

AIRLINE
OPERATING AGREEMENT
AT
OAKLAND INTERNATIONAL AIRPORT

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS.....	2
A. “Airline”	2
B. “Airport”	2
C. “Airport Directives”	2
D. “Airport General Manager”	2
E. “Air Transportation”	2
F. “All Cargo Transportation”	2
G. “Certificated Maximum Gross Landing Weight”	2
H. “City”	2
I. “Contract Security”	2
J. “Director”	2
K. “Federal Aviation Administration” or “FAA”	3
L. “FIS”	3
M. “Losses”	3
N. “Port”	3
O. “Port Attorney”	3
P. “Revenue Landing”	3
Q. “Sterile Area”	3
R. “Terminal Complex”	3
ARTICLE 2 - RIGHTS AND PRIVILEGES GRANTED TO AIRLINE	3
A. Rights and Privileges.	3
B. Nonexclusivity.	3
C. Mobile Lifts.....	4
ARTICLE 3 - FACILITIES.....	4

A.	Facility Requirements	4
B.	International Facility Requirements	4
C.	Change in Requirements	4
ARTICLE 4 - TERM		4
ARTICLE 5 - FEES AND CHARGES AND ACCOUNTING RECORDS		5
A.	Fees and Charges	5
B.	Monthly Reporting	6
C.	Record Inspection; Underpayment	6
D.	Interest and Penalty	7
ARTICLE 6 - SIGNAGE		7
A.	Permitted Signage	7
B.	Signage Release	8
ARTICLE 7 - CONTRACT SECURITY		8
ARTICLE 8 - INDEMNIFICATION AND INSURANCE		9
A.	Indemnification	9
B.	Liability Insurance	10
C.	Workers' Compensation Insurance	11
D.	Waiver of Action Against Port Commissioners, Officers and Employees	11
E.	Failure to Obtain Required Insurance	11
F.	Survival Provisions	12
ARTICLE 9 - ENVIRONMENTAL RESPONSIBILITIES		12
A.	Definitions	12
B.	General Prohibitions	13
C.	Compliance With Laws	13
D.	Disposal of Toxic Materials	14

E.	Material Safety Data Sheets	14
F.	Clean Water Act; NPDES Permits and SWPPPs	14
G.	Entry and Inspection	14
H.	Indemnity	15
I.	Clean-up	17
J.	Notices	17
K.	Fees, Taxes and Fines	17
L.	Delivery of Documentation	17
M.	Expiration of Term of Agreement	18
N.	Consultants and Contractors	21
O.	Spill Response Plan	21
P.	Asbestos Notification	21
Q.	Port’s Claims	21
R.	Existing Reports Regarding Toxic Materials	21
ARTICLE 10 - DEFAULT BY AIRLINE		22
A.	Events of Default	22
B.	Remedies Upon Airline’s Default	23
C.	Further Provisions Regarding Default	23
ARTICLE 11 - ASSIGNMENT		24
A.	No Assignment	24
B.	Transfer of Control	24
ARTICLE 12 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS		24
A.	Agreements with the United States, State of California and City of Oakland	24
B.	Right to Amend	24
C.	Covenants Against Discrimination	25

D.	Right to Modify	27
E.	Warranty of Airline As to Conflicts of Interest	27
F.	Notices	27
G.	Rules and Regulations of Port	27
H.	Additional Reserved Rights of Port	28
I.	Miscellaneous Provisions	28
J.	Tax Exempt Status of Port Revenue Bonds	30
K.	Entire Agreement	30
L.	Applicable Law	30
M.	Jurisdiction and Venue	30
N.	Covenant Against Contingent Fees	30

**AIRLINE
OPERATING AGREEMENT
AT
OAKLAND INTERNATIONAL AIRPORT**

For the better promotion of commerce and navigation and the development of the Port of Oakland and Oakland International Airport for the benefit of the public, this agreement is made and entered into this day of , by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners, herein referred to as the "Port," and

Name of Airline:
Address:

Telephone:
Fax:
Contact Name:
Position:

duly incorporated in the State of and authorized to transact business in the State of California, hereinafter referred to as "Airline".

W I T N E S S E T H

WHEREAS, the Port is the owner and operator of the Oakland International Airport ("Airport"), located in the City of Oakland, County of Alameda, State of California; and

WHEREAS, the Port has the right to lease and license the use of property on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline, as duly authorized by competent governmental authority, is engaged in the business of certificated air transportation with respect to persons, property and mail at the Airport and elsewhere; and

WHEREAS, Airline requires the use of certain specific rights and privileges in connection with its use of the Airport and Port is willing to grant the same to Airline upon the terms and conditions hereinafter stated.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

A. “**Airline**” shall mean the airline operating company first named herein as a party to this Agreement, duly organized and existing, and which company is qualified by appropriate laws, regulations and certifications to conduct airline operations into the Airport.

B. “**Airport**” shall mean the Oakland International Airport, owned and operated by the Port.

C. “**Airport Directives**” shall mean collectively, any rules, regulations, or requirements made by the Port; Airport Safety, Security and Operations directives; and other written directives issued or authorized by the Director or Airport General Manager and all oral and/or written instructions given to Airline by the Airport control tower.

D. “**Airport General Manager**” shall mean that person employed by the Board of Port Commissioners in that position having immediate charge of the Airport (or his or her designee) and acting under the direction of the Director.

E. “**Air Transportation**” shall mean the operation of a transportation system by aircraft for the carriage of persons, property and mail, including activities reasonably necessary to such operation.

F. “**All Cargo Transportation**” shall mean the transportation by aircraft of property and mail but not the carriage of passengers.

G. “**Certificated Maximum Gross Landing Weight**” shall mean the maximum weight at which each aircraft operated by Airline is authorized by the FAA to land at Airport, as recited in the FAA flight manual governing that type of aircraft.

H. “**City**” shall mean the City of Oakland, California.

I. “**Contract Security**” shall mean a letter of credit in substantially the form attached hereto as Attachment “A”, issued by a bank licensed to do business in the State of California as shall be acceptable to Port in its sole discretion. Cash may be accepted as security or considered as prepayment for services, at the Port’s discretion. The Port will not pay any interest on cash deposits.

J. “**Director**” shall mean the Director of Aviation employed by the Board of Port Commissioners.

K. **“Federal Aviation Administration” or “FAA”** hereinafter referred to as “FAA”, shall mean that agency of the United States Government created and established under the Federal Aviation Act of 1958, or its successor.

L. **“FIS”** shall mean the Federal Inspection Station at the Airport.

M. **“Losses”** shall mean any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys’ fees, investigation costs, remediation costs, and court costs), of any kind or nature.

N. **“Port”** shall mean the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners.

O. **“Port Attorney”** shall mean the Port Attorney employed by the Board of Port Commissioners.

P. **“Revenue Landing”** shall mean an aircraft landing at Airport in conjunction with a flight for which Airline makes a charge or from which revenue is derived from the transportation by air of persons or property, including without limitation aircraft of Airline diverted to Airport from another airport, but “Revenue Landing” shall not include any landing of an aircraft which, after having taken off from Airport, and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

Q. **“Sterile Area”** shall mean the area of the Airport designated from time to time by the Airport General Manager to which access is controlled by the inspection of persons and property in accordance with federally approved security programs.

R. **“Terminal Complex”** shall mean all buildings and structures located within the Airport for the purpose of flight ticket purchase, passenger enplanement and deplanement, including Sterile Areas and adjoining aprons and roadways, public lobby waiting, baggage check-in and pick-up and those other services related to public passenger air travel.

ARTICLE 2 - RIGHTS AND PRIVILEGES GRANTED TO AIRLINE

A. **Rights and Privileges.** Port hereby grants to Airline the right and privilege to use the Airport for Air Transportation and no other purpose whatsoever or, when item A(4) is selected in Article 3 below, for All Cargo Transportation and no other purpose whatsoever. Airline, its employees, passengers, guests, patrons and invitees shall only have the right to use (in common with other duly authorized users) those portions of the Airport and appurtenances which have been or may be provided by the Port for common use at or in connection with the Airport, subject to rules and regulations promulgated by Port, in accordance with the provisions of Article 12-H below.

B. **Nonexclusivity.** Notwithstanding anything herein contained that may be or appear to the contrary, it is expressly understood and agreed that the rights granted under this Agreement are “non-exclusive” and Port reserves the right to grant similar privileges to others engaged in Air Transportation or All Cargo Transportation at the Airport.

C. Mobile Lifts. Airline shall be solely responsible to satisfy its obligations under the Air Carrier Access Act (49 U.S.C. 1374 (c)) and the regulations promulgated thereunder (14 CFR Section 382.23), with respect to aircraft covered by 14 CFR Part 121.

ARTICLE 3 - FACILITIES

A. Facility Requirements. Airline hereby advises Port, by initialing **ONE** of the sections 3-A(1) through 3-A(4), that:

(1) It has arranged to use ramp and terminal facilities leased from the Port to another airline in the Terminal Complex. **IF THIS BOX IS CHECKED, AIRLINE MUST ATTACH A COPY OF ITS AGREEMENT WITH SUCH OTHER AIRLINE.**

(2) It will require access to the common ramp and terminal facilities controlled by the Port in the Terminal Complex.

(3) It has arranged to lease ramp and terminal facilities in the Terminal Complex from the Port pursuant to a SPACE/USE PERMIT attached hereto as “Annex A.”

(4) It is providing All Cargo Transportation to the Airport, and will not require access to the Terminal Complex.

B. International Facility Requirements.

(1) Is Airline providing international passenger service to the Airport?
YES NO

(2) Does Airline require Federal Inspection Services for post clearing international passengers? YES NO

C. Change in Requirements. Airline shall give Port at least thirty (30) days prior written notice (unless otherwise obligated under a separate agreement for a longer notice period) of any proposed change in its facility requirements, as set forth in Article 3-A above. In the event such notice changes the designation from Article 3(A)(1) above, such notice shall not be effective unless accompanied by the additional Contract Security required by Article 7 below; and should the notice change the designation to Article 3-A (1), (2) or (3) above, the Director’s written consent must be obtained at least fifteen (15) days before the change becomes effective.

ARTICLE 4 - TERM

This Agreement, as approved by the Port Attorney, shall become effective upon execution by the parties hereto and continue until the earlier of (i) the termination of this Agreement by Port pursuant to Article 10 of this Agreement, (ii) the cancellation of this Agreement by either party on thirty (30) days’ prior written notice to the other party, or (iii) two hundred and seventy (270) days after the date hereof; provided, however, that once this Agreement has been approved by duly adopted resolution or ordinance (if applicable) of the Port

and written notice of such approval has been given by Port to Airline, the expiration date set forth in this subparagraph (iii) shall be extended to the tenth (10th) anniversary of the dated date hereof.

ARTICLE 5 - FEES AND CHARGES AND ACCOUNTING RECORDS

A. Fees and Charges

Landing Fees. Airline shall within ten (10) days following the end of each calendar month, transmit to Port a true report, on the Port's current form ("Monthly Landing Report"), setting out the Certificated Maximum Gross Landing Weight of each type of Airline's aircraft multiplied by the number of Revenue Landings of said aircraft at the Airport during the prior calendar month. Within fifteen (15) days of said reporting date, which shall also be considered the invoice date, Airline shall pay to Port, pursuant to such invoice, a landing fee calculated at the rate established from time to time by duly enacted Port ordinance, which initially shall be the rate shown on the schedule of AIRPORT RATES AND CHARGES attached hereto as Attachment B, per thousand pounds of the total of said Certificated Maximum Gross Landing Weight for the prior calendar month. If Airline shall fail, within ten (10) days following the end of a calendar month, provide Port with the report containing all the data required by the first paragraph of this Article 5-A, then Port may invoice Airline for estimated landing fees for the prior calendar month in an amount equal to the monthly landing fee that would be payable under this Agreement if Airline's Revenue Landings at the Airport were the landings shown in Airline's published schedule of aircraft service to the Airport for the prior calendar month, or if Airline has no such published schedule, based on 1.5 times Airline's actual Revenue Landings at the Airport in the last month reported by Airline to Port, or if Airline has filed no such report with Port, as estimated in good faith by Port. Airline shall, within ten (10) days after its receipt of such invoice, pay the invoiced amount to Port; provided, however, that if within such ten (10) day period, Airline determines the actual landing fees payable for the preceding month, Airline may tender the actual payment to Port but only if it is accompanied by the landing fee report for the prior calendar month. The acceptance of such estimated landing fee payments by Port shall be without prejudice to any of Port's rights under Article 10 below. Any underpayment of landing fees shall be paid with the landing fee report provided by Airline to Port covering the period for which estimated landing fee payments have been made, together with interest and applicable penalty thereon from the date the estimated landing fees became payable at the rate provided for in Article 5-D below.

(1) **Facility Fees.** If Airline is using the common ramp and terminal facilities controlled by Port in the Terminal Complex, then within fifteen (15) days from receipt of Port's invoice, Airline shall pay to Port, facility fees for such use in accordance with Attachment B to this Agreement, as such fees may be adjusted by the Port from time to time by duly enacted Port ordinance.

(2) **Rent.** If Airline is leasing ramp and terminal facilities in the Terminal Complex from the Port pursuant to a Space/Use Permit attached hereto as "Annex A," Airline shall timely make all rent and other payments to the Port required by the terms of such Space/Use Permit.

(3) **Federal Inspection Station (“FIS”) Fees.** If Airline is conducting international flights requiring inspection at the FIS, Airline shall pay to Port within fifteen (15) days from receipt of Port’s invoice, FIS fees in accordance with Attachment B to this Agreement, as such fees may be adjusted from time to time by duly enacted Port ordinance.

(4) **Security Fees.** Airline agrees to pay its pro rata share of any security fees assessed by the Port. (Airline agrees that its on-line and interline passengers shall count as enplaned passengers for purposes of calculating Airline’s share of any security fees allocated on the basis of enplaned passengers). Airline shall also pay or reimburse Port for any fines which may be assessed against the Port as a result of the violation by Airline of any applicable security regulation at the Airport, which payment shall be made by Airline within fifteen (15) days from receipt of the Port’s invoice for such amount and documentation showing that payment of such fine is Airline’s responsibility hereunder.

(5) **Passenger Facility Charge (“PFC”)**. Airline shall pay the Port the PFC applicable to Airline’s passengers enplaning at the Airport imposed by the Port from time to time pursuant to applicable Federal law and regulations and duly enacted Port ordinance.

B. Monthly Reporting. Airline agrees to furnish Port, no later than the tenth day of each month, with a report of Airline’s operations at the Airport during the preceding month, separately setting forth on a form provided by the Port the total number of enplaning and deplaning domestic and international passengers (including on-line and interline passengers), the total pounds of domestic and international enplaned and deplaned mail, express and freight carried by Airline and the number of landings by Airline by type of aircraft during the preceding month. Airline shall be obligated to provide such additional information to Port as it shall reasonably request.

C. Record Inspection; Underpayment.

(1) During the term of this Agreement and for four (4) years thereafter, Airline shall maintain, and shall permit authorized representatives of the Port to inspect (upon five days' notice, during regular business hours, at the Airport or another location within Alameda County, California), complete and accurate records and documentation reflecting (i) the number of Revenue Landings and non-Revenue Landings per month of each type of aircraft by Airline; (ii) the number of Airline's enplaned passengers at the Airport per month (including on-line and interline passengers); (iii) the weight of domestic and international mail, and freight and express cargo, enplaned and deplaned at the Airport per month; and (iv) the usage of ramp and terminal facilities and FIS facilities at the Airport. Such records shall be kept in such form and detail as the Port may reasonably require, and at a minimum in accordance with standard industry practice and any FAA regulations pertaining to such records and documentation. If, prior to the expiration of the above-stated record retention period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation commenced relating to this Agreement by the Port, the Airline or a third party, the records shall be maintained by Airline, and the Port shall continue to have the right to inspect such records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal).

(2) If, as a result of the Port's examination of such records and documentation or otherwise, it is determined that Airline has underpaid any landing fees, facility fees, FIS fees, security fees, PFC's, or any other amounts owed by Airline to the Port pursuant to this Agreement, Airline shall forthwith, upon written demand from the Director or his or her designee, pay any underpaid amount due to Port, together with interest thereon at the rate set forth in Article 5-D, below, from the date such amount(s) should have been paid. Further, if such examination establishes that Airline has underpaid any examined fees to Port by two percent (2%) or more, then the entire expense of such examination shall be borne by Airline.

(3) Port's right under this Article 5-C shall survive the expiration or earlier termination of this Agreement.

D. Interest and Penalty. Any sums payable to Port by Airline under any provisions of this Agreement which are not paid when due shall bear interest and penalty at the applicable rate provided by duly enacted Port Ordinance.

ARTICLE 6 - SIGNAGE

A. Permitted Signage. Airline shall not permit any signs, posters or other devices to be erected, maintained or displayed from or on any portion of the Airport or elsewhere in or about the Terminal Complex without the express, prior written approval of the Airport General Manager in each instance which shall not be unreasonably withheld.

After execution of the Agreement, and at the written request of Airline, which request shall be accompanied by Airline's check in the amount shown on Attachment B to this Agreement to recover the Port's cost of making the signage modifications, Port shall, with reasonable promptness, take the necessary action to include Airline on those identification, directional and location signs affecting Airline on which Airline's name is entitled to appear in accordance with the applicable requirements of Port's then existing signage policy, said signage to be compatible with similar existing signs at the Airport. Airline will be required to pay an

additional fee to reimburse the Port for any costs and expenses incurred if subsequent changes in identification, directional or location signage are requested by Airline because of changes in Airline's operations at the Airport.

B. Signage Release. Airline hereby authorizes the Port to display the Airline's name, logo and service marks in connection with the operations of electronic or static display screens (i) installed at the Airport as part of the Port's Flight Information Display System "FIDS", (ii) installed at the Airport as part of the Port's directional and on-site signage, (iii) installed at any remote facility which receives an electronic, telephonic, or other type of input or feed from the Port's FIDS or (iv) shown as part of any of the Port's internet web sites. This authorization shall continue until revoked in writing by the Airline. A revocation of Port's rights to use and display the Airline's name, logo or service mark shall be effective 30 days following Port's receipt of written notice of Airline's revocation, which notice shall be delivered by U.S. Certified Mail return receipt requested, overnight delivery service or by hand to the following address (or to such other address as Port may designate by written notice given to Airline pursuant to Article 12-G below): Oakland International Airport, Attention: Airport General Manager, One Airport Drive, Box 45, Oakland, California 94621.

The Airline will indemnify, defend and hold the Port harmless from any loss, damage, cost or expense (including reasonable attorneys fees) arising or resulting from any claim during or after the term of this Agreement as a result of any such authorized use of the displays including but not limited to claims for trademark or service mark infringements, except for any loss, damage, cost or expense arising or resulting from the Port's negligence or willful misconduct. Airline's name, logos and service marks shall remain the property of the Airline with the sole right, title and interest thereto, except as provided herein. In carrying out its obligations hereunder, Airline shall use counsel reasonably acceptable to the Port Attorney.

ARTICLE 7 - CONTRACT SECURITY

A. Airline shall provide to the Port, on the execution of this Agreement, with a Contract Security acceptable to the Director in the sum shown on Attachment B to guarantee the faithful performance by Airline of all of its obligations under this Agreement and the payment of all fees, charges and other amounts which become due under this Agreement including, without limitation, amounts invoiced or required to be remitted without demand such as Passenger Facility Charges. The formula to calculate the Contract Security requirement is as follows:

- (1) Certified Maximum Gross Landing Weight of aircraft to be operated by Airline at the Airport divided by 1,000, multiplied by
- (2) The current landing rate, multiplied by
- (3) The number of flights to be conducted by Airline at the Airport in 3 consecutive months, or by a shorter period of time as provided in Article 7-B below. Plus
- (4) . If the Airline is using the Port's common facilities or FIS, the Facility Fees and FIS Fees estimated to be payable by Airline for the time period specified in (3) above.

Contract Security shall be calculated and established by the Port based on the method outlined above. Furthermore, if Airline has failed to remit Passenger Facility Charges to the Port in accordance with the time requirements in applicable Federal law and regulations and ordinances

of the Port, then the Port reserves the right to include in the required Contract Security the Passenger Facility Charges calculated to be payable by Airline to the Port for a period of three (3) consecutive months, notwithstanding any shorter period provided in Article 7-B below.

B. If Airline has served the Airport for a period of twenty-four (24) consecutive months without any late payment to the Port of fees and charges required hereunder or any Event of Default hereunder, then the amount of such Contract Security required shall be reduced to an amount the Port calculates according to Article 7-A above to be necessary to secure payment of fees and charges for a period of two (2) consecutive months. If Airline has served the Airport for a period of thirty –six (36) consecutive months without any late payment to the Port of any fees and charges required hereunder or any Event of Default hereunder, the amount of such Contract security required shall be reduced to an amount the Port calculates according to Article 7-A to be necessary to secure payments of fees and charges for a period of one (1) month. Upon any subsequent late payment to the Port of any fees and charges required hereunder or any Event of Default hereunder, the Port shall have the right to increase the amount of Contract Security pursuant to Article 7-D below from any reduced amount calculated pursuant to this Article 7-B. Notwithstanding the above sentences of this Article 7-B, the Port shall have no obligation to reduce the amount of that portion of the Contract Security required hereunder securing the payment of Passenger Facility Charges to less than a three (3) month period calculated pursuant to Article 7-A.

C. If Airline fails to provide Port with a renewal or replacement Contract Security reasonably acceptable to Port at least sixty (60) days prior to the date on which such previous Contract Security expires or at least sixty (60) days prior to the effective date of any cancellation of such previous Contract Security, or if Port makes any proper demand on the issuer of such Contract Security which is not honored, or if such demand is honored and Airline does not within fifteen (15) days thereafter deposit additional Contract Security with Port in the amount paid by the issuer of such Contract Security to Port, pursuant to such demand, then Port shall have the right, in addition to other legal remedies available to the Port, to immediately terminate this Agreement by written notice to Airline, and/or to collect any penalty imposed on Airline by duly enacted Port Ordinance.

D. Port shall have the right on at least thirty (30) days' prior written notice to Airline to increase or decrease the amount of Contract Security that Airline is required to maintain under Article 7-A, subject to any reduction provided for in Article 7-B. If Airline does not provide Port, prior to the expiration of such thirty-day period, with the full amount of any such increase in the required Contract Security, then Port shall have the right, in addition to other legal remedies available to the Port, to terminate this Agreement two (2) business days after written notice to Airline.

ARTICLE 8 - INDEMNIFICATION AND INSURANCE

A. **Indemnification.** Airline shall defend, indemnify and hold Port harmless against all Losses (excluding claims, costs, penalties, fines, liabilities and losses arising out of Airline's failure to comply with its obligations under Article 9 below) which directly or indirectly arise out of (i) Airlines occupancy or use of the Airport or other Port properties or Airline's activities related thereto, (ii) any act or omission of Airline in the observance or

performance of any of the terms, covenants, or conditions of this Agreement, or (iii) from the alleged violation of any civil rights act arising out of Airline's occupancy or use of the Airport or other Port properties or Airline's activities related thereto, including acts regarding disabled or handicapped persons, including without limitation, the Americans With Disabilities Act of 1990, unless such Losses were caused solely by the negligence or willful misconduct of Port. Airline's defense counsel retained by Airline under this Article 8-A shall be subject to the Port Attorney's reasonable approval.

These obligations of Airline shall not apply to any such loss, damage, injury or death caused solely by the negligence or willful misconduct of Port but shall apply under all other circumstances. The obligations of Airline under this Article 8-A arising by reason of any occurrence taking place during the term of this Agreement shall survive any termination of this Agreement.

For purposes of this Article 8-A, "Port" shall include the Board of Port Commissioners and each of its Commissioners, officers, employees and agents.

The foregoing provisions of this Article 8-A are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Airline otherwise would be entitled as an additional insured under any liability insurance maintained by Airline under this Agreement.

B. Liability Insurance. Airline at its own cost and expense shall obtain and cause to be kept in force for the term of this Agreement, Airline General Liability Insurance to insure the specific and general liabilities assumed in Article 8-A, above (Indemnification), including, but not limited to, aircraft liability (owned, non-owned or leased), passenger legal liability, bodily injury, broad form property damage liability, premises liability, baggage and cargo liability, independent contractor and contractual liability and such other coverage as may from time to time be generally issued by insurance companies to airlines in connection with their airport operations, and Business Automobile Liability Insurance (any Auto, including Owned Autos, Non-Owned Autos and Hired Autos) with Port (including without limitation, members of Port's Board of Commissioners), officers, agents and employees named as additional insureds. Limits of liability for Airline General Liability Insurance shall not be less than Twenty-five Million Dollars (\$25,000,000.00) combined single limit or its equivalent per occurrence or such greater amount actually maintained by Airline, whether required by law or regulation applicable to Airline, or otherwise, with no deductible, except to the extent that any self-insured retention has been approved in advance and in writing by the Port's Risk Manager. Limits of liability for Business Automobile Liability Insurance shall not be less than Five Million Dollars (\$5,000,000.00) combined single limit or its equivalent per occurrence, with no deductible. All of said insurance shall be in a form and with a company or companies of generally recognized financial strength and responsibility, and reasonably approved by Port. All such insurance shall provide that it is primary insurance, in respect of any other valid and collectible insurance Port may possess including any self-insured retention or deductible Port may have, and that any such other insurance Port does possess will not contribute in the event of Losses. All insurance required under this Article 8-B shall also provide that it shall act for each insured and each additional insured as though a separate policy had been written for each; provided, however, that

this provision shall not operate to increase the policy limits of the insurance. All such insurance shall name Port as an additional insured under contractual liability coverage for the covenants and indemnification provided under this Agreement of the Port by Airline; shall provide for payment of loss to the Port and Airline as their interests may appear; shall contain a waiver of any right of subrogation that the insurer or insurers may have against Port; and shall require the insurance company, in carrying out its obligations to Port, to use counsel reasonably acceptable to the Port Attorney. Prior to Airline's execution of this Agreement, a Certificate of Insurance shall be furnished to Port showing that all the required insurance coverage and additional insured endorsements are in force and providing that such insurance coverage will not be reduced or canceled without at least thirty (30) days' prior written notice to Port. The Port's Risk Manager will notify Airline if he or she reasonably believes that there is a basis for the Port to make a claim under any of the required insurance policies, in which event Airline will promptly provide Port with copies of all required insurance policies. Port reserves the right reasonably to amend the monetary limits or coverages herein specified during the term of this Agreement, but in so doing will give Airline at least thirty (30) day's prior written notice.

C. Workers' Compensation Insurance. Airline shall also purchase workers' compensation insurance with a company or companies acceptable to the Port affording the required statutory coverage and containing the requisite limits together with employer liability insurance of at least \$1,000,000, to be effective at least twenty (20) days prior to the commencement of this Agreement, and to be maintained by Airline throughout the term of this Agreement. Notwithstanding the foregoing, Airline may self-insure its workers' compensation liability, subject to all applicable requirements of California law.

D. Waiver of Action Against Port Commissioners, Officers and Employees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreements or documents pertaining to the operation of Airline hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Port, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any member of the Board of Port Commissioners, or any officer, employee or agent, as such, past, present or future, of the Port, either directly or through Port or otherwise, for any claim arising out of this Agreement or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Port. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any member of the Board of Port Commissioners, or any officer, employee or agent, of the Port, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement or the operations conducted pursuant to it, or for the payment for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

E. Failure to Obtain Required Insurance. In the event that Airline shall at any time fail to provide Port with the insurance policies or certificates required under this Article, Port may (i) terminate this Agreement two (2) business days after written notice of termination has been given to Airline, (ii) suspend Airline's right to operate hereunder, or (iii) upon fifteen (15) days' written notice to Airline of its intention so to do, if such insurance is not obtained by

Airline during that fifteen (15) day period, secure the required insurance, at the sole cost and expense of Airline.

F. Survival Provisions. The provisions of Articles 8-A and 8-D shall survive the expiration or earlier termination of the term of this Agreement.

ARTICLE 9 - ENVIRONMENTAL RESPONSIBILITIES

A. Definitions. The following terms when used in this Agreement with the initial letter(s) capitalized, whether in the singular or plural, shall have the following meaning:

(1) **“Airline Representative”**: Airline’s agents, employees, contractors, subtenants, licensees or invitees.

(2) **“Clean-up”**: Evaluation, investigation, testing, feasibility studies, risk assessments, removal, disposal, remediation, containment, capping, encapsulating and monitoring of Toxic Materials and restoration of the Airport property.

(3) **“Exempted Toxic Materials”**: Ordinary office and janitorial supplies in amounts reasonably necessary for their intended purpose, substances in cooling systems (e.g., refrigerators and air conditioning units), or automobiles or other vehicles and the standard contents therein, used in the ordinary course of Airline’s permitted uses, cargo handled at the Airport or transported by air carriers, and any substances approved in writing by (1) the Port’s Manager of Environmental Health and Safety Compliance, and subsequent thereto, (2) the Executive Director or the Deputy Executive Director of the Port, in the exercise of their sole discretion, and listed by the Port in an Addendum to this Agreement labeled Additional Exempted Toxic Materials, and executed by Airline and the Executive Director or Deputy Executive Director of the Port, so long as said items are stored, used, handled, transported and disposed of in accordance with all Laws; provided, however, that with respect to cooling systems and automobiles and other vehicles and the standard contents therein, Exempted Toxic Materials shall not include the storage or use of any Toxic Materials outside of a cooling system or an automobile or other vehicle.

(4) **“Laws”**: All federal, state and local laws, statutes, ordinances, codes including the Uniform Fire Code as adopted by the City of Oakland, regulations and orders, relating to the handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release, treatment, and disposal of any Toxic Materials.

(5) **“Toxic Materials”**: (i) Substances that are toxic, corrosive, inflammable or ignitable; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, hazardous wastes, toxic substances or related hazardous materials; (iv) noxious fumes, vapors, soot or smoke; and (v) substances which now or in the future are defined by applicable local, State or federal law as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “reproductive toxins,” or “toxic substances,” or regulated under applicable local, state or federal law, including those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution

Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); California Health & Safety Code (“H&S Code”) Section 25100, et seq. (Hazardous Waste Control); H&S Code Section 25300, et seq. (the Hazardous Substance Account Act); H&S Code Section 25404 et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); H&S Code Section 25531 et seq. (Hazardous Materials Management); H&S Code Section 18901 et seq. (California Building Standards); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); local fire codes; the regulations adopted and promulgated pursuant to such statutes, and any regulations adopted pursuant to such statutes after the Effective Date of the Agreement, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances; and any other substance designated by the Port as a Toxic Material, upon a finding by the Executive Director and notice to the Airline, that the substance poses a hazard to human health, safety, or the environment.

B. General Prohibitions.

(1) No Toxic Materials; Exceptions: Airline shall not cause or permit any Toxic Materials to be brought upon, remain, kept or used in or about the Airport property or other Port property during the term of this Agreement by Airline or any Airline Representative, except for (i) Exempted Toxic Materials or (ii) Toxic Materials approved in advance and in writing by the Executive Director or the Deputy Executive Director of the Port in the exercise of his or her sole discretion.

(2) Storage Tanks: Airline shall not install, operate or remove any underground storage tank, above ground storage tank or other storage facility whatsoever containing Toxic Materials (except Exempted Toxic Materials) without the prior written approval of the Executive Director or the Deputy Executive Director of the Port, which approval may be given, conditioned, or withheld in the exercise of his or her sole discretion. Any such installation, operation or removal of such tanks or other storage facilities shall be subject to all of the other applicable provisions of this Article 9.

(3) Wells and Groundwater: Airline shall not install, operate or remove any well, or use any groundwater, on the Airport property without the prior written approval of the Executive Director or the Deputy Executive Director of the Port which approval may be given, conditioned, or withheld in the exercise of his or her sole discretion; provided, however, that if such removal is required under the Laws, the Port shall grant such approval. Any such installation, operation, removal or use shall be subject to all of the other applicable provisions of this Article 9.

C. Compliance With Laws. Airline shall comply, at its sole cost, with all Laws relating to Toxic Materials. It shall be the sole obligation of Airline to obtain and maintain any permits and approvals required pursuant to such Laws.

D. Disposal of Toxic Materials. Airline shall not dispose of any Toxic Materials, regardless of quantity or concentration, within the storm and/or sanitary sewer drains and plumbing facilities within the Airport property, or other property of the Port unless such disposal is in accordance with a properly issued federal, state or local permit and such disposal has been approved by the Executive Director or Deputy Executive Director of the Port in the exercise of his or her sole discretion. All disposal of Toxic Materials shall be in approved and labeled containers and removed from the Airport property in compliance with all Laws and only by duly licensed and insured carriers in compliance with all Laws.

E. Material Safety Data Sheets. Airline shall maintain Material Safety Data Sheets, as required under the Hazard Communication Standard in 29 CFR §1910.1200, and any other Laws. Such information shall be kept current at all times and shall be kept in a place accessible to the Port and other regulatory agencies including the Oakland Fire Department at any time for inspection and in the event of emergency.

F. Clean Water Act; NPDES Permits and SWPPPs. Airline shall comply with all Laws regarding discharges to water and land, including without limitation obtaining and complying with an individual National Pollutant Discharge Elimination System (“NPDES”) permit, requesting coverage under and complying with any applicable General Permit and preparation and complying with a site-specific Storm Water Pollution Prevention Plan (“SWPPP”) or any revisions to an SWPPP, with respect to Airline’s operations or activities on the Airport property.

G. Entry and Inspection.

(1) Port’s Entry and Inspection Rights. The Port and its authorized representatives and consultants shall have the right, but not the obligation, to enter the Airport property at any reasonable time (i) to confirm Airline’s compliance with the provisions of this Article 9, including the right to physically investigate the condition of the Airport property and review all permits, reports, plans, and other documents regarding the use, handling, storage or disposal of Toxic Materials, and (ii) to perform the Port’s obligations under this Article 9. The Port’s said right shall include the right to inspect, investigate, sample and/or monitor the Airport property, including any air, soil, surface water, groundwater or other sampling or any other testing, digging, drilling or analysis to determine whether Airline is complying with the terms of this Article 9. Airline shall pay the costs of Port’s consultants’ fees and all other costs incurred by Port if said fees and costs result from Airline’s failure to carry out its obligations under this Article 9. The Port shall use reasonable efforts to minimize any interference with Airline’s business caused by Port’s entry onto the Airport property, but Port shall not be responsible for any interference caused thereby.

(2) Environmental Audit. The Port shall have the right, but not the obligation, to require, annually during the term of this Agreement and again within thirty (30) business days after the termination or expiration of the Agreement, that a detailed review (“Environmental Audit”) be undertaken to determine whether Airline and Airline Representative’s use, handling, storage or disposal of all Toxic Materials comply with this Article 9. The Environmental Audit shall be conducted by independent, qualified, licensed environmental consultants selected by Port. The Environmental Audit shall include an inspection of the Airport property, interviews with the occupants of the Airport property and any

other matters which the consultants believe, in the exercise of their professional judgment, are reasonably necessary to ascertain whether the Airline is in compliance with this Article 9, including the installation of monitoring wells, and the sampling and analysis of soil, surface water and groundwater. Airline shall fully cooperate with the consultants and comply with all information requests. After the completion of the Environmental Audit, a written report shall be prepared and copies shall be distributed to both Airline and Port. Airline shall reimburse the Port for the entire expense of this audit if the audit gives the Port reasonable cause to believe that Airline has breached its obligations under this Article 9.

(3) Required Compliance. If the Airline is not in compliance with this Article 9, Airline shall, at its cost, promptly take all action necessary to bring the Airport property into compliance, including all Clean-Up.

H. Indemnity

(1) Basic Obligation. Airline shall be solely responsible for and shall indemnify, protect, defend (with counsel acceptable to the Port) and hold harmless the Port and the Port's Commissioners, agents, employees, representatives, contractors, directors and officers (collectively hereinafter referred to as the "Indemnitees") from and against any and all claims, costs, penalties, fines, liabilities, losses, including without limitation: (i) (a) in the case of Airport property, damages for the loss or restriction on use or development as an airport or for a reasonably related commercial use of rentable or usable space or of any amenity of the Airport property (including without limitation deed restrictions), or of any loss of income from any of the foregoing uses of such space or property, and (b) in the case of any other Port property, damages for the loss or restriction on use or development of rentable or usable space or of any amenity of the other Port property (including, without limitation deed restrictions), or any loss of income from any of the foregoing space or property; (ii) Airline's responsibilities, if any, for pre-existing contamination as described in subsection (8) hereinbelow; (iii) increased costs of maintenance, construction, repairs or major improvements to the Airport property, or any other Port property; (iv) Clean-up costs; and (v) sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, damages, injuries, causes of action, judgments, taxes and expenses which arise during or after the term of this Agreement as a result of Airline's failure to comply with Airline's obligations under this Article 9 or the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, presence, threatened or actual discharge, release or disposal of Toxic Materials, in, upon or about the Airport property or other Port property, by Airline or by any Airline Representative, during the term of this Agreement.

(2) Notice and Opportunity. The Port shall give to Airline reasonable notice of the Port's knowledge of Toxic Materials affecting the Airport property, and the Port's knowledge of any third party's claim in relation thereto, for which Airline may be responsible hereunder. In addition, subject to the limitations and conditions set forth in subsection (e) below, the Port shall allow Airline a reasonable opportunity to promptly and diligently indemnify, protect, and defend the Port, and to undertake appropriate Clean-up for which Airline is responsible hereunder; provided, however, that all Clean-up activities by Airline or any Airline Representatives shall be with the Port's prior written approval.

(3) Action. Airline's indemnification obligation under this section shall commence in no event later than any notice of any claim whether by regulatory notice (which

shall be deemed to include without limitation notice by a governmental agency of an informational request, or to take investigative, remedial, removal or other action), threatened legal action, arbitration, mediation, administrative proceeding or lawsuit (“Action”).

(4) Notice; Defense of Action. The Port shall within a reasonable time after receipt of notice of an Action or after the Port otherwise has discovered an event or condition which would give rise to Airline’s indemnification obligation hereunder, give notice to Airline. The failure to so notify Airline shall not relieve Airline of any liability it may have to the Port. The Port shall give notice to Airline of the commencement of an Action, and Airline shall be entitled to participate therein. The Port may, in its sole discretion, assume control of the defense of any Action brought against the Port, and Airline shall be responsible for payment and/or reimbursement of all reasonable defense costs. Defense costs shall include all reasonable legal and attorneys fees (including costs attributable to in-house attorneys), legal overhead costs, court costs, fees and costs of experts retained as consultants or expert witnesses, in-house environmental staff costs, fees and costs charged by governmental entities for such items as oversight or review fees. The defense of an Action shall be deemed to include pre-litigation defense costs, the response to any request, directive or order by a governmental agency, and the cost associated with tendering claims to insurance carriers for defense and indemnity. Airline and the Port shall cooperate with each other in the defense against any Action, including, without limitation, the tendering of claims to Airline’s insurance carriers for defense and indemnity.

(5) Settlements. No compromise or settlement of any Action affecting the Airport property may be effected by Airline without the Port’s written consent.

(6) Right to Defend. With respect to any Action by a governmental agency, and with respect to all other claims as to which the Port determines in good faith that there is a reasonable probability that such Action or claim may materially and adversely affect the Port other than as a result of monetary damages or that the monetary damages are likely to exceed the amount which Airline is obligated to indemnify under this Section, the Port may, by notice to the Airline, assume the exclusive right to defend, compromise or settle such action without prejudice to its rights to indemnification hereunder.

(7) Survival. Airline’s indemnification obligation under this Section shall survive expiration or other termination of this Agreement.

(8) Pre-Existing Contamination. Notwithstanding any other provision of this Article 9, Airline shall not be responsible for any Toxic Materials that were on the Airport property prior to Airline’s use of the Airport except as follows: (1) Airline shall be responsible for any such Toxic Materials to the extent that the scope, boundaries or level of contamination, or the cost of Clean-up, is increased as a result of Airline’s failure, after Airline knows, or has a reasonable basis to believe that Toxic Materials are on the Airport property or other Port property, promptly and reasonably to (A) notify the Port in writing of such Toxic Materials, (B) take precautionary measures to alter its operations and the activities of any Airline Representative on the Airport property in order to assure that such operations or activities do not increase such scope or cost; and (C) provide the Port prompt and adequate access to the affected areas of the Airport property in order to undertake all Clean-up activities that the Port, at its sole discretion, may take; and (2) Airline shall be responsible for any Toxic Material that is

discovered, released or disturbed as the result of any excavation or other subsurface activity made or undertaken on the Airport property by Airline or any Airline Representative, unless the Port has given to Airline in writing prior approval for such excavation or subsurface activity including the workplan for such excavation or subsurface activity (which approval may be given or withheld in the Port's sole discretion and which approval may also be conditioned upon Airline's compliance with the Port's directive to modify Airline's excavation or subsurface activity plans so as to minimize the excavation, release or disturbance of Toxic Materials on, under or beneath the Airport property).

I. Clean-up. If Airline or any Airline Representative causes contamination of surface water, groundwater or soil or other portions of the Airport property by Toxic Materials, then Airline shall promptly take any and all actions necessary for Clean-up of such contamination. Prior to taking such action, except in the case of an emergency, Airline shall provide Port with written notification of all actions proposed to be taken by Airline, and shall proceed with such action only upon receipt of approval by the Port for such action. If Airline fails to take such action after approval by the Port, or if the Port does not approve Airline's proposed action, Port may, but shall not be obligated to, take Clean-up actions. In such event, Port will reasonably attempt to avoid interference with Airline's operations at the Airport but shall not be responsible for any interference caused thereby, and all costs incurred by Port with respect to such Clean-up activities shall be for the account of Airline.

J. Notices. In addition to Airline's obligations to report spillage, discharge, release and disposal of Toxic Materials to local, state and federal agencies, Airline shall immediately provide Port with telephonic notice, which shall later promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Toxic Materials onto or within the Airport property or other Port property and any injuries or damages resulting directly or indirectly therefrom, regardless of whether reporting to a governmental agency is required. Further, Airline shall deliver to Port each and every notice or order received by Airline or any Airline Representative from governmental agencies concerning Toxic Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order.

K. Fees, Taxes and Fines. Airline shall pay, prior to delinquency, any and all fees, taxes (including excise taxes) and fines which are charged upon or incident to any responsibility of Airline under this Article 9, and shall not allow such obligations to become a lien or charge against or upon the Airport property or other Port property or the Port.

L. Delivery of Documentation.

(1) Copies to Port. If Airline makes any disclosure, or provides any report, to any governmental agency concerning Airline's storage, use, generation or disposal of Toxic Materials on the Airport property or other Port property, Airline shall concurrently also provide a copy of such disclosure or report to the Port.

(2) Business Plan. At any time that Airline's business conducted at the Airport requires the establishment and implementation of a business plan pursuant to California Health and Safety Code §25500 et seq. or any other Laws concerning the handling of Toxic Materials, or to prepare an inventory pursuant to any Laws, Airline shall (i) timely comply with such requirement, (ii) promptly give written notification to Port that Airline's business is subject

to the business plan requirement of the Code or other Laws, (iii) promptly advise the Port whether the business is in compliance with the Code and other Laws, and (iv) simultaneously deliver to the Port and the appropriate regulatory agency any such business plan.

(3) Clean Water Act Documents. Airline shall deliver to the Port a copy of all registration forms, reports, policies, its site-specific SWPPP, any revised or updated SWPPP and documents submitted to a government agency or prepared or maintained by Airline, required to be prepared pursuant to the Clean Water Act that relates to the Airport property or other Port property.

(4) Proposition 65. Airline shall deliver to Port a copy of any notices posted, distributed or published pursuant to Proposition 65, Chapter 6.6, Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 et seq that relates to the Airport property or other Port property.

(5) Documents. Airline shall maintain for periodic inspection by the Port and deliver to Port upon request (unless required by other provisions of this Article 9 or by the Laws without the stated requirement for a Port request) true and correct copies of the following documents (hereinafter referred to as the “Documents”), related to the handling, storage, disposal and emission of Toxic Materials on the Airport property or other Port property, concurrently with the receipt from or submission to a governmental agency:

Permits; approvals; spill reports; reports and correspondence; storage and management plans; spill prevention control and countermeasures plans; other spill contingency and emergency response plans; documents relating to taxes for toxic materials; manifests for disposal or treatment of Toxic Materials; notice of violations of any Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Airport property; and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks or other facilities installed or Toxic Materials located in, on or under the Airport property.

Airline is not required, however, to provide Port with any portion(s) of the Documents containing information of a proprietary nature or information that is subject to the attorney client or work product privilege which, in and of itself, does not contain a reference to any Toxic Materials or hazardous activities which are not otherwise identified to the Port in such Document, unless any such Document names the Port as an “Owner” or “Operator” of the facility in which Airline is conducting its business. It is not the intent of the foregoing, unless necessary for the Port to comply with Laws or to enforce provisions of this Agreement or otherwise secure the Port’s rights, to provide Port with information which could be detrimental to Airline’s business should such information become possessed by Airline’s competitors.

M. Expiration of Term of Agreement

(1) Periodic Monitoring; Surrender. Airline regularly shall monitor and inspect all of its activities on the Airport with the objectives of discovering any Toxic Material that Airline is required under the terms of this Article 9 to Clean-up or to remove upon expiration

or termination of the Agreement and of making reasonable and adequate provisions for assuring that removal of any Toxic Materials is accomplished before such expiration or termination. This Section is not intended to and shall not be construed to delay any Clean-up that is required by Laws or other provision of this Article 9 to be undertaken before expiration or termination of the Agreement. In all cases where reasonably possible, before expiration or termination of this Agreement, and in all other cases promptly after the scheduled date of expiration or termination of this Agreement, Airline shall take any and all action required to be taken under this Article 9 and the Laws in order to (i) surrender the Airport property to the Port in a condition which would be free, to the maximum extent achievable using state of the art methods existing at the time of the Clean-up, not prohibited by applicable Laws, and approved in writing by the Executive Director or the Deputy Executive Director of the Port in the exercise of his or her sole discretion, of any and all Toxic Materials for which Airline has Clean-up responsibility under this Agreement, and (ii) close or remove any storage tanks in, on or under the Airport property installed or operated by Airline or any Airline Representative, unless an alternative arrangement has been approved by the Executive Director or the Deputy Executive Director of the Port in the exercise of his or her sole discretion (said items (i) and (ii) herein referred to as "Agreement Closure"). Notwithstanding the foregoing, if subsequent to the completion of any Clean-up by Airline of Toxic Materials for which Airline has Clean-up responsibility under this Agreement, the Port becomes legally obligated to perform additional Clean-up of such Toxic Materials, then Port shall give Airline written notice and a reasonable opportunity to perform such additional Clean-up in accordance with the requirements of all applicable Laws. If Airline fails, within 30 days after such written notice, to commence and thereafter to diligently pursue such additional Clean-up to completion to the satisfaction of the Port and the applicable governmental authority that ordered such additional Clean-up, the Port shall have the right, after written notice to Airline, to complete such additional Clean-up in accordance with the requirements of all applicable Laws at Airline's expense.

(2) Notwithstanding any lesser standard of removal or remediation which might be allowable under the Laws or governmental policies, Airline shall perform or cause to be performed all actions that are not prohibited by applicable Laws and that are necessary, as determined by the Port in its reasonable business judgment, to ensure that Agreement Closure has been completed, including inspection, testing and post-Agreement Closure monitoring, and shall provide to the Port copies of such notices of compliance, clearances, "no further action" notices or other notices or approvals from appropriate governmental agencies as may be reasonably required by the Port, to evidence Airline's completion of its Agreement Closure obligations. Airline, at its own expense, shall repair any damage caused by such work and unless otherwise requested by the Port, shall remove, at the completion of all testing and monitoring, in accordance with applicable law, any and all monitoring wells installed as a result of or in connection with Airline's occupancy of the Airport property or otherwise installed by Airline, or at Airline's direction.

(3) Access to Airport Property After End of Term. If Airline does not surrender the Airport property in the condition required and complete any required remediation of Toxic Materials, closure or removal of storage tanks or Agreement Closure before the scheduled date of expiration or termination of the Agreement, then the Port shall provide Airline with reasonable access to the Airport property so that Airline can fulfill its obligations under this Article 9, which Airline agrees to pursue diligently to completion.

(4) Closure Plans. Airline shall submit to the Port for review, comment and approval its closure plans relating to Agreement Closure and to the remediation of Toxic Materials or to the closure and removal of any storage tanks at least twenty one (21) business days prior to the commencement of the work.

(5) Certificates. Upon the expiration or earlier termination of the Agreement, Airline, at its sole cost, shall remove and remediate all Toxic Materials, for which Airline has Clean-up responsibility under this Agreement, from the Airport property and shall provide a certificate to the Port certifying that there are no such Toxic Materials in, on or about the Airport property from which Airline was obligated to remove and remediate all Toxic Materials, and Certificates of Closure or other regulatory response reasonably acceptable to the Port from all governmental regulatory agencies that have jurisdiction with respect to the removal and remediation of such Toxic Materials. If Airline fails to so surrender the Airport property as required herein, Airline shall indemnify, protect, defend and hold the Port harmless from all damages in connection with the condition of the Airport property such as damages occasioned by the inability to re-let the Airport property or a reduction in the fair market and/or rental value of the Airport property by reason of the existence of any such Toxic Materials in or around the Airport property, as more fully set forth above.

(6) Storage Tanks. With regard to underground and/or aboveground storage tanks, if any, at least 90 days, but not more than 120 days, before expiration of the term of this Agreement, or, in the event of earlier termination prior to the date of termination, Airline shall give the Port written notice expressly referring to the provisions herein and stating Airline's intention either to close or to remove any storage tank for which Airline has closure responsibility under this Article 9. The Port may elect by written notice to Airline, given at any time not later than 30 days after receipt of notice of Airline's intention, to require Airline either (a) to remove said tanks or (b) to leave the tanks in place in operating condition, provided, however, that if the Port requires Airline to leave the tanks in place in operating condition, Airline shall provide Port with documentary evidence that the tanks have been modified to comply with the upgrade requirements for underground storage tanks, spill and overflow prevention and underground piping pursuant to Chapter 6.7, Underground Storage of Hazardous Substances, Health and Safety Code, that the tanks have passed Tank Tightness Integrity Tests for the past five (5) years, and provide to the Port soil and groundwater monitoring data verifying that there has been no release of Toxic Materials from the tanks and all other monitoring records, equipment testing or maintenance records required by California Code of Regulations Title 23, Chapter 16, Section 2610 et seq. If the Port gives notice of election to Airline during said 30-day period, Airline shall handle the tanks in accordance with Port's intention as stated in its notice to the Airline; provided, however, that Airline will not be obligated to remove said tanks, notwithstanding Port's intention, if Airline promptly provides Port with all of the documentary evidence specified above in this subsection. If no notice of election is given to Airline, Airline shall remove said tanks as required by the Laws if it is unable to timely satisfy all of the conditions contained in the proviso at the end of the immediately preceding sentence.

(7) Compensation During Extension. In the event the Agreement is extended by mutual agreement to permit Airline to complete its work under the foregoing provisions, then during the period of extension, all of the terms of the Agreement shall continue

to apply. If the Agreement is not extended, or if extended, it subsequently is terminated by the Port, Airline shall remain obligated diligently to pursue to completion all work necessary to free the Airport property of all Toxic Materials for which Airline is responsible and/or to close or remove storage tank(s), and until the completion of all of said work, all of the indemnity, liability insurance and security/performance deposit provisions of this Agreement shall continue to apply and shall be binding upon Airline notwithstanding the expiration or termination of the Agreement.

N. Consultants and Contractors. All consultants or contractors performing work on behalf of Airline concerning Toxic Materials on the Airport property shall be qualified and licensed to undertake the applicable work and as to any consultants or contractors selected by Airline, Port shall be notified of the selected consultants or contractors at least ten (10) business days prior to the commencement of any work by such consultants or contractors (except in an emergency, in which case Port shall be notified within one (1) business day after the selection of the consultants or contractors). All work shall be performed in a good, safe and workmanlike manner and, with regard to work performed at or near the end of the term, in a manner that will not interfere with Port's use, operation, leasing or sale of the Airport property.

O. Spill Response Plan. Airline shall at all times maintain with the Port and post in an appropriate location at the Airport a complete copy of spill notifications forms required from time-to-time by the Port. Airline shall comply with all notification and procedural requirements for Port tenants set forth in any applicable Port spill plan in effect from time-to-time.

P. Asbestos Notification. Airline shall comply with all asbestos notification requirements, asbestos management plans, and asbestos handling requirements required by the Laws and as set forth in (but not limited to) Health and Safety Code Section Chapter 10.4 Asbestos Notification, sections 25915, et seq. Airline is required to provide written notice to its employees of known asbestos containing materials. Airline is also required to enact asbestos management plans, and post warnings with respect to any construction, maintenance or remodeling conducted in the building area where there is a potential for employees to come into contact with, or release, or disturb asbestos or asbestos containing construction materials. Airline shall comply with asbestos survey and monitoring requirements as required by the Laws. Port shall provide Airline with any asbestos notification required by the Laws, as reasonably interpreted by Port.

Q. Port's Claims. Nothing in this Article 9 shall be construed to prohibit or restrict the Port from pursuing any and all claims, causes of action, proceedings, and the like, against insurance carriers and against any other person or entity which the Port may believe caused or otherwise contributed to the claims, demands, causes of action, damages and liabilities of any kind arising directly or indirectly out of any Toxic Materials on the Airport property.

R. Existing Reports Regarding Toxic Materials. Airline acknowledges that prior to execution of the Agreement the Port has given to Airline written notice of the reports listed on Attachment "D-1" attached hereto and by this reference incorporated herein, (herein referred to as "the Reports") regarding the presence of Toxic Materials on the Airport property:

ARTICLE 10 - DEFAULT BY AIRLINE

A. Events of Default. Any one of the following events shall constitute an Event of Default hereunder:

(1) The failure of Airline to make any payment required to be made by Airline hereunder when due as herein provided, which failure is not remedied within five (5) days after receipt by Airline of the Port's written demand;

(2) The failure of Airline to provide any report required under Article 5 above or any other financial report required to be submitted to the Port or any officer or employee thereof when due as herein provided, which failure is not remedied within five (5) days after receipt by Airline of the Port's written demand;

(3) The failure of Airline to provide any Contract Security or renewal of Contract Security on or before the date on which the same is required hereunder, or to perform any other obligation where this Agreement expressly grants Port the right to immediately terminate this Agreement;

(4) The failure of Airline to keep, observe or perform any of the other covenants or agreements herein required to be kept, observed or performed by Airline, and continued failure to observe or perform any such covenant or agreement after a period of fifteen (15) days after receipt by Airline of the Port's written demand; provided, however, that if such failure cannot reasonably be cured within such fifteen (15) day period, then such failure will not become an Event of Default as long as Airline commences such cure within such fifteen (15) day period, pursue such cure diligently and in good faith, and cures such failure within a period of sixty (60) days after receipt by Airline of such written demand from the Port (unless such date is extended by the Executive Director or the Deputy Executive Director of the Port, in writing, in the exercise of his or her sole discretion);

(5) Commencement by Airline or by any guarantor or surety of this Agreement, in any court pursuant to any statute of the United States or of any State, territory or government, of any insolvency or bankruptcy proceeding, including, without limitation, a proceeding for liquidation, reorganization or for the adjustment of its indebtedness;

(6) Commencement of any insolvency or bankruptcy proceeding (including, without limitation a proceeding for liquidation, reorganization or for adjustment of indebtedness) against Airline or any guarantor or surety of this Agreement, if an order for relief is entered against such party and the same is not stayed or vacated within thirty (30) days after entry thereof, or if such party fails to secure a discharge of the proceedings within sixty (60) days after the filing thereof;

(7) Insolvency of Airline or any guarantor or surety of this Agreement, or if Airline or any guarantor or surety of this agreement is generally unable to pay its debts as they become due;

(8) The making by Airline or by any guarantor or surety of this Agreement of an assignment for the benefit of its creditors or the filing of a petition for or the entering into of an arrangement with its creditors;

(9) The appointment or sufferance of a receiver, trustee or custodian to take possession of all or substantially all of the property of Airline or of any guarantor or surety of this Agreement, whether or not judicial proceedings are instituted in connection with such appointment or sufferance; or

(10) If a Space/Use Agreement is attached hereto as Annex "A," any default by Airline under such Space/Use Agreement.

B. Remedies Upon Airline's Default. Upon the occurrence of any Event of Default, as defined above, Port, besides any other rights or remedies it may have, shall have the option to immediately terminate this Agreement and recover from Airline all unpaid sums due Port hereunder by drawing upon the Contract Security or by all other legal means, together with any other amount and court costs necessary to compensate Port for all damages proximately caused by Airline's default.

C. Further Provisions Regarding Default. No action by Port pursuant to this Article shall be deemed to terminate this Agreement unless written notice of termination is given by Port to Airline. In any event and irrespective of any option exercised, Airline shall pay upon demand all of Port's costs, charges and expenses including reasonable fees of counsel, agents and others retained by Port incurred in connection with the recovery of sums due under this Agreement, or because of the breach of any covenant or agreement of Airline contained in this Agreement or for any other relief against Airline. Airline hereby expressly waives any notices of default not specifically provided for herein, and all rights of redemption, if any, granted by or under any present or future law in the event Airline shall be evicted or dispossessed from the Airport for any cause.

(1) No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement shall be taken to constitute a waiver of any subsequent breach of such covenant or condition or to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof, nor shall the acceptance by Port of any sums from Airline at any time when Airline is in default under any covenant or condition hereof, be construed as a waiver of such default or of Port's right to terminate this Agreement on account of such default, nor shall any waiver or indulgence granted by Port to Airline be taken as an estoppel against Port, it being expressly understood that Port may at any time thereafter, if such default continues, terminate this Agreement on account of such default in the manner hereinbefore provided.

(2) The rights and remedies given to Port by this Agreement shall not be exclusive, and in addition thereto, Port shall have such other rights and may pursue such other remedies as are provided by law or in equity. All such rights and remedies shall be deemed to be cumulative, and the exercise of one such right or remedy by Port shall not impair its standing to exercise any other right or remedy.

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

[To be initialed by Airline] _____

[To be initialed by Port] _____

ARTICLE 11 - ASSIGNMENT

A. No Assignment Airline shall not sell, assign or transfer this Agreement or any of its rights and privileges hereunder or permit any such sale, assignment or transfer to occur by operation of law, or subcontract for the performance of any of the services to be provided by it hereunder, without the Port's prior written approval, which approval may be granted or withheld by Port in the exercise of its sole discretion as evidenced by a resolution of the Board of Port Commissioners and subject to payment by Airline of all reasonable administrative expenses incurred by the Port for the processing of such assignment or transfer.

B. Transfer of Control. For purposes of Article 11(A) above, an assignment shall include, if the Airline is a corporation (except if Airline is a corporation whose stock is publicly traded), the issuance or the sale, transfer or other disposition of a sufficient number of shares of stock in the Airline to result in a change in control of the Airline or if the Airline is a partnership or joint venture, a transfer of an interest in the partnership or joint venture which results in a change in control of such entity.

ARTICLE 12 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

A. Agreements with the United States, State of California and City of Oakland. This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, and City laws and Port ordinances and regulations, affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between Port and the City, and those between Port or the City and the United States of America or the State of California, or their boards, agencies or commissions, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, or City funds or PFC's for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

B. Right to Amend. Airline covenants and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreements between the Port and the United States Government relative to the operation and maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the use of PFC's for the development of the Airport. In the event that the FAA or its successors require modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport or as a requirement of any prior grants, Airline hereby consents to any and all such modifications and changes as may be reasonably required.

C. Covenants Against Discrimination. Airline, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (a) no person on the grounds of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status, shall be excluded from or segregated for participation in, denied the benefits of, or be otherwise subject to discrimination in (i) the use of the Airport under the provisions of this Agreement; (ii) the construction of any improvements on, over or under the Airport for the Airline's operations or (iii) the furnishing of services thereon and (b) that Airline shall use the Airport in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(2) Airline shall comply with laws of the State of California prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status.

(3) Should the Airline authorize another person, with Port's prior written consent, to provide services or benefits from a location on or relating to Airline's operation on the Airport, Airline shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this Article 12-C. Airline shall furnish the original or a true copy of such agreement to Port. Airline also assures Port that it will require any contractors to provide assurances to the same effect and ensure that such assurances are included in subcontracts at all tiers which are entered into in connection with Airline's operations under this Agreement.

(4) Port may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport, and Airline agrees that it will adopt any such requirement as a part of this Agreement.

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

(6) Airline assures Port that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status, be excluded from participating in any activity conducted in connection with its operations under this Agreement. Airline also assures Port that it will require any contractors and subtenants (to the extent that such subtenants are allowed under other

provisions of this Agreement) to provide assurances to the same effect and ensure that such assurances are included in subcontracts at all tiers which are entered into in connection with Airline's operations under this Agreement.

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

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

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

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

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

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

(9) In the event of breach of any of the nondiscrimination covenants in this Article 12-C, Port shall have the right, in addition to all other legal remedies, to terminate this Agreement, or to seek judicial enforcement of said covenants. The right granted to Port by the foregoing sentence shall be effective to enforce nondiscrimination requirements under Port, State of California and federal laws and regulations; provided however that such right for the enforcement of federal nondiscrimination laws and regulations or termination because of the breach thereof shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, if applicable, are followed and completed, including exercise or expiration of appeal rights; and further provided however that such right of termination for the breach of California nondiscrimination laws and regulations shall not be effective until thirty (30) days after written notice of termination has been given to Airline.

D. Right to Modify. The parties hereto covenant and agree that, during the term hereof, this Agreement may be unilaterally modified by the Port, upon advice of the Port Attorney and on at least thirty (30) days prior written notice by the Port to Airline, in order to conform to judicial, FAA, Department of Transportation or Federal Trade Commission rulings or opinions. This section shall not preclude Airline from contesting said rulings or opinions, but Airline shall abide by the unilateral change. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except in writing and signed by both parties.

E. Warranty of Airline As to Conflicts of Interest. Airline represents and warrants to Port, that, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Port has any interest, direct or indirect (excluding any interest as a stockholder owning less than 5% of the shares of any class of securities), in the business of Airline to be conducted hereunder, and that no such persons shall have any such interest at any time during the term hereof.

F. Notices. All notices required or permitted to be given by Port to Airline hereunder shall be in writing and delivered to it by hand delivery at the Airport, or by courier service providing a written record of the date of delivery or United States certified mail, postage prepaid, return receipt requested, addressed to Airline at the address shown on page one hereof. All notices required or permitted be given to Port hereunder shall also be in writing and delivered to it by hand delivery or courier service providing a written record of the date of delivery or United States certified mail, postage prepaid, return receipt requested addressed to:

Director of Aviation
Oakland International Airport
One Airport Drive
Oakland, California 94621

Either party may change its address for purposes of this paragraph by written notice similarly given.

G. Rules and Regulations of Port. Airline covenants and agrees to observe and obey all lawful rules and regulations, including Airport Directives, not conflicting with any express provisions of this Agreement as may now exist or may be promulgated from time to time by Port.

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

I. Miscellaneous Provisions. Airline shall hold all necessary certificates or permits from appropriate federal or state agencies having jurisdiction to provide air transportation services to the routes it is serving to and from the Airport.

(1) Airline and its employees and the employees of any subsidiary of Airline shall promptly observe and comply with applicable provisions of all federal, state, and local statutes, ordinances, regulations and rules which govern or apply to Airline or its operations hereunder.

(2) Airline shall make and maintain arrangements for ground handling or fueling services only with companies that are permitted to render such services to Airline under written agreements between such company and the Port; provided, however, that Airline shall have the right to ground handle its own aircraft with its own employees. A current list of such companies is on file and may be inspected at the office of the Airport General Manager. Airline agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repairs) on its own aircraft with its own employees that it may choose to perform.

(3) Airline shall be obligated to insure that continuous porter service is available in the baggage claim area of the Terminal Complex when baggage from Airline's arriving aircraft is being delivered until the baggage claim area is clear of Airline's passengers.

(4) Airline shall submit proposed changes in previously published schedules of its aircraft operations at the Airport to the Airport General Manager prior to each schedule change during such month.

(5) Airline shall pay all lawful taxes and assessments levied or assessed against Airline, including but not limited to any business tax lawfully imposed by the City.

(6) Airline shall pay all miscellaneous charges owed to Port for key cards, identification badges and the like.

(7) Airline shall comply with all applicable regulations of the FAA and the Port relating to Airport security so as to prevent or deter unauthorized persons from obtaining access to the air operations area of Airport.

(8) Airline agrees to repair promptly, at its sole cost and expense and in a manner acceptable to Port, any damage (normal wear and tear excepted) caused by Airline or any

of its agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any improvements or property located thereon. If Airline fails to commence such repair within ten (10) days after the Airport General Manager's written demand and thereafter to diligently complete such repair, Port shall have the right to make such repair, and Airline agrees to reimburse Port for the cost of such repair promptly after the Airport General Manager's written demand. Any unpaid amount due from Airline to Port hereunder shall be secured by Airline's Contract Security and shall bear interest and penalty from the date payment was due to Port at the applicable rate provided in Article 5-D above.

(9) Airline is not authorized to act as Port's agent hereunder and shall have no authority, express or implied, to act for or bind Port hereunder and nothing contained in this Agreement shall be deemed or construed by Port or Airline or by any third party to create the relationship of partnership or joint venture.

(10) The article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

(11) Time is expressed to be of the essence of this Agreement.

(12) The Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

(13) If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contained herein.

(14) Except as otherwise expressly provided herein, if certain action may be taken only with the consent or approval of the Port, or if a determination or judgment is to be made by the Port, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the Director or his or her designee.

(15) Airline shall develop and maintain written procedures to be used in the event of bombing and/or bomb threat, disaster, hijacking or other emergency, and train its personnel in the implementation of those procedures.

(16) If Airline is engaged only in All Cargo Transportation at the Airport, it shall train all of its personnel at the Airport in the proper handling and disposal of garbage, papers, refuse and other forms of trash, in accordance with a written training program that has been approved by the Airport General Manager.

(17) Airline agrees that it will not accept delivery at the Airport of duty free or bonded merchandise from any third party that has not been authorized by the Port to engage in the sale of such merchandise at the Airport, or deliver to or accept delivery to the Airport of any duty free or bonded merchandise purchased off of the Airport.

J. Tax Exempt Status of Port Revenue Bonds. Airline agrees to comply promptly with the applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided thereunder, as required to permit the Port's capital expansion projects to be planned and constructed by Port with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes, including without limitation, the execution by Airline and delivery to Port of any required tax election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport not financed with Airline's own funds.

K. Entire Agreement. This Agreement, together with the exhibits, attachments and annexes hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements made with respect to such subject matter are merged herein. Except as otherwise specifically provided in this Agreement, this Agreement may be altered or amended only by written instrument executed by all of the parties hereto.

L. Applicable Law. This Agreement has been entered into in, and shall be governed by and construed and interpreted in accordance with, the laws of the State of California (without regard to principles of conflict of law).

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

N. Covenant Against Contingent Fees. Airline warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul or immediately terminate this Agreement or recover from Airline the full amount of the contingent fee.

As used in this section, "bona fide agency" means an established commercial or selling agency, maintained by Airline for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

As used in this section, “bona fide employee” means a person, employed by Airline and subject to Airline’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.”

As used in this section, “contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

As used in this section, “improper influence” means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.”

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

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

By: _____
Executive Director

NOTE: PLEASE ALSO INITIAL
PAGE 24 TO ACKNOWLEDGE
WAIVER OF RIGHT TO A
TRIAL BY JURY

AIRLINE
a Corporation

By: _____

Print Name and Title
(If Corporate: Chairman, President or Vice President)

Attest _____

Print Name and Title
(If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer,
Or Assistant Treasurer)

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

DAVID L. ALEXANDER
Port Attorney

THIS AGREEMENT SHALL NOT
BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND
UNTIL SIGNED BY THE PORT
ATTORNEY.

Port Resolution No. _____
P.A.#: _____

ATTACHMENT A

IRREVOCABLE AND TRANSFERABLE
LETTER OF CREDIT

Irrevocable and Transferable
Letter of Credit # _____

Amount: U.S.\$ _____

To: Port of Oakland
530 Water Street
Oakland, California 94604

_____, 20__

Ladies/Gentlemen:

For the account of _____, a _____ corporation, we hereby issue in your favor our Irrevocable Letter of Credit for U.S. \$ _____.

The amount of this credit is available to you by your drafts on us at sight accompanied by the following statement signed by your Executive Director or Chief Financial Officer (including individuals designated as "Acting" in such positions).

The Port of Oakland hereby certifies that it is entitled to draw upon _____ letter of credit number _____ in the amount of \$ _____ on account of the Port of Oakland's good faith belief that Airline is in default under the _____ between Airline and the Port of Oakland dated _____.

Drafts must clearly specify the number of this credit and be presented at our counters at _____, in Oakland, California (or in San Francisco, California) not later than the close of business on _____, 20 ____, or such later date as this credit shall have been extended to.

This credit shall be deemed automatically extended without amendment for additional periods of one year from the present or any future expiration date unless thirty (30) days prior to any such date we notify you by notice to the Executive Director and separate notice to the Chief Financial Officer, at 530 Water Street, Oakland, California 94604, and _____ by registered mail that we elect not to consider the letter of credit renewed for any such additional period. You may then draw on us at sight with the above specified signed statement.

This Letter of Credit is subject to the "Uniform Custom and Practice for Documentary Credits" (1993 Revision), International Chamber of Commerce Publication No. 500.

We engage with you that drafts drawn under and in compliance with the terms of this credit will be duly honored by us on delivery of documents as specified.

Very truly yours,

Authorized signature and title

ATTACHMENT B

AIRPORT RATES AND CHARGES

- a. Landing Fee:
Effective 1/1/00, the landing fee is \$ per 1,000 lbs. of certificated maximum gross landing weight.

- b. Facility Fees:
See Attached Schedule "A" for facility fees effective 1/1/00.

- c. FIS Fees:
Effective 1/1/00, the FIS Fee is \$ per passenger.

- d. Signage Modifications: \$.

- e. Amount of Contract Security: \$.