

## ANNEX "A"

### SPACE/USE PERMIT

For the better promotion of commerce and navigation and the development of the Port of Oakland and Oakland International Airport for the benefit of the public, the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, herein referred to as the "Port", by its execution hereof, hereby authorizes the following person or entity, hereinafter referred to as "Airline," to conduct business and/or occupy space at Oakland International Airport, hereinafter referred to as the "Airport," for the purpose or purposes and on the terms and conditions hereinafter stated.

1. **Airline.** The name, address and telephone numbers of the Airline hereunder are as follows:

Name:

Address:

Telephone:

Contact:

2. **Business to be Conducted.** Airline is authorized to conduct only the following business at the Airport: The operation of a transportation system by aircraft for the carriage of persons, property and mail, including activities reasonably necessary for such operations. Airline shall have no right to offer or sell food, beverages or merchandise under this Permit.

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

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

4-b. **Consideration-Percentage of Receipts.** Airline hereby agrees to pay to Port a percentage of the gross receipts derived from its business at the Airport as specified in **Attachment A, paragraph A-3** and in accordance with the provisions of Paragraph H ("Percentage Fees"), if applicable.

All payments due hereunder shall be remitted to: \_\_\_\_\_,  
\_\_\_\_\_, without demand, set-off or deduction.

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

5. **Term.** This Permit is effective, from the date of execution by the Port, to permit use or occupancy for the period stated in **Attachment A, paragraph A-4**, unless sooner terminated in accordance with the terms and provisions hereof. Notwithstanding the foregoing, however, either party hereto shall have the right to terminate this Permit prior to the date upon

which it would otherwise expire by giving the other party at least thirty (30) days written notice of its intention to do so.

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

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

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

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

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

By: \_\_\_\_\_  
Director of Aviation

**NOTE:** Please also initial page  
B-29 of Attachment B to Waive  
Trial By Jury

**NAME OF AIRLINE:**

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

Attest

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

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

Approved as to form and legality this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Port Attorney  
Port Resolution No. \_\_\_\_\_  
P.A. # \_\_\_\_\_

**ATTACHMENT A**  
**TO**  
**SPACE/USE PERMIT**

**A-1. ASSIGNED SPACE TO BE OCCUPIED**

<b>Location</b>	<b>Exclusive, Preferential or Common Use</b>	<b>Class</b> (1 )  (2 )	<b>S.F.</b>	<b>Rate P.S.F.</b>	<b>Annual Rate</b>	<b>Monthly Rate</b>
			<b>TOTAL</b>			

Space Exhibit Attached

**A-2. ASSIGNED SPACE RENTAL CHARGE**

ANNUAL

MONTHLY

The fee for the use of certain Common Use space shall be a minimum of \$250 per Aircraft Turn (as defined in paragraph (d) of paragraph A-7).

**A-3. PERCENTAGE OF GROSS RECEIPTS**

Not Applicable. The provisions of paragraph H of Attachment B shall also not be applicable to Airline.

**A-4. TERM**

The period of occupancy permitted under this Permit will expire 270 days from the date that this Permit is executed by the Port and signed by the Port Attorney (“Commencement Date”); provided, however, that once this Permit has been approved by duly adopted resolution of the Port and written notice of such approval has been given by Port to Airline, such period of occupancy will expire on the tenth (10<sup>th</sup>) anniversary of the Commencement Date.

A-5. INSURANCE REQUIREMENTS

The minimum coverage required is:

Business automobile liability	<b>\$ 5,000,000</b>
Comprehensive general liability	<b>\$ 5,000,000</b>
Workers Compensation	<b>As required by the laws of California.</b>
Employer Liability	<b>\$1,000,000</b>

Evidence of required insurance coverage is to be kept on file with the Port

A-6. AMOUNT OF PERFORMANCE DEPOSIT

\$\_\_\_\_\_

A-7. SPECIAL CONDITIONS

(a) Airline agrees that any performance deposit required under this Permit may be applied by the Port to any amount owed by Airline under its Airline Operating Agreement with the Port, and that any contract security required under such Airline Operating Agreement may be applied by the Port to any amount owed by Airline under this Permit.

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

(c) Space identified as “Preferential” in paragraph A-1 shall be preferential use space, of which Airline shall have first priority of use for its own aircraft operations. The Port shall retain the right to schedule the use of this space on a second priority use basis to other airlines operators. Port also reserves the right to require the removal of an aircraft of Airline from any preferential use space at any time that is more than one (1) hour before or after the aircraft’s scheduled departure time, unless other preferential use space is then available to accommodate the aircraft of a third party, as reasonably determined by the Port, and provided that the Port shall provide a space on the Airport to park such aircraft of Airline.

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

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

(ii) The duration of each Common use of airline ticket office and ticket counter space (“Aircraft Turn”) by Airline shall be four (4) hours, commencing not more than three (3) hours before each of Airline’s schedule aircraft departure times. Airline’s use of such Common use space referenced above beyond the designated duration of four (4) hours because of aircraft delays, mechanical problems, or other problems beyond the control of Airline, shall be

only at the discretion of Landside Operations at the Airport, and shall be limited to such time as may be necessary to correct the cause of the delay.

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

(f) Port expressly reserve the right to reassign or relocate any Airline from and to any permitted space under this Permit, whether exclusive, preference or common use, upon giving of thirty (30) days notice to the Airline.

(g) Port shall pay all utilities (except telephone) within the Landside passenger terminal buildings.

A-8. ASSIGNMENT

The assignment processing fee for the assignment of this Permit shall be \$\_\_\_\_\_.



## **ATTACHMENT B**

### **OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT**

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

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

set of reproducible, final “as built” drawings of any all such alterations or improvements. Airline waives the right to make repairs at the expense of the Port and waives the benefit of the provisions of Section 1941 and 1942 of the California Civil Code.

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

C. **Port's Right to Enter.** Port and its designated agents shall have the right to enter the Assigned Space at any reasonable time for inspection, maintenance, repair, attending to emergencies or any other reasonable purpose.

D. **Utilities.** Except as otherwise provided for in Attachment A, paragraph A-7, Airline shall be responsible for obtaining and paying for all utilities (including, without limitation, electricity, water, and telephone, but excluding sewer) used or consumed in the Assigned Space.

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

F. **Taxes and Assessments.** Airline shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges, and any business tax lawfully imposed by the City of Oakland (“City”)) and impact fees which are levied against or in connection with the Assigned Space, Airline's interest therein and the property and improvements of Airline for the term hereof or attributable to Airline's activities at the Assigned Space or at the Airport. If the term of this Permit expires or is earlier terminated prior to the close of the tax year for which any such tax is payable, or if the term of this Permit commences on a date other than the first day of such tax year, Airline shall be responsible for paying a percentage of the tax calculated by dividing the number of days that this Permit was in effect during such tax year by the total number of days that the Assigned Space was leased to tenants during such tax year. If this Permit is in effect for a period less than any entire period for which an assessment other than a tax is imposed, Airline shall pay a percentage of the assessment calculated by dividing the number of days this Permit was in effect during that assessment period by the total number of days in the assessment period. Airline's obligations under this Paragraph F shall survive the expiration or earlier termination of this Permit. Nothing contained herein shall be construed as a release or waiver on the part of the Port, or the City, of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which they, or either of them, may lawfully impose on the business or property of Airline.



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

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

**H. Percentage Fees.** In the event that the consideration to be paid under Paragraph 4 hereof of this Permit is based in whole or in part on a percentage of Airline's "Gross Receipts," such term as used herein shall mean all receipts derived by Airline or any agent of Airline from its business at the Airport, excluding only (i) the amount of all sale refunds actually made by Airline, (ii) the amount of any federal, state or municipal sales or other similar taxes separately stated to and paid by customers of Airline now or hereafter levied and imposed and (iii) the proceeds from the sale of capital assets. If Airline shows the percentage of Gross Receipts payable to Port as a separate charge to Airline's customers, then this separate charge must also be included in Airline's Gross Receipts.

No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit cards or by reason of any other credit arrangements. If any charge customarily made by Airline for goods or services is not assessed, charged or collected, irrespective of the reason therefor, then the amount of Airline's customary charge therefor shall nevertheless be included in determining Gross Receipts. All computations in the determination of Gross Receipts shall be made in accordance with the terms of this Permit.

On or before the fifteenth (15th) day of each calendar month during the term hereof and of the calendar month immediately following the end of the term, Airline shall deliver to Port a statement signed by an officer of Airline, in such form and with such detail as Port may reasonably request, setting forth Airline's Gross Receipts (as the same are hereinbefore defined) during the preceding calendar month, and separately identifying all receipts derived by Airline during such month which have been excluded from the computation of Gross Receipts, together with payment of the Percentage Fees due by reason thereof.

Airline shall maintain complete and accurate books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of Airline's Gross Receipts. Such books and records shall be maintained in a form consistent with generally accepted accounting practices. All such books and records shall upon reasonable notice from Port be made available, either at the Assigned Space, if assigned, or at the offices of the Port, for inspection by Port through its duly authorized representatives at any time for up to four (4) years after the calendar year to which such books and records pertain; provided, however, that if prior to the expiration of such four (4) year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Permit by the Port, such books and records shall continue to be maintained by Airline, and Port shall continue to have the right to inspect such books and 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). Any such inspection at the Assigned Space will be conducted during reasonable business hours and in such a manner and at such time as to not unduly interfere with the conduct of Airline's business. Port shall further have the right, upon reasonable written notice to Airline, to cause an audit to be made of the books and records of Airline and its assignees and agents which relate to its operations at the Airport to determine the correctness of the Percentage Fees paid by Airline hereunder. If, as a result of such audit, it is established that Percentage Fees have been underpaid to Port, Airline shall forthwith, upon written demand from Port, pay the difference to Port, together with interest and penalties thereon at the applicable rate provided by duly enacted Port ordinance, from the date such amount or amounts should have been paid. Further, if such audit establishes that Airline has understated and underpaid the total Percentage Fees due hereunder during the audit period by two percent (2%) or more, then the entire expense of such audit shall be borne by Airline.

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

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

J. **Waiver of Damage.** Airline hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect, deficiency or impairments of any of the services in or to the Assigned Space or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is due to the willful misconduct or gross negligence of Port or its officers, agents or employees.

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

(1) Business automobile liability insurance (any auto, including owned autos, non-autos and hired autos), and comprehensive general liability insurance (including, but not limited to Assigned Space or on the Airport/Operations, Underground, Explosion and Collapse Hazard, Products/Completed Operations, Contractual, Independent Contractors, Broad Form Property Damage and Personal Injury coverage, as applicable), protecting Airline, the Port and its members (including, without limitation, members of Port's Board of Commissioners), officers, agents and employees, all of whom shall be named as additional insureds, from and against any and all liabilities arising out of or relating to Airline's use or occupancy of the Assigned Space or the conduct of its operations under this Permit, in such form and with such companies as the Port may reasonably approve, with a combined single limit (or its equivalent) per occurrence of not less than the amount set forth in Attachment A, paragraph A-5 to this Permit, with a deductible reasonably acceptable to the Port, with a waiver of any right of subrogation that the insurer may have against Port; with contractual liability coverage for Airline's covenants to and indemnification of the Port under this Permit, and with the insurance company obligated to use counsel reasonably acceptable to the Port Attorney in carrying out its obligations to the Port. This insurance shall provide that it is primary insurance as respects any other valid and collectible insurance Port may possess, including any self-insured retention or deductible Port may have, and that Port shall not be obligated to contribute to cover any loss, damage or liability. This insurance shall also provide that it shall act for each insured and each additional insured as though a separate policy has been written for each; provided, however, that this provision shall not operate to increase the policy limits of the insurance; and

(2) Workers compensation insurance as required by the laws of California; provided, however, that Airline may self-insure its workers compensation liability, subject to all applicable requirements of California law, together with employer liability insurance in the coverage amount of not less than \$1,000,000.

At least three (3) business days prior to the commencement of the term of this Permit and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided hereunder by Airline, Airline shall cause a certificate or certificates of insurance to be furnished to Port evidencing all such coverage, and such certificate shall provide that the policy or policies will not be cancelled nor the limits thereunder materially changed without first providing at least thirty (30) days' written notice thereof 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.

L. **Assignment and Subletting.** Airline may not assign this Permit or any of the rights granted to it hereunder or sublet the Assigned Space or any portion thereof except to assign the right to use no more than forty-nine percent (49%) of the Assigned Space to another airline pursuant to a handling agreement, provided that the Airline shall (i) charge the assignee no more than one hundred and twenty-five percent (125%) of the proportionate charges the Airline pays the Port for such portion of the Assigned Space, (ii) pay the Port an assignment processing fee in the amount indicated in Attachment A, paragraph A-8 to this Permit, (iii) provide the Port with a copy of said assignment, and handling agreement, and (iv) obtain the prior express written consent of Airport General Manager in each instance which may be granted or withheld in the Port's sole discretion. For purposes of this paragraph L, 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. Airline shall indemnify and defend the Port for, from and against any matters, which arise as a result of the Airline's failure to disclose any relevant information about the Assigned Space to any assignee or sublessee of the Airline.

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

N. **End of Term.** At the end of the term or upon the earlier termination of this Permit, Airline shall deliver to Port possession of the Assigned Space and all of the fixtures and equipment of Port in their original condition in all respects, reasonable use and wear excepted, and Airline agrees to reimburse Port for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition; provided, however, in the event Airline has caused any alterations or improvements to be made to the Assigned Space, including but not

limited to the addition, relocation or removal of partitions and doorways (which such alterations or improvements shall be made at Airline's cost and only with the prior express written approval of Port in each instance), the Port may elect, with respect to each such alteration or improvement, to accept it as it was at the time it was made or constructed, reasonable use and wear excepted, or to require the same to be restored to its original condition at Airline's expense.

O. **Holding Over**. If Airline or any assignee or sublessee thereof continues to occupy the Assigned Space after the term of this Permit has terminated in any manner and the Port has not objected thereto, such holding over shall be deemed a month to month Permit terminable on thirty (30) days notice given by either party (the "Hold-Over Permit") on the same terms and conditions as provided in this Permit, except the monthly rate during any such Hold-Over Permit shall be the monthly rate that is established from time-to-time by Port ordinance for a particular annual period of the Hold-Over Permit, or if the monthly rate for the Assigned Space is not established by a Port ordinance, then the monthly rate shall be fixed by the Director of Aviation of Port from time-to-time by giving Airline written notice thereof at any time not less than seven (7) days before the expiration of any monthly period, to be effective at the expiration of such month. At the end of the term of this Permit, and at the end of every twelve months of the Hold-Over Permit thereafter ("Rate Adjustment Date"), the monthly rate in effect immediately before the Rate Adjustment Date shall be increased (but not decreased) by the percentage increase (but not decrease), if any, in the last Consumer Price Index (as hereinafter defined) published prior to the date of each succeeding Rate Adjustment Date. Such adjustment shall be in addition to any adjustment set by Port ordinance or fixed by the Director of Aviation of the Port. "Consumer Price Index" as used herein means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said Index is changed so that the base year differs from the base year used in the last index published prior to the commencement of the term of this Permit, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. In addition to the terms above, the Director of Aviation of Port, upon thirty (30) days written notice to Airline, may change any of the other terms and conditions of the Hold-Over Permit.

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

If Airline or any assignee or sublessee thereof shall continue to occupy the Assigned Space after the term of this Permit has terminated in any manner and the Port has objected thereto, then the Port shall be entitled to double the monthly rate specified in Paragraph 4 hereof, and acceptance by Port of any sums after any such objection shall not constitute a renewal of this Permit or a consent to such occupancy, nor shall it waive Port's right of re-entry or any other right available to it under the laws of California or the provisions of this Permit.

P. **Reserved.**

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

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

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

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

S. **Interest and Penalty on Sums Due Port.** Any sums payable by Airline to Port under any provision of this Permit which are not paid when due shall bear interest and penalty at the applicable rate provided by duly enacted Port ordinance.

T. **Performance Deposit.** In the event that a performance deposit is required under Paragraph 7 of this Permit, Airline shall deposit such sum with Port upon execution of this Permit, and such sum shall be retained by Port as security for the faithful performance of Airline's obligation hereunder. Port shall have the right, but not the obligation, to apply said performance deposit to the payment of any sum due to Port which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Port in curing any default of Airline, or to the cost of restoring the Assigned Space or its furnishings, fixtures or equipment to their original condition, reasonable use and wear excepted. In the event that all or any portion of the performance deposit is so applied, Airline shall promptly upon demand by Port remit to Port the amount of cash required to restore the performance deposit to its original sum, and Airline's failure to do so within fifteen (15) days after its receipt of such demand shall constitute a default under this Permit. If said deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Airline, without interest, within ninety (90) days after the end of the term of this Permit. The Port will not pay any interest on the performance deposit.

In the event that Airline has another agreement or other agreements with the Port that requires or require Airline to maintain a deposit with the Port, Airline, at its election may

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

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

#### V. **Port's Reserved Rights.**

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

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

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

(4) Airline shall cooperate in implementing the goals of the Port's Employment Resources Development Program, hereinafter called the "ERDP" as set forth in the Port Resolution No. 26291, as amended to date. Airline understands the Port's ERDP seeks to address the needs of the Port tenants and professional service providers for a qualified work force and the needs of Oakland's chronically unemployed and under-employed for employment, by identifying employment opportunities, by providing employment training and counseling for persons seeking such opportunities and facilitating the employment of those persons qualified to fill the jobs identified. Airline understands that cooperation in implementing the goals of the Port's ERDP involves considering Port ERDP referrals consistent with relevant state and federal anti-discrimination regulations seeking to insure equal employment opportunity. Airline shall

provide to the Port's Executive Director or his or her designee copies of all solicitations or advertisements for employees at the Airport placed by or on behalf of Airline, so that the Port may assist in providing Airline with the names of qualified unemployed and under-employed residents of Oakland, including minorities, women, physically handicapped persons, and veterans seeking such employment or training opportunities through the Port's ERDP efforts."

**W. Discrimination Not Permitted.**

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

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

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

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



as it may be amended. Airline also assures Port that it will require its covered suborganizations to provide written assurances to the same effect and provide copies thereof to Port.

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

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

(a) That Airline shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, actual or perceived sexual orientation, national origin, age, 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 regulation, 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.

(6) In the event of breach of any of the nondiscrimination covenants in this Section W, Port shall have the right, in addition to all other legal remedies, to terminate this 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 law and regulations or termination because of the breach thereof shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, if applicable, are followed and completed, including exercise or expiration of appeal rights; and further provided however that such right of termination for the breach of California nondiscrimination laws and regulations shall not be effective until thirty (30) days after written notice of termination has been given to Airline.

#### **X. Federal Aviation Administration Requirements.**

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

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

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

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

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

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

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

#### **Y. Toxic Materials**

(1) 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:

(a) "Airline Representative": Airline's agents, employees, contractors, subtenants, licensees or invitees.

(b) "Agreement": means this Permit.

(c) "Clean-up": Evaluation, investigation, testing, feasibility studies, risk assessments, removal, disposal, remediation, containment, capping, encapsulating and monitoring of Toxic Materials and restoration of the Assigned Space.

(d) "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 Permit 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.

(e) "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.

(f) "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.

**(2) General Prohibitions.**

(a) 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 Assigned Space 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.

(b) 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 Section Y.

(c) Wells and Groundwater: Airline shall not install, operate or remove any well, or use any groundwater, on the Assigned Space 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 Section Y.

**(3) 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.

**(4) 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 Assigned Space, 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 Assigned Space in compliance with all Laws and only by duly licensed and insured carriers in compliance with all Laws.

**(5) 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.

**(6) 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 Assigned Space.

**(7) Entry and Inspection.**

(a) 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 Assigned Space at any reasonable time (i) to confirm Airline's compliance with the provisions of this Section Y, including the right to physically investigate the condition of the Assigned Space 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 Section Y. The Port's said right shall include the right to inspect, investigate, sample and/or monitor the Assigned Space, 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 Section Y. 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 Section Y. The Port shall use reasonable efforts to minimize any interference with Airline's business caused by Port's entry onto the Assigned Space, but Port shall not be responsible for any interference caused thereby.

(b) 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 the Assigned Space and Airline's and Airline's Representatives' use, handling, storage or disposal of all Toxic Materials comply with this Section Y. The Environmental Audit shall be conducted by independent, qualified, licensed environmental consultants selected by the Port. The Environmental Audit shall include

an inspection of the Assigned Space, interviews with the occupants of the Assigned Space and any other matters which the consultants believe, in the exercise of their professional judgment, are reasonably necessary to ascertain whether the Assigned Space are in compliance with this Section Y, 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 obligation under this Section Y.

(c) Required Compliance. If the Assigned Space are not in compliance with this Section Y, Airline shall, at its cost, promptly take all action necessary to bring the Assigned Space into compliance, including all Clean-Up.

(8) **Indemnity.**

(a) 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 ("the Indemnitees")) from and against any and all claims, costs, penalties, fines, liabilities, losses, including without limitation: (i) diminution in value of the Assigned Space and of any other Port property; (ii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Assigned Space (including, without limitation deed restrictions), or any other Port property; (iii) damages arising from any adverse impact on marketing of space in the Assigned Space or other Port property (unless the Assigned Space is in the passenger terminal building); (iv) Airline's responsibilities, if any, for pre-existing contamination as described in subsection (h) hereinbelow; (v) increased costs of maintenance, construction, repairs or major improvements to the Assigned Space, or any other Port property; (vi) Clean-up costs; and (vii) sums paid in settlement of claims, paralegal and 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 Section Y 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 Assigned Space or other Port property, by Airline or by any Airline Representative, and with respect to all exclusive use (rather than preferential or common use) Assigned Space, any third party, known or unknown, during the term of this Agreement.

(b) Notice and Opportunity. The Port shall give to Airline reasonable notice of the Port's knowledge of Toxic Materials affecting the Assigned Space, 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.

(c) 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”).

(d) 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 legal and reasonable paralegal and attorneys fees (including costs attributable to in-house paralegal and 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.

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

(f) 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.

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

(h) Pre-Existing Contamination. Notwithstanding any other provision of this Section Y, Airline shall not be responsible for any Toxic Materials that were on the Assigned Space prior to Airline’s taking possession 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 Assigned Space 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 other parties (including Airline’s Representatives) on the Assigned Space 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 Assigned Space in order to undertake all Clean-up activities that the Port, at its sole discretion, may take; (2) Airline shall be responsible for any such Toxic Materials on the Assigned Space prior to Airline’s taking possession if such Toxic Materials were present on the Assigned Space due to the negligent or intentional acts or omission of Airline or any Airline Representative; and (3) 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 Assigned Space 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 Assigned Space).

**(9) Clean-up.**

If Airline or any Airline Representative, and with respect to all exclusive use (rather than preferential or common use) Assigned Space, any third party, known or unknown (except the Indemnitees), causes contamination of surface water, groundwater or soil or other portions of the Assigned Space 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 will 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.

**(10) 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 Assigned Space 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.

**(11) 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 Section Y, and shall not allow such obligations to become a lien or charge against or upon the Assigned Space or the Port.

**(12) Delivery of Documentation.**

(a) 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 Assigned Space or other Port property, Airline shall concurrently also provide a copy of such disclosure or report to the Port.



(b) Business Plan. At any time that Airline's business conducted within the Assigned Space 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.

(c) 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 Assigned Space or other Port property.

(d) 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 Assigned Space or other Port property.

(e) Documents. Airline shall maintain for periodic inspection by the Port and deliver to Port upon request (unless required by other provisions of this Section Y 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 Assigned Space 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 Assigned Space; 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 Assigned Space.

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.

(13) **Expiration of Term of Agreement.**

(a) Periodic Monitoring; Surrender. Airline regularly shall monitor and inspect the Assigned Space and all activities thereon with the objectives of discovering any Toxic Material that Airline is required under the terms of this Section Y 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 subparagraph is not intended to and shall not be construed to delay any Clean-up that is required by Laws or other provision of this Section Y 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 Section Y and the Laws in order to (i) surrender the Assigned Space 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 Assigned Space 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.

(b) 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 Assigned Space or otherwise installed by Airline, or at Airline's direction.

(c) Extension of Term. If Airline does not surrender the Assigned Space 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 have the option either (a) to extend this Agreement for the period of time necessary for Airline to bring the Assigned Space to such condition, and/or clean up or remediate the Toxic Materials or close or remove storage tank(s), subject, however, to Port's reserved right at the Port's election to terminate the Agreement, as so extended, at any time upon at least 30 days prior written notice to Airline, and Airline diligently shall pursue to completion during such extension all work necessary to remove all Toxic Materials, for which Airline is responsible, from the Assigned Space and/or to close or remove storage tank(s), or (b) not to extend the Agreement. Airline shall notify the Port in writing promptly after Airline becomes aware that Airline likely will not complete required work before the scheduled date of expiration or termination of the Agreement. Absent contrary written notice from Port to the Airline (whether or not Airline has given the Port Airline's said notice that Airline likely will not timely complete said work), the Port shall be presumed to have elected to extend this Agreement if Airline has not completed said work. If the Port does not extend this Agreement, Port shall provide Airline with reasonable access to the Assigned Space so that Airline can fulfill its obligations under this Section, which Airline agrees to pursue diligently to completion.

(d) 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.

(e) 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 Assigned Space and shall provide a certificate to the Port certifying that there are no Toxic Materials in, on or about the Assigned Space 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 Assigned Space as required herein, Airline shall indemnify, protect, defend and hold the Port harmless from all damages in connection with the condition of the Assigned Space such as damages occasioned by the inability to re-let the Assigned Space or a reduction in the fair market and/or rental value of the Assigned Space by reason of the existence of any Toxic Materials in or around the Assigned Space, as more fully set forth above.

(f) 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 Section Y. 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 fails to timely satisfy all of the conditions contained in the proviso at the end of the immediately preceding sentence.

(g) Compensation During Extension. In the event the Agreement is extended pursuant to the foregoing provisions, then during the period of extension, all of the terms of the Agreement shall continue to apply except that the amount of any fixed monthly rent under the Agreement shall be increased 50%. The Port may increase the amount of any fixed monthly rent under the Agreement by up to an additional 50% for each six-month period, or portion of a six-month period, that the term extends beyond the scheduled expiration or termination date. 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 Assigned Space 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.

(14) **Consultants and Contractors.**

All consultants or contractors performing work on behalf of Airline concerning Toxic Materials on the Assigned Space 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 Assigned Space.

(15) **Spill Response Plan.**

Airline shall at all times maintain with the Port and post in an appropriate location on the Assigned Space 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.

(16) **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 the Port.

**(17) Port's Claims.**

Nothing in this Section Y 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 Assigned Space.

**(18) 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 Assigned Space.

**Z. Prevailing Wage Requirements.**

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

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

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

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

The Private Work Prevailing Wage Requirements shall not apply to tenant improvements costing less than \$50,000.00, nor to tenant improvements for which the initial building permit for such work is issued more than one year after the certificate of occupancy is

approved on the core and shell. The \$50,000.00 cost shall be adjusted annually pursuant to the CPI.

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

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

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

The prevailing wage requirements of this subsection will be monitored and enforced by the Port. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this section shall preclude its enforcement by the California Division of Labor Standards Enforcement.

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

Airline agrees that to the extent that Airline is required to comply with the prevailing wage requirements, Airline shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of the Port's first approval of a building permit or other approval of the work. Copies of

the applicable prevailing rate of per diem wages are on file at the Port's principal office and will be made available to any interested party on request. Airline agrees to post a copy of the prevailing rate of per diem wages at each job site.

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

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

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

Airline agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Paragraph Z showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the Port within a reasonable time not to exceed fifteen (15) days from close of payroll by the respective employer.

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

In the event of repetitive breach of the requirements of this subsection by Airline, the Port shall be entitled, in addition to all other remedies hereunder for breach of this Permit, to appoint at Airline's expense a special monitor to oversee Airline's compliance. Fees for said special monitor shall be billed to Airline, which fees Airline agrees to pay as additional rent

within 10 days after Airline's receipt of such bill. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after the Port gives to Airline written notice specifying in what respects Airline must comply, Airline shall forfeit as a penalty to the Port for each worker twenty-five dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated.

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

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

AA. **Miscellaneous.**

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

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

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

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

(5) This Permit shall be governed by and construed in accordance with the laws of the State of California (without regard to principles of conflict of laws). It is agreed that if any covenant, condition or provision contained herein is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

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



for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Permit.

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

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

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

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

**(11) AIRLINE AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN**

**CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS AGREEMENT.**

\_\_\_\_\_ **[To be initialed by Port]**

\_\_\_\_\_ **[To be initialed by Airline]**