applicable advertising revenues that may be generated from the reverse side of any Authority-supplied consumable stock.

- B. Radio Frequency Identification ("RFID") Bag Tag Stock. In the event Authority implements an RFID-based bag tag system, Authority will supply all radio frequency identification bag tag stock for use as part of the baggage handling system. The sole extent of liability of Authority with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. Authority will respond as expeditiously and as reasonably possible to technical difficulties with the equipment after Airline has notified Authority of such difficulties, in a manner and process which shall be prescribed by Authority. Airline shall ensure the same responsiveness and assistance to Authority staff and/or Authority's third party service provider to identify and resolve Airline and/or Airline-vendor issues relating to Airline's applications that run in conjunction with the radio frequency identification, bag handling systems.
- C. No Modifications to Authority's Equipment. Airline shall not be allowed to install Airline-owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment in areas other than its Exclusive Use Premises. Further, Airline shall not make any modification whatsoever to Authority's Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by Airline shall be remedied by Airline, to the sole satisfaction of Authority, at the sole cost of Airline. In the event that the damage is repaired by Authority, Airline will reimburse Authority for both the fully-allocated cost of time and materials pertaining to the repairs plus a fifteen percent (15%) administrative fee.
- D. Future Maintenance and Stock Responsibilities. Authority reserves the right to continue the provision of Common Use Equipment and stock, to hire a third party service provider to provide for the maintenance and supply of Common Use Equipment and stock, and/or to require the Airlines to provide for the Common Use Equipment and stock upon reasonable notice in the Authority's sole discretion.

ARTICLE 16

LIENS

Section 16.01 – Indemnification. Airline agrees that it will at all times indemnify, defend and hold harmless Authority from and against all claims, encumbrances, stop notices, levies and liens (hereinafter for Article 16, "Indemnified Lien Claims") for labor, services, or materials in connection with improvements, repairs, or alterations made by Airline or its subtenants,

contractors, and agents on the Airline Leased Premises, and for the costs of defending against such claims, including reasonable attorney's fees and court costs.

Section 16.02 – Lien Bonds. In the event that any Indemnified Lien Claim caused by Airline or its subtenants, contractors, and agents, is filed against the Airline Leased Premises or the leasehold interests of Airline therein, Airline shall, upon written request of Authority, make immediate payment in full of all claims upon which said claim has been filed. In the event Airline contests the Indemnified Lien Claim, Airline shall deposit with Authority a bond conditioned for the payment in full of all claims upon which said claim has been filed. Such surety bond shall be acknowledged by Airline as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Authority shall have the right to declare this Agreement in default in the event the bond required by this Article has not been deposited with Authority within ten (10) days after written request has been delivered to Airline.

Section 16.03 – Exception. This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if it has been consented to by Authority as provided in this Agreement.

ARTICLE 17

BANKRUPTCY

Section 17.01 – Insolvency and Bankruptcy. Notwithstanding any other provisions of this Agreement, in the event Airline becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceeding, or in the event of any judicial sale of Airlines' interest under this Agreement, (the date of the occurrence of any of the foregoing events is referred to as the "Date of Bankruptcy") then automatically and immediately, the term of this Agreement shall convert to month-to-month, commencing on the Date of Bankruptcy and shall terminate upon thirty (30) days written notice from Authority to Airline, or from Airline to Authority.

Section 17.02 – No Discharge of Obligations. The conversion of the term of this Agreement pursuant to the provisions herein shall not discharge any of Airline's obligations hereunder or affect any of Authority's other remedies set forth herein.

Section 17.03 – Lease. The parties agree that for purposes of interpretation of this Agreement under the federal bankruptcy law, this Agreement is a lease.

ARTICLE 18

HOLD HARMLESS

Section 18.01 – Indemnification. Airline shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Authority and its Board, officers, officials, directors, employees, volunteers and agents from and against (i) any and all liability, damages, losses, expenses, claims, judgments, or demands, including attorneys' fees and court costs ("claims"), arising directly or indirectly from any act or omission of Airline, its employees, agents, and representatives or out of the obligations undertaken in connection with or the performance of this Agreement, or (ii) for claims based upon Airline's alleged breach of any statutory duty or obligation or Airline's duty under contracts with third parties, or (iii) arising from any defect in any

part of the Airline Leased Premises except, for those claims arising out of the sole active negligence or willful misconduct of Authority. The obligations in this Article shall apply for the entire time that any third party can make a claim against or sue Authority for liabilities arising out of Airline's use, occupancy, or operation of the Airline Leased Premises or Airport.

ARTICLE 19

INSURANCE

Section 19.01 – Duty to Carry Insurance. Airline shall procure, at its expense, and maintain at all times during the term of this Agreement, the types and amounts of insurance specified in "Exhibit P", a copy of which is attached hereto and incorporated by reference herein. The specified insurance described in 1. and 2. on "Exhibit P" shall include and insure Authority, its Board, officers, employees and agents, their successors and assigns, as additional insureds, against the areas of risk associated with this Agreement to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, and property damage suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act, omission or activity of Airline, or any person acting for it or under its control or direction, or any person authorized by it to use the Airline Leased Premises.

Section 19.02 – Severability of Interest and Contractual Endorsement. Each specified insurance policy (other than Worker's Compensation, Employers' Liability, and Property All Risk Insurance) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Endorsement which shall state, " Such insurance as is afforded by this policy shall also apply to liability assumed by the Insured (Airline) under Insured's (Airline's) Agreement with Authority."

Section 19.03 – Primary and Noncontributing. All such insurance shall be primary and noncontributing with any other insurance held by Authority where liability arises out of or results from the acts of omissions of the Airline or those of its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Airline.

Section 19.04 – No Liability for Premiums; No Partnership; and Default. Authority shall have no liability for any premiums charged for such coverage(s). The inclusion of Authority, its Board, officers, employees, and agents, their successors and assigns, as additional insureds is not intended to, and shall not make them, or any of them, a partner or joint venturer with the Airline in Airline's operations at Airport or in the performance of this Agreement. In the event Airline fails to furnish Authority with evidence of insurance and maintain the insurance as required, Authority upon ten (10) days prior written notice to comply, may (but shall not be required to) terminate this Agreement.

Section 19.05 – Continuing Coverage. At least thirty (30) days prior to the expiration date of the above policies, documentation showing that the coverage has been renewed or extended shall be filed with Authority. If such coverage is canceled or reduced, Airline shall, within fifteen (15) days of such notice of cancellation or reduction of coverage, file with Authority evidence that the required insurance has been reinstated or provided by another insurance company or companies.

Section 19.06 – Proof of Insurance. Airline shall provide proof of all specified insurance and related requirements to Authority either by production of the actual insurance policy, by use of Authority's own endorsement form(s), by broker's letter reasonably acceptable to the President/CEO in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance reasonably acceptable to the President/ CEO. The documents evidencing all specified coverage shall be filed with Authority prior to Airline performing under this Agreement or using the Airport. The documents shall contain the applicable policy number, the inclusive dates of policy coverage, and the insurance carrier's number, address, and telephone number, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or non-renewal except after written notice by certified mail, return receipt requested, to the Authority at least thirty (30) days prior to the effective date thereof. Authority reserves the right to have submitted to it, upon request, all pertinent information about the agent, broker and carrier providing such insurance.

Acceptable evidence of proof of insurance shall be mailed to the Authority as follows:

San Diego County Regional Airport Authority
Attention: Risk Management Dept.
P.O. Box 82776
San Diego, CA 92138-2776

Section 19.07 – Non-Admitted Carriers. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code §§1760-1780, and any laws, ordinances or other regulations and/or directives from the State of California's Department of Insurance or other regulatory board or agency. Airline agrees, except where legally exempted, to provide Authority with proof of said insurance by and through a surplus line broker licensed by the State of California.

Section 19.08 – Full Liability Clause. The procuring of such required policies of insurance shall not be construed to limit Airline's liability hereunder, or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policies of insurance, and only to the extent consistent with the obligations of Airline set forth elsewhere in this Agreement, Airline shall be obligated for the full and total amount of any damage, injury or loss caused by its negligence, neglect or intentional misconduct connected with this Agreement or with its use of Airport.

Section 19.09 – Deductibles and Self-Insurance. Any deductibles or self-insured retentions must be declared and acceptable to Authority. At the option of Authority, and upon written notice to Airline, Airline shall (1) cause the insurer to either reduce or eliminate such deductibles or self-insured retentions as respects Authority, its Board, officers, officials, and employees, or (2) procure a bond or letter of credit guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount equal to the unaccepted deductible or self-insurance retention.

Section 19.10 – Sufficient Coverages. Authority shall retain the right at any time to review the coverage, form, and amount of the insurance required herein. If, in the opinion of Authority, the insurance provisions in this Agreement do not provide adequate protection for Authority and/or for members of the public, Authority may require Airline to obtain increased insurance sufficient in coverage, form, and amount to provide adequate protection. Authority's

requirements shall be reasonable, but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

Section 19.11 – Liability of Airline. Provisions of this Article as to the maintenance of insurance shall not be construed as limiting in any way the extent to which Airline may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

ARTICLE 20

EASEMENTS

Section 20.01 – Agreement Subject to Easements. This Agreement and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by Authority (and its legal predecessors in interest) in, to, or over the Airline Leased Premises covered by this Agreement for any purpose whatsoever and shall be subject to such future rights-of-way for reasonable access, sewers, pipelines, conduits, and such underground telephone, telegraph, light, heat, communication or power lines, as may from time to time be determined by Authority to be in the best interests of the development of Authority property.

Section 20.02 – Minimum Interference. Authority agrees that future easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Airline. Other than as provided for in Section 4.02 – Demolition, Reconstruction, or Relocation, Airline shall not be entitled to any monetary payment or other remuneration for any such future easements

ARTICLE 21

DEFAULT

Section 21.01 – Default in Payments and Posting Deposits. If Airline defaults in the payment of any Airline Rents, Fees and Charges provided for herein, or in maintaining the security deposit in the amount, form, and for the term required and such default has not been cured within thirty (30) days after written notice thereof from Authority, the President/CEO shall have the right to terminate this Agreement immediately and in the event of such termination, Airline shall have no further rights hereunder.

Section 21.02 – Default of Other Terms or Conditions. If Airline defaults in the performance of any other covenant, term or condition of this Agreement and such default is not cured within thirty (30) days after written notice thereof from Authority, (or, in the case where such default cannot reasonably be cured within thirty (30) days, or where Airline does not begin to diligently pursue a cure during that time period), Authority shall have the right to terminate this Agreement immediately and in the event of such termination, Airline shall have no further rights hereunder. Notwithstanding the above, in the event the default involves a serious security, health or safety matter, the required thirty (30) days' notice may be shortened as reasonably necessary to meet the exigencies of the circumstances.

Section 21.03 – Default and Damages. As to any default, Authority shall have all other rights and remedies as provided by law, including without limitation the right to recover damages from Airline in the amount necessary to compensate Authority for damages caused by Airline,

for the direct costs incurred and caused by Airline's failure to perform its obligations under this Agreement, and for any other damages which in the ordinary course would be likely to result from a default of this Agreement.

Section 21.04 – Abandonment of Premises Leaving Personal Property. If Airline abandons the Airline Leased Premises, Authority shall have the immediate right of re-entry. Under such circumstances, Authority may consider any personal property belonging to Airline and left on the Airline Leased Premises to have been abandoned. Authority, after thirty (30) days written notice to Airline, may dispose of all such personal property in any manner Authority shall deem proper and is hereby relieved of all liability for doing so.

Should the Authority incur any un-reimbursed costs in disposing of Airline's abandoned personal property, Airline agrees to pay Authority for said costs.

ARTICLE 22

WAIVER

Section 22.01 – Waiver. Any waiver by either party of any breach by the other party of any one or more of the covenants, conditions, or agreements of this Agreement shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this Agreement, nor shall any failure on the part of either party to require or exact full and complete compliance by the other party with any of the covenants, conditions, or agreements of this Agreement be construed as in any manner to be a change in or to the terms hereof or to prevent the enforcement in full of the provisions hereof.

Section 22.02 – Acceptance of Payments. The subsequent acceptance of payments hereunder by Authority from Airline shall not be deemed to be a waiver of any preceding breach by Airline of any term, covenant, or condition of this Agreement, other than the failure of Airline to pay the particular fees or rent so accepted, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such landing fees and/or rent.

ARTICLE 23

CONFORMITY WITH LAWS, RULES AND REGULATIONS

Section 23.01 – Laws, Rules and Regulations. This Agreement and the use of the Airport, Airline Leased Premises and Airport Facilities covered by this Agreement by Airline and the conduct of Airline's business shall be subject to and Airline agrees to comply with, any and all applicable laws, ordinances, statutes, rules, regulations, orders, federal grant assurances, limitations, restrictions, or prohibitions of any governmental authority, federal or state, including those adopted by Authority, lawfully exercising authority over Airport or the activities and business operations of Airline.

Section 23.02 – Airport Use Regulations. The right to use the Airport and the Airfield Area covered by this Agreement is restricted in accordance with the published "Rules and Regulations, San Diego International Airport" of the Authority which are currently located at http://www.san.org/documents/airport_rules_regulations.pdf including all directives as may be issued by the President/CEO, and such other regulations, resolutions, or ordinances as may be enacted from time to time. Airline agrees to fully comply with the provisions of Section 9.40 of the Authority's Codes which contain time of day and other use restrictions on aircraft operations

at Airport. Authority will make good faith efforts to provide Airline advance notice of any change to the Rules and Regulations Codes that may impact the Airline's obligations under this Agreement.

Section 23.03 – State Noise Variance. Airline acknowledges that Authority operates Airport under a variance issued by the Department of Transportation, Division of Aeronautics of the State of California. A copy of the present effective variance and any subsequent Decision and Order regarding any applicable variance will be made available to Airline upon request.

Section 23.04 – No Liability - Right to Terminate. Authority shall not be liable to Airline for any diminution or deprivation of its rights hereunder on account of any such laws, ordinances, statutes, rules, regulations, orders, federal grant assurances, limitations, restrictions, prohibitions, directives, or resolutions. In the event, however, that any laws, ordinances, statutes, rules, regulations, orders, federal grant assurances, limitations, restrictions, prohibitions, directives, or resolutions, shall so interfere with the conduct of Airline's activities and business operations under this Agreement as to constitute a termination in whole or in part of this Agreement by operation of law in accordance with the laws of the State of California, Airline shall have the right to terminate this Agreement and thereby be relieved of all future obligations and duties hereunder. In no event, however, shall such termination impose any liability upon Authority, or obligate Authority to make any payment to Airline.

Section 23.05 – Signs and Advertising. Airline shall not place or allow any signs, posters, or advertising whatsoever on, within, or about the Airport or the Terminal without the prior written approval of the President/CEO or his or her authorized representative.

ARTICLE 24

PEACEABLE SURRENDER

Section 24.01 – Peaceable Surrender. Upon the expiration of this Agreement or the earlier termination or cancellation thereof, as herein provided, Airline will peaceably surrender said Airline Leased Premises to Authority. Further, as it relates to Airline Leased Premises, Airline shall surrender such premises in as good condition as said premises were on the date of this Agreement, ordinary wear and tear excepted.

Section 24.02 – Indemnity for Failure. If Airline fails to peaceably surrender the Airline Leased Premises at the expiration of this Agreement or the earlier termination or cancellation thereof, Airline shall defend and indemnify Authority from all liability and expense resulting from the delay or failure to surrender, including, without limitation, any succeeding airline's claims based on Airline's failure to surrender.

ARTICLE 25

TIME IS OF THE ESSENCE AND SUCCESSOR RIGHTS AND OBLIGATIONS

Section 25.01 – Time of the Essence. Time is of the essence of this Agreement and of each and all of the terms, conditions, covenants and provisions thereof.

Section 25.02 - Agreement Binding on Successors. Unless otherwise provided for in this Agreement, the terms, covenants, conditions, and agreements herein shall apply to and

bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE 26

WARRANTIES, GUARANTEES AND COVENANTS

Section 26.01 – No Warranty of Condition or Suitability. Except as otherwise provided herein, Authority makes no warranties, either express or implied, as to the condition of the Airline Leased Premises or that the Airline Leased Premises are suitable for Airline's purposes or needs. Authority shall not be responsible for any latent defect and Airline shall not under any circumstances withhold any Airline Rent, Fees and Charges or other amounts payable to Authority hereunder on account of any defect in the Airline Leased Premises. By its entry upon the Airline Leased Premises, Airline accepts the Airline Leased Premises as being free and clear from all defects and in good, safe, clean and orderly condition and repair

ARTICLE 27

ENTIRE UNDERSTANDING

Section 27.01 – Entire Understanding. This Agreement contains the entire and only understanding and agreement of the parties. Airline and Authority, by accepting this Agreement, acknowledge that there is no other written or oral understanding or agreement between the parties with respect to the Airline Leased Premises and that this Agreement supersedes all prior negotiations, discussions, obligations and rights of the parties hereto. No waiver, modification, amendment or alteration of this Agreement shall be valid unless it is expressed in writing and signed by authorized persons of the parties hereto. Each of the parties to this Agreement acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representation, waiver or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Agreement. Each party further acknowledges that it has not executed this Agreement in reliance upon any collateral promise, representation, waiver or warranty, or in reliance upon any belief as to any fact not expressly recited in this Agreement

ARTICLE 28

HOLD OVER BY AIRLINE

Section 28.01 – Holdover with Authority Approval. In the event Airline holds over its tenancy of all or any portion of the Airline Leased Premises beyond the expiration date of this Agreement with the Authority's approval, this Agreement shall be deemed to be a month-to-month tenancy, terminable on thirty (30) days' notice given at any time by either party. During any month-to-month tenancy, Airline shall pay all Airline Rent, Fees and Charges required by this Agreement which shall be paid in accordance with the most current rent and landing fees schedules. All provisions of this Agreement shall apply to the month-to-month tenancy.

ARTICLE 29

FEDERAL AVIATION ADMINISTRATION REGULATIONS

Section 29.01 - Title 49 Obligations. Airline for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does

hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Airline Leased Premises described in this Agreement for a purpose for which a Department of Transportation ("DOT") program or activity is extended or for another purpose involving the provisions of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination 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.

Section 29.02 - No Exclusion from Participation. Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (ii) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (iii) that Airline shall use the Airline Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination 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.

Section 29.03 - Breach of Nondiscrimination Covenant. In the event of breach of any of the above nondiscrimination covenants by Airline, Authority shall have the right to terminate this Agreement and to reenter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

Section 29.04 - Nondiscrimination in Accommodations. Airline shall furnish its accommodations and/or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that Airline may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

Section 29.05 - Material Breach. Noncompliance with Section 29.04, above, shall constitute a material breach hereof and in the event of such noncompliance Authority shall have the right to terminate this Agreement and the rights or estate hereby created without liability therefore or at the election of Authority or the United States either or both shall have the right to judicially enforce these provisions.

Section 29.06 - Other Agreements. Airline agrees that it shall insert Sections 29.01 through 29.05, above, in any agreement by which said Airline grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Airline Leased Premises herein covered by this Agreement.

Section 29.07 - Affirmative Action Program. Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating

in any employment activities covered in 14 CFR Part 152, Subpart E. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Airline assures that it will require that its covered sub-organizations provide assurances to Airline that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR 152, Subpart E, to the same effect.

Section 29.08 - Right to Develop Airport. Authority reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of Airline and without interference or hindrance.

Section 29.09 - Right to Repair Airfield Area. Authority reserves the right, but shall not be obligated to Airline, to maintain and keep in repair the landing area of Airport and all publicly owned facilities of said Airport, together with the right to direct and control all activities of Airline in this regard.

Section 29.10 - Preemption. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between Authority and the United States relative to the development, operation, or maintenance of Airport. This Agreement is subject to the grant assurances required in the FAA grant agreements executed in accordance with the Airport Improvement Program.

Section 29.11 – Right of Flight. There is hereby reserved to Authority, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airline Leased Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport premises.

Section 29.12 – 14 C.F.R Part 77, Obstructions in Navigable Airspace. Airline agrees to comply with the notification and review requirements covered in 14 Code of Federal Regulations (“C.F.R.”) Part 77 of the Federal Aviation Regulations, in the event future construction of a building is planned for the Airline Leased Premises covered by this Agreement, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airline Leased Premises.

Section 29.13 – No Obstructions. Airline, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land rented hereunder above the mean sea level elevation of zero (0) feet for the Airfield Areas, and fifty (50) feet for all other areas covered by this Agreement. In the event the aforesaid covenants are breached, Authority reserves the right to enter upon the land covered by this Agreement and to remove the offending structure or object or cut the offending tree, all of which shall be at the expense of Airline.

Section 29.14 – No Interference. Airline by accepting this Agreement agrees for itself, its successors, and assigns that it will not make use of the Airline Leased Premises covered by this Agreement 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, Authority reserves the right to enter upon the Airline Leased Premises hereby

covered by this Agreement and cause the abatement of such interference at the expense of Airline.

Section 29.15 – No Exclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the Federal Aviation Act of 1958 (49 U.S.C. §40103; P.L. 103-272; 108 STAT. 1102, and as may be amended).

Section 29.16 – War or National Emergency. This Agreement 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 over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

ARTICLE 30

COMPLIANCE WITH RULE 15c2-12 OF THE SECURITIES EXCHANGE ACT

Section 30.01 – S.E.C. In order to permit Authority to issue Bonds in compliance with applicable securities laws, Airline agrees that upon the request of Authority, Airline shall provide to Authority such information with respect to Airline as Authority deems reasonably necessary in order for Authority to issue Bonds in compliance with the requirements of Rule 15c2-12 of the Securities Exchange Act.

ARTICLE 31

ATTORNEY'S FEES

Section 31.01 – Attorney's Fees. If Authority shall, without any fault, be made a party to any litigation commenced by or against Airline arising out of Airline's use or enjoyment of Airport or the Airline Leased Premises and as a result of which Airline is finally adjudicated to be liable, then Airline shall pay all costs and reasonable attorney's fees incurred by or imposed upon Authority in connection with such litigation.

In any action by Authority or Airline against the other for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants or conditions contained herein, the prevailing party shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements incurred in such action. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

ARTICLE 32

NOTICES

Section 32.01 – Notice to Airline. Any notice provided for by this Agreement or by law to be given or served upon Airline may be given by either the President/CEO or the Board, and may be served by certified or registered letter or overnight delivery, addressed to Airline at 2702 Love Field Drive Dallas, TX 75235 Attn: Director-Properties and deposited in the United States mail, or may be served personally, upon said Airline or any person hereafter authorized by Airline in writing to receive such notice.

Section 32.02 – Notice to Authority. Any notice provided for by this Agreement or by law to be served upon Authority may be given or served by certified or registered letter or overnight delivery, addressed to the President/CEO at the administrative offices of the San Diego County Regional Airport Authority, Post Office Box 82776, San Diego, California 92138-2776, and deposited in the United States mail, or may be served personally upon said President/CEO.

Section 32.03 – Effective Date of Service of Notice. Any notice given or served as provided herein shall be effectual and binding for all purposes upon the parties so served to be effective upon the earlier of either receipt or the expiration of five (5) days from the date of mailing.

ARTICLE 33

PARTIAL INVALIDITY

Section 33.01 – Construction to Save Agreement. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and in no way shall be affected, impaired, or invalidated thereby. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

ARTICLE 34

INTERFERENCE WITH AIRPORT OPERATIONS OR AIRLINES

Section 34.01 – No Interference. Airline by accepting this Agreement agrees for itself, its successors, and assigns that it will not do or permit to be done by its officers, agents, employees, contractors or invitees, any act or omission which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard, or unreasonably interfere with the conduct of business by another airline, tenant or contractor of Authority, or unreasonably interfere with the performance of their duties by the staff of Authority or by the staff of the FAA, the TSA or any other agency of the U. S. Government, or of the contractors thereof. In the event this covenant is breached, Authority reserves the right to terminate this Agreement or to enter upon the Airline Leased Premises and cause the abatement of such interference at the expense of Airline.

ARTICLE 35

TAXES

Section 35.01 – Taxes and Possessory Interests. This Agreement may result in or create a taxable possessory interest and be subject to the payment of property taxes. Airline agrees to and shall pay before delinquency all taxes and assessments of any kind, including possessory interest taxes, assessed or levied upon Airline or the Airline Leased Premises by reason of this Agreement, or on the rent, landing fees or other charges payable hereunder, or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by Airline or by reason of the business or other activities of Airline upon or in connection with the Airport or Airline Leased Premises.

Section 35.02 – Right to Contest. Nothing in the foregoing shall prevent Airline from contesting the validity and/or applicability of such taxes or charges. During the period of any such lawful contest, Airline may, as permitted by law, refrain from making or directing the withholding of, any such contested payment without being in breach of the above provisions, provided there are no claims, charges, liens, judgments or any other instruments attached to the Airline Leased Premises and/or to Authority. Upon a final determination in which Airline is held responsible for such charges, Airline shall, if it has not already done so, promptly pay the amount and all penalties required under applicable law and regulations.

ARTICLE 36

SECURITY DEPOSIT

Section 36.01 – Posting of Security Deposit. Airline shall provide a security deposit in the sum of Seven Million Eight Thousand Six Hundred Thirty-Five and 94/100 Dollars (\$7,008,635.94) to Authority on or before the commencement date of the term of this Agreement. The security deposit shall be held by Authority and used to remedy Airline's defaults in the payment of Airline Rent, Fees and Charges which are required by the terms of the Agreement or which otherwise arise as a result of Airline's operations at the Airport.

Section 36.02 – Standby Letter of Credit Requirements. The security deposit shall be in the form of an irrevocable standby letter of credit drawn on a bank having a branch in San Diego County and having a long-term, letter of credit rating and bank deposit rating from two (2) of the three (3) rating agencies of at least A2/A/A by Moody's Investor Services, Standard & Poor's and Fitch Ratings, respectively. Each letter of credit shall be in the form provided at "Exhibit Q", attached hereto and by this reference made a part hereof. Variances from the form shall be allowed only with the prior consent of the Authority.

Section 36.03 – Right to Adjust Security Deposit Amount. The amount of the security deposit may be adjusted from time to time at the discretion of the President/CEO. Following any such adjustment, the amount of the security deposit shall be at least equal to the combined total of three (3) months' estimated obligations by Airline to the Authority, said obligations to include, but not be limited to, Airline Rent, Fees and Charges, owing pursuant to the Agreement. In the event the amount of the security deposit is increased, Airline shall submit the additional security deposit within thirty (30) days of being notified in writing of the increase.

Section 36.04 – Duty to Maintain Security Deposit - Default. Airline shall maintain the required security deposit continuously throughout the term of this Agreement. Failure to do so shall be deemed a default and shall be grounds, at Authority's discretion, upon ten (10) days' written notice unless the default is cured, for immediate termination of this Agreement in accordance with the terms of this Agreement.

Section 36.05 – Duty to Rebate. The security deposit or the remaining portion thereof following any draws on the letter of credit by Authority shall be rebated, released, assigned, surrendered, or endorsed to Airline, as applicable, no later than ninety (90) days after the termination of this Agreement.

ARTICLE 37

ENVIRONMENTAL COMPLIANCES

Section 37.01 – Definitions. The following definitions shall apply as used in Article 37:

“Environmental Laws” shall mean all applicable present and future federal, state, and local statutes, regulations, ordinances, permits, codes, orders, limitations, restrictions, or prohibitions of any governmental authority, including Authority codes and orders, relative to the occupancy and use of the Airline Leased Premises, the Airport and Airfield Area regarding the environment, including, without limitation, Pollutants, wetlands, waters of the United States, areas inhabited by Endangered, Threatened, or Sensitive Species, historic sites, the protection of the environment, public health, welfare or safety, including, without limitation, those related to Pollutants (as such term is defined herein).

“Endangered, Threatened and Sensitive Species” shall mean any flora or fauna identified by the provisions of the California Endangered Species Act (California Fish and Game Code §2050, *et seq.*), the Federal Endangered Species Act (16 U.S.C. §§1531-1543), and the Federal Migratory Bird Treaty Act (16 U.S.C. §§703-712), including the California least tern (*Sterna antillarum browni*), a seabird known to nest on the Airport.

“Hazardous Material” shall mean any substance whether solid, liquid, or gaseous in nature: (i) the presence of which requires investigation or remediation under any applicable federal, state or local statute, regulation, ordinance, order or common law; or (ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any applicable federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601-9675), the Resource Conservation and Recovery Act (42 U.S.C. §§6901-6992), the Clean Air Act (42 U.S.C. §§7401-7642), and the Clean Water Act (33 U.S.C. §§1251-1387), and state and federal regulations relating to stormwater discharges, including without limitation, 40 CFR Part 122; or (iii) the presence of which on the Airport causes or threatens to cause a nuisance upon the Airport or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Airport; or (iv) without limitation, which contains gasoline, diesel fuel, other petroleum hydrocarbons, natural gas liquids, polychlorinated biphenyls (PCBs), asbestos, or lead-based paint.

“Process Water” shall mean water which contains Hazardous Material or Solid Waste from any point or non-point source subject to the Clean Water Act, amendments thereto, and regulations promulgated pursuant thereto, including without limitation, requirements of the National Pollution Discharge Elimination System Program (“NPDES”), and the State of California Porter-Cologne Water Quality Control Act.

“Pollutants” shall mean Hazardous Materials, Solid Wastes, and Process Waters (as such terms are defined herein).

“Release” shall mean any depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, regardless of intent.

“Solid Waste” shall have the same meaning as in the Resource Conservation and Recovery Act and shall include sewage.

Section 37.02 - “Duty to Comply with Environmental Laws”. Airline shall, relative to its occupancy and use of the Airline Leased Premises, the Airport, and the Airfield Area, comply with all Environmental Laws.

Section 37.03 – Liability and Responsibility for Corrective Action. Airline shall be liable and responsible for any Release of Pollutants arising out of the occupancy or use of the Airline Leased Premises, and/or Airport, and/or Airfield Area, which is caused by Airline, employees, agents, representatives, or affiliates (hereinafter “Airline Release”). Liability and responsibility for such Airline Releases shall include, but not be limited to:

- A. all immediate actions reasonably necessary under applicable Environment Laws to promptly control any such Airline Release and to mitigate any immediate threat to public health, safety, and the environment resulting from such Airline Release;
- B. any further repairs or corrective actions, conducted in a timely manner, reasonably necessary under applicable Environmental Laws to remediate the Airline Release and to protect public health, safety, and the environment, and to bring the affected areas on and/or outside the Airline Leased Premises, and/or Airport, and/or Airfield Area into compliance with applicable Environmental Laws and other applicable regulatory requirements;
- C. damages to persons, property and the Airline Leased Premises, and/or Airport, and/or Airfield Area;
- D. all claims resulting from those damages;
- E. fines imposed by any governmental agency, and
- F. any other liability as provided by law.

Airline shall defend, indemnify and hold harmless Authority, its Board, officials, officers, agents, and employees from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorneys' fees, resulting from an Airline Release except to the extent caused by the sole active negligence or willful misconduct of Authority or by a third party with no relationship to Airline. Authority shall have a direct right of action against Airline even if no third party has asserted a claim

Section 37.04 – Right to Inspect and Test. The Authority, or its designated representatives, may at any time during the term of this Agreement enter upon the Airline Leased Premises and make any inspections, assessments, investigations, audits, tests or measurements Authority deems reasonably necessary, including boring into surfaces and/or the ground, in order to determine if a Release of Pollutants has occurred. Authority shall give Airline a minimum of seventy-two (72) hours' notice in writing prior to conducting any inspections or tests, unless, in Authority's reasonable sole judgment, circumstances require otherwise, and such tests shall be conducted in a manner so as to minimize any inconvenience and disruption to Airline's operations. If such tests indicate an Airline Release has occurred, then Authority, at Authority's reasonable but sole discretion, may require Airline, at Airline's sole expense, to have tests for such Pollutants conducted by a qualified party or parties on the Airline Leased

Premises, and/or Airport, and/or Airfield Area. If Pollutants that originated from an Airline Release have contaminated any area outside the Airline Leased Premises, including but not limited to surface, subsurface, surface water, and groundwater, then Authority, at Authority's reasonable but sole discretion, may require Airline, at Airline's sole expense, to have tests for such Pollutants conducted by a qualified party or parties on said area outside the Airline Leased Premises, and/or Airport, and/or Airfield Area.

Section 37.05 – Duty to Furnish Information. At the reasonable request of the Authority, Airline shall make available for inspection and copying any or all substantive documents and materials that Airline possesses associated with Airline's operations at or occupancy or use of the Airline Leased Premises, and/or Airport, and/or Airfield Area by Airline, including without limitation any and all associated records, test results, studies and/or other documentation regarding environmental conditions relating to the use, storage, or treatment of any Hazardous Materials and/or Solid Wastes and/or Process Waters.

Immediately upon receipt by Airline (and in no event later than five (5) business days after receipt), Airline shall provide the Authority with copies of any notice or other document issued to Airline (or any employee, agent, contractor, sub-lessee, or any other third party under Airline's direction and/or control) by any governmental agency alleging non-compliance or investigating potential non-compliance with any Environmental Laws (i) arising out of the occupancy or use of the Airline Leased Premises, and/or Airport, and/or Airfield Area by Airline, or (ii) at the Airport and alleged to have arisen in whole or in part from Airline operations, activities, actions or omissions of Airline or third parties under Airline's direction and/or control.

At the request of the Authority (but in no event more than thirty (30) days after such request), the Airline shall provide the results of any tests conducted by Airline or Airline's qualified party at the Airline Leased Premises, the Airport or Airfield Area, including but not be limited to, comprehensive soil, emission, material, Process Water, surface water or groundwater sampling and testing or other procedures to determine any actual or possible Release of Pollutants.

Airline shall report such known or identified Releases to Authority within seventy-two (72) hours and shall (i) if such Releases are determined to be an Airline Release, and (ii) if necessary to determine compliance with Environmental Laws, diligently proceed to identify the horizontal and vertical extent of the Release, how it will be controlled and/or mitigated and/or remediated as required by applicable Environmental Law(s), when and by whom it will be controlled and/or mitigated and/or remediated, and the cost of such corrective actions. By way of clarification, the above requirements shall not apply to the extent that a Release of Pollutants was caused by the sole negligence or willful misconduct of the Authority or by a third party with no relationship to Airline.

If Airline provides privileged or confidential materials to Authority, Authority agrees to not disclose such materials unless required by law.

Section 37.06 – Term of Environmental Provisions. The provisions of this Article, including the representations, warranties, covenants and indemnities of Airline, shall expressly survive termination of this Agreement and Airline's obligations and liabilities under this Article shall continue so long as Authority bears any liability or responsibility under the Environmental Laws arising from Airline's occupancy or use of the Airline Leased Premises, and/or Airport, and/or Airfield Area during the term of this Agreement.

Section 37.07 – Sustainability. Airline and Authority jointly agree that that protection of the environment is an important mutual goal and objective. The parties agree that this Agreement should address the issues of global warming, greenhouse gas (“GHG”) emissions, pollution, traffic congestion, and recycling.

Attached to this Agreement, marked as “Exhibit R” and incorporated herein by reference, is a copy of the “Memorandum of Understanding Between the Attorney General of the State of California and the San Diego County Regional Airport Authority Regarding the San Diego International Airport Master Plan” of 2008 (hereinafter “MOU”) which contains provisions for operating the Airport in a manner which reduces GHG emissions. To the extent the Authority plans to implement programs pursuant to the MOU, Authority agrees it will work closely with Airline in the development of any such programs, including taking into account technical, operational, and financial factors. Airline agrees to cooperate to the extent reasonably possible with the Authority in the development of such programs applicable to Airline’s operations and its suppliers and subcontractors. Both parties will seek out available federal and state funding to defray costs of such programs. Nothing in this Agreement shall prevent Airline from contesting the validity or legality of any rule, regulation, or law implementing any subject matter covered by the MOU.

Subject to FAA policies, pilot discretion and aircraft manufacturing specifications related to safety and operational requirements, Airline agrees to:

- A. Connect to fixed ground power and pre-conditioned air units as soon as practical upon arrival at a Gate if available;
- B. Share information about airline practices to minimize aircraft taxi time;
- C. Collaborate with Authority in developing Authority’s recycling and carbon emissions reductions programs; and
- D. Identify ground service equipment at the Airport consistent with the applicable placarding requirements under the California Air Resources Board “Portable Equipment Registration Program”, and the California Air Resources Board “Off-Road Diesel Regulation”.

ARTICLE 38

REPORTING REQUIREMENTS

Section 38.01 - Monthly Air Traffic Data. Airline, in a format and manner prescribed by Authority, shall provide its air traffic data to Authority by the tenth (10th) day of each month during the term of this Agreement.

Section 38.02 – Ground Handling Contracts. Airline, in a format and manner prescribed by Authority, shall report on a semi-annual basis during the term of this Agreement, all contracts it holds with ground handling service providers with the first report due July 1 and the second report due January 15 of the respective calendar year.

Section 38.03 - Submission of Monthly Flight Schedules. Airline, in a format and manner prescribed by Authority, shall on a monthly basis during the term of this Agreement, forward its complete monthly schedule of arrivals and departures at Airport to Authority at least

forty-five (45) days in advance of the first day of the month for which that schedule shall be in effect. Airline shall specifically annotate any proposed changes in a format prescribed by Authority.

Section 38.04 – Landing Fees Reports. Airline, in a format and manner prescribed by Authority, shall provide verifiable landing fees reports on or before the fifteenth (15th) day of each month during the term of this Agreement for its activity during the preceding month.

Section 38.05 – Additional Reports. Authority will consult with the Airlines prior to requiring any future reports. However, Authority reserves the right to require Airline, and Airline agrees to provide, in a format and manner prescribed by Authority, such additional reports as the Authority may require in the future.

ARTICLE 39

DAMAGE TO OR DESTRUCTION OF PREMISES

Section 39.01 – Damage or Destruction of Authority Constructed Improvements. In the event of damage to, or destruction by fire, the elements, acts of God, or any other cause of Authority-constructed improvements at Airport which materially impacts Airport operations, Authority shall have the option, in its reasonable discretion, and shall within ninety (90) days, following the date of such damage, provide Airline written notice of Authority's election, either to commence reconstruction of the damaged improvements and prosecute the same diligently to completion, in which event this Agreement shall continue in full force and effect, and Airline Rent, Fees and Charges for all or the portion of the Airline Leased Premises rendered untenable shall be abated until such repairs are complete and the Airline Leased Premises or the portion thereof deemed untenable are tenable once again, or not to perform such reconstruction, in which event this Agreement shall cease and terminate not later than ninety (90) days after delivery of Authority's notice of its election to so terminate.

Section 39.02 – Damage or Destruction of Airline Constructed Improvements. In the event of damage to or destruction by fire, the elements, acts of God, or any other cause, of Airline-constructed improvements located within the Airline Leased Premises or in the event Airline-constructed improvements located within the Airline Leased Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Airline shall, within sixty (60) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Airline Leased Premises for the purposes required by this Agreement. Repair, replacement or reconstruction of improvements within the Airline Leased Premises shall be accomplished in a manner and according to plans approved by Authority; provided, however, Airline shall not be obligated to repair, reconstruct, or replace the improvements following their destruction in whole or substantial part except to the extent the loss is covered by insurance required to be carried by Airline pursuant to this Agreement (or would be covered whether or not such required insurance is actually in effect). If Airline elects not to restore, repair, or reconstruct as herein provided, then this Agreement shall terminate. Airline shall promptly remit to Authority the proceeds of the property and casualty insurance Airline was required to carry with respect to the Airline-constructed improvements pursuant to this Agreement (or an equivalent amount as if such required insurance had been in effect), and Authority shall have any rights to which it would be entitled under this Agreement.

ARTICLE 40

DEPRECIATION AND INVESTMENT CREDIT

Section 40.01 – Depreciation and Investment Credit Neither Airline nor any successor of Airline under this Agreement may claim depreciation or an investment credit under the Internal Revenue Code of 1954, as amended, with respect to Authority-owned improvements in the Airline Leased Premises, the Terminal or other leased facilities. Airline represents that it has made an election under Proposed Treasury Regulations §1.103(n)-1T through §1.103(n)-6T not to claim such depreciation or investment credit with respect to such Authority-owned improvements in the Airline Leased Premises or other leased facilities and agrees that it will retain copies of said election in its records. The Authority acknowledges receipt of a copy of said election and agrees that it will retain copies of said election in its records.

ARTICLE 41

MISCELLANEOUS

Section 41.01 – Approval or Consent. Whenever consent or approval is required herein by either party to the other, such consent or approval shall not be unreasonably withheld, conditioned, or delayed.

Section 41.02 – Payment of PFCs. Airline shall timely pay Authority any and all Passenger Facility Charges imposed pursuant to applicable FAA regulations and collected from Airline's passengers enplaning at the Airport. Late payments received by Authority after the date due shall bear interest at the rate of ten percent (10%) *per annum* from the date due until paid.

Section 41.03 – Airport Security. Airline shall comply with all applicable regulations of the FAA and TSA relating to Airport security to prevent or deter, as applicable, unauthorized persons from obtaining access to the air operations area and secured areas of Airport.

Section 41.04 – Governing Law and Venue. This Agreement has been entered into and shall be governed by, construed and interpreted in accordance with the laws of the State of California. Venue of any action brought under this Agreement shall be vested in the state courts of California in the County of San Diego or if federal jurisdiction is appropriate, in the United States District Court in the Southern District of California.

Section 41.05 – Gender, Singular and Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

Section 41.06 – Article and Section Headings. The paragraph headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intention of this Agreement.

Section 41.07 – Fair Meaning. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against either the Authority or Airline.

Section 41.08 – Cumulative Rights. Each right of the parties hereto is cumulative and is in addition to every other legal right that the party may have in the event of any default by the other.

Section 41.09 – Agent for Service of Process and Alternative Service. It is expressly agreed and understood that if Airline is not a resident of the state of California, or is a partnership or joint venture without a partner or member resident in California, or is a foreign corporation, then in any such event Airline does designate the California Secretary of State, its agent for the purpose of service of process in any court action or other litigation between it and Authority arising out of or based upon this Agreement, shall be made as provided by the laws of the state of California for service upon a nonresident, and a copy of such service of process shall also be delivered to the Airline's address for notices provided in Section 32.01. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, Airline may be served personally with such process out of this State by mailing, by registered or certified mail, the complaint and process to Airline at the address set out hereafter in this Agreement, and that such service shall constitute valid service upon Airline as of the date of mailing, and Airline shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that Airline is amenable, and hereby agrees, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

Section 41.10 - Memorandum of Lease. In the event that Authority so requests, Airline shall execute, attest, acknowledge, and deliver for recording with the Recorder of San Diego County a short form Memorandum of Lease of this Agreement.

Section 41.11 - Prohibition of Gifts. Airline is familiar with Authority's prohibition against the acceptance of any gift by an Authority officer or employee, which prohibition is found in Article 2 of the Authority's Code, and as it may be amended from time to time. Airline agrees not to offer any Authority officer or employee any gift prohibited by Article 2 and agrees to abide by all laws applicable to it with respect to the making or offering of gifts or things of value to Authority officers or employees.

Section 41.12 - Waiver of Visual Artists Rights. Airline shall not install any object in the Airport that constitutes a work of visual art under the Visual Artists Rights Act of 1990 ("VARA") unless and until Airline has (a) obtained the prior written approval of the President/CEO, and (b) provided Authority with a written waiver from the author or artist of such work of visual art, in form and substance reasonably satisfactory to Authority, which waiver shall identify specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. §106A(e)(1). Airline shall also provide Authority with a similar written waiver that is effective to bar any claim by an artist with respect to a work of fine art under the California Art Preservation Act, Cal. Civil Code §987.

Section 41.13 - No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement other than as specifically and expressly provided herein.

Section 41.14 - Labor Disputes. Airline agrees to use reasonable efforts to avoid disruption to Authority, its tenants or members of the public arising from labor disputes involving Airline, and in the event of a strike, picketing, demonstration or other labor difficulty involving Airline, to use its good offices, including the utilization of available legal remedies, to minimize or eliminate any disruption to Authority, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

Section 41.15 - Americans with Disabilities Act (“ADA”). Airline shall be solely and fully responsible for ensuring that Airline’s operations, wherever they may occur at the Airport, and any improvements made by Airline at Airport, shall comply with the Americans with Disabilities Act of 1990 (42 U.S.C §12101-§12213), as this act may be amended from time to time (“ADA”). Airline shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. Airline shall deliver to the Authority, upon Authority’s request, a copy of each such report and work plan. Authority’s approval of or acceptance of any aspect of Airline’s activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Airline agrees to indemnify, defend, and hold the Authority harmless from any and all costs incurred by Authority with respect to Airline’s failure to comply with the ADA for Airline’s operations or any improvements made by Airline at the Airport. Authority shall comply with the ADA as applicable to any facilities constructed by Authority and any improvements made by Authority at the Airport.

Section 41.16 - Incorporation of Exhibits. All exhibits and attachments referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

Section 41.17 - Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of Airline Rents, Fees and Charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of landlord and tenant.

Section 41.18 - Airline Operations Information and Planning. For planning purposes upon the request of Authority, Airline shall cooperate to the greatest extent possible to furnish to Authority any and all pertinent information regarding Airline’s current and future operations (including forecasts) at Airport. Airline shall discuss with Authority at the earliest date possible its consideration of changes to its operations or the type and series of aircraft used at the Airport (other than equipment substitution necessitated by occurrences beyond the control of Airline). Authority shall not disclose any such information deemed confidential by Airline unless required to by law without first obtaining Airline’s written consent. Notwithstanding the foregoing, Authority shall be entitled, from time to time, to release consolidated statistics for all airlines providing Scheduled Operations at the Airport.

Section 41.19 - Employee Parking. Authority will make reasonable efforts, but shall not have the duty, to make available area(s) at the Airport for vehicular parking for Airline’s personnel employed at the Airport; provided, however, such area(s) shall not be used for: (a) vehicle parking or storage for any period other than such personnel’s performance of employment for Airline at the Airport, or (b) parking or storage of trailers, recreational vehicles (“RVs”) or other oversized vehicles at any time. Usage of any parking area(s) made available by Authority at the Airport is subject to the Airport’s Rules and Regulations. Authority may establish and impose parking fees for any such employee parking and may amend the fees from time to time.

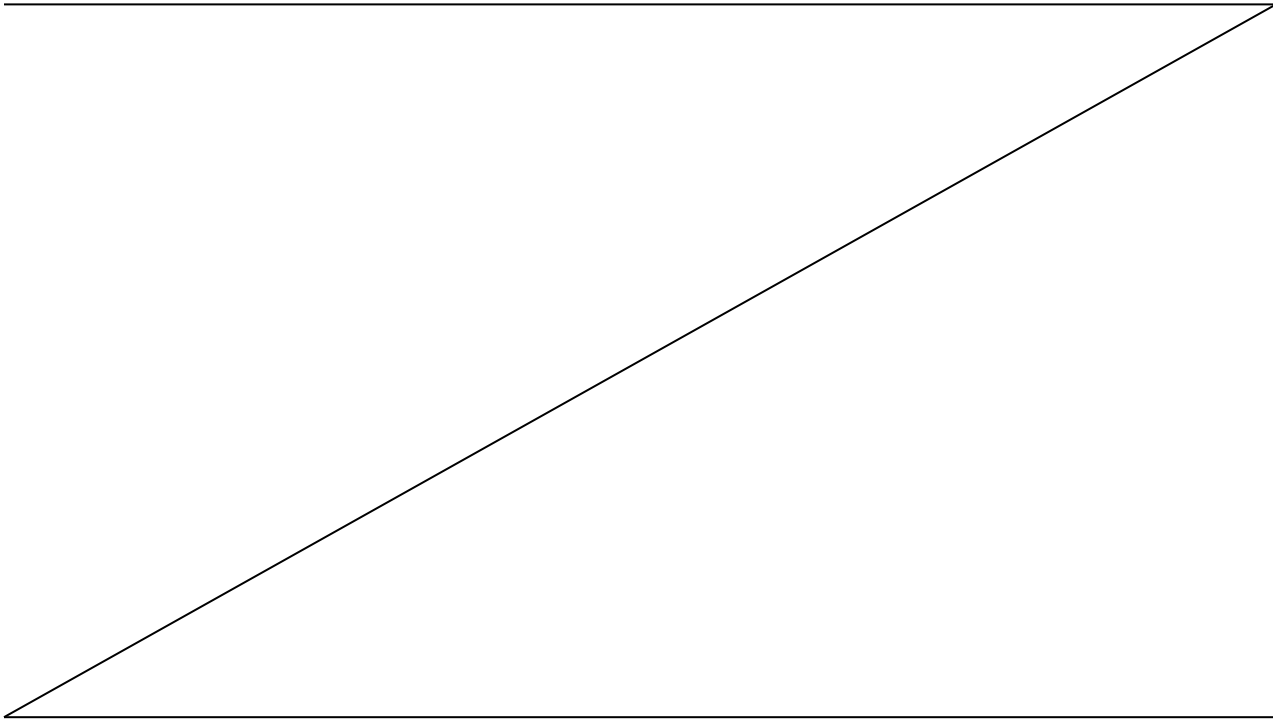
Section 41.20 - Federal Inspection Facilities (“FIS”). Authority may designate areas in the Terminal, or elsewhere on the Airport, to be used by agencies of the United States for the inspection of international passengers and their baggage and for the exercise of the responsibilities of said agencies with respect to the movement of persons, property, and cargo to and from the United States.

Section 41.21 - Removal of Disabled Aircraft. As soon as reasonably possible after release from proper authorities, Airline shall remove from Airport any disabled aircraft owned or operated by the Airline, unless upon the written approval of the President/CEO the Airline is permitted to place or store such disabled aircraft in an approved storage area as may be reasonably designated by the President/CEO upon such terms and conditions as may be reasonably established by Authority. In the event Airline shall fail to remove its disabled aircraft as expeditiously as is reasonably possible, Authority may, but shall not be obligated to, cause the removal of such disabled aircraft. Airline shall pay to Authority, upon receipt of an invoice, the costs incurred for such removal plus fifteen percent (15%). Nonpayment of such invoice shall be deemed a default of this Agreement.

Section 41.22 – Force Majeure. Neither Authority nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations under this Agreement by reason of strikes, boycotts, lock-outs, labor disputes, embargoes, shortage of energy or materials, riots, insurrection, acts of a public enemy, war, rebellion, sabotage, acts of God, acts of a public enemy, acts of a superior governmental authority, or any other circumstance for which it is not responsible or that are not within its control. The provisions of this Section shall not operate to excuse Airline from the paying the Airline Rent, Fees and Charges required under this Agreement.

Section 41.23 – Deliveries. All commercial deliveries must be made through the air freight buildings or, if directed by Authority, the San Diego International Airport Consolidated Receiving and Distribution Center (“CRDC”). Terminal curbside commercial deliveries are not allowed unless prior written approval is given by Authority.

Section 41.24 – Licenses and Permits. Airline shall also pay any fees imposed by law for licenses or permits for any business or activities of Airline upon the Airport or Airline Leased Premises or under this Agreement.



ARTICLE 42

SIGNATURE OF PARTIES

It is an express condition of this Agreement that it shall not be complete, binding or effective until such time as it has been executed by the President/CEO on behalf of the Authority and by two duly authorized representatives of Airline.

APPROVED AS TO FORM

**SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY**

By: _____
Breton K. Lobner
General Counsel

By: _____
Name: _____
Title: _____

SOUTHWEST AIRLINES, CO.

By: _____
Print Name: _____
Print Title: _____

By: _____
Print Name: _____
Print Title: _____

