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**AIRLINE USE AND LEASE AGREEMENT**

**THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the NORFOLK AIRPORT AUTHORITY, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "AUTHORITY," and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and authorized to do business in the Commonwealth of Virginia, hereinafter referred to as "AIRLINE."**

**WHEREAS the City of Norfolk, hereinafter referred to as "City," has conveyed the fee simple interest in all the real property and improvements constituting the Norfolk International Airport, hereinafter referred to as "Airport," located in the City of Norfolk, Commonwealth of Virginia to the AUTHORITY; and**

**WHEREAS, the City has authorized the AUTHORITY to be responsible for the operation, maintenance, improvement and promotion of the Airport;**

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

**WHEREAS, AIRLINE is engaged in the business of scheduled transportation by air of persons, property, mail and cargo; and**

**WHEREAS, AIRLINE desires to obtain certain rights, services and privileges in connection with the use of the Airport and its facilities, and AUTHORITY is willing to grant and lease the same to AIRLINE upon the terms and conditions hereinafter stated; and**

**WHEREAS, AIRLINE and AUTHORITY agree to enter into this Agreement, specifying the rights and obligations of the parties with respect to the operation of the Airport by AUTHORITY and the use and occupancy of the Airport by AIRLINE;**

**NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, AUTHORITY and AIRLINE do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:**

## ARTICLE 1: DEFINITIONS

### 1.01 Definitions

The following words, terms and phrases, wherever used in this Agreement, shall, for the purposes of this Agreement, have the following meanings:

Act shall mean Sections 144(a) through 144(p) of the Norfolk Charter of 1918 and the acts amendatory thereof or supplemental thereto.

Affiliate shall mean any corporation or other entity that is (i) a parent or wholly-owned subsidiary of Host Airline or is under common ownership and control with Host Airline, (ii) a Code Share Airline with Host Airline and is operating at the Airport, or (iii) operating at the Airport under Host Airline's trade name.

Agreement shall mean this Airline Use and Lease Agreement between AUTHORITY and AIRLINE, as the same may be amended or supplemented from time to time pursuant to the terms hereof.

Air Transportation Company shall mean a company engaged in the business of scheduled or non-scheduled commercial transportation by air of persons, property, mail, and/or cargo.

Air Transportation Business shall mean that business operated by AIRLINE at the Airport for the commercial transportation by air of persons, property, mail, and/or cargo.

Aircraft Aprons shall mean those parts of the Ramp Area adjacent to the Terminal that are used for the parking of aircraft and support vehicles, and the loading and unloading of aircraft.

Airfield shall mean the Landing Area and Ramp Area, and other facilities supporting the activity of military, general aviation, and commercial aircraft.

AIRLINE shall mean the Scheduled Air Carrier executing this Agreement.

Airline Airport Affairs Committee or AAAC shall mean collectively the authorized representatives of each Signatory Airline who shall meet from time to time with representatives of the AUTHORITY to receive information and provide input from the Signatory Airlines with regard to the operation and development of the Airport.

Airline Premises or Premises shall mean those areas assigned to AIRLINE as Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as defined herein, and shown on Exhibits "C" and "D," attached hereto.

AIRLINE'S Share of Surplus Revenue shall mean the amount, if any, calculated as a credit to the Signatory Airlines and Affiliates in accordance with the provisions of Exhibit "E".

**Airport** shall mean the Norfolk International Airport owned and operated by the AUTHORITY, as the same may exist from time to time, including all real property and easements, improvements and appurtenances thereto, structures, buildings, fixtures, machinery, equipment, vehicles, supplies and other tangible personal property or interest in any of the foregoing, now or hereafter leased or acquired by AUTHORITY.

**Amortization Requirements** shall mean the recovery or repayment of capital costs, excluding any amounts funded with PFCs or federal, state, or local grants, in substantially equal annual installments for a Capital Expenditure which is not debt financed. The amortization charge, if any, for each such expenditure shall be computed using the useful life of the Capital Expenditure as the amortization period, an interest component equal to the Thirty-Year Revenue Bond Index, published by the "Bond Buyer," (except that no interest component shall apply to Capital Expenditures funded with Revenues from any Air Transportation Company) and the date as the first day of the month after said Capital Expenditure is placed in service. In no event shall the total additional new amortization requirements for a Fiscal Year for all Airline-supported Cost Centers exceed \$100,000, net of direct rental reimbursements for amortization of new facilities.

**AUTHORITY** shall mean the Norfolk Airport Authority, a political subdivision of the Commonwealth of Virginia, and shall include such person or persons as may from time to time be authorized in writing by AUTHORITY to act for the AUTHORITY with respect to all matters pertaining to this Agreement.

**Bonds** shall mean any bonds or other financing instrument or obligation of the AUTHORITY having a first lien on Revenues, after the payment of O&M Expenses, including, to the extent not treated as an O&M Expense, bonds issued by the AUTHORITY for the purposes of improving, maintaining and developing the Airport other than Subordinated Indebtedness or Other Indebtedness.

**Capital Charge Coverage** shall mean, for any Fiscal Year, an amount at least equal to twenty-five percent (25%) of Debt Service if required by any Resolution(s) or other financing document(s) of the AUTHORITY, plus such other amounts as may be established with respect to Other Indebtedness.

**Capital Charges** shall mean (i) Debt Service, (ii) Other Debt Service, and (iii) Amortization Requirements.

**Capital Expenditure** shall mean an expenditure made to acquire, purchase or construct a single capital item or project for the purpose(s) of improving, maintaining or developing the Airport and shall include expenses incurred for development, study, analysis, review or planning efforts. For the purposes of this Agreement, a Capital Expenditure shall be \$50,000 or more in net cost after application of any applicable federal, state and local grants or PFC funds for such Capital Expenditure and subject to annual adjustment in accordance with the Cost Increase Factor.

**Capital Improvement Program or CIP** shall mean each five-year capital improvement plan as amended from time to time by the Authority

**City** shall mean the City of Norfolk, a political subdivision of the Commonwealth of Virginia.

**City Airport Assessment** shall mean that sum approved by the AUTHORITY to be paid to the City in accordance with an agreement between these two parties dated as of January 18, 2000 and the settlement agreement dated March 23, 1999 between the City and certain airlines. The calculation of such sum shall be in the manner set forth in said agreements.

**Code-Share Airline** shall mean an Air Transportation Company providing regularly scheduled air service at the Airport under a common airline code with a Host Airline.

**Contract Security** shall mean that requirement established in Section 7.07 of this Agreement.

**Cost Centers** shall mean those areas or functional activities of the Airport as set forth in Exhibit "B," grouped together for the purposes of accounting for Revenues, O&M Expenses, Capital Charges, Capital Charge Coverage, and any other requirements including reserves, established by any Resolution(s) or other financing document(s) of the AUTHORITY.

**Cost Index** shall mean the Implicit Price Deflator Index published by the U.S. Department of Labor, Bureau of Labor Statistics, or such other standard or successor index as the AUTHORITY may deem appropriate to use under the circumstances.

**Cost Increase Factor** shall mean the greater of zero or the annual change in the Cost Index, computed by taking the latest available monthly Cost Index for the then-current year and dividing by the Cost Index for the same month of the previous year.

**Day or Days** shall mean, when referenced in this Agreement, a calendar day or days.

**Debt Service** shall mean the amount required during any period for the accrual and payment of principal of, interest on, and premium, if any, and other fees and amounts associated with all series of Bonds and Subordinated Indebtedness, all as set forth in any Resolution(s) or other financing document(s) of the AUTHORITY.

**Debt Service Reserve Fund** shall mean any fund or funds established by the AUTHORITY for monies necessary to satisfy any Debt Service Reserve Requirement established in any Resolution(s) or other financing document(s) of the AUTHORITY.

**Debt Service Reserve Requirement** shall mean the requirement, if any, for the Debt Service Reserve Funds for all series of Bonds, Subordinated Indebtedness, and Other Indebtedness.

**Enplaned Passenger** shall mean all local boarding, interline transfer, and intraline transfer revenue passengers, including zero fare passengers of AIRLINE and its Affiliate(s) at the Airport, other than AIRLINE's employees or AIRLINE's retirees traveling on AIRLINE passes.

**Exclusive Use Premises** shall mean the Terminal space leased by AUTHORITY to AIRLINE for AIRLINE's exclusive use, as more fully described in Article 4 and shown in Exhibit "C" of this Agreement.

**Executive Director** shall mean the Executive Director of the AUTHORITY, and shall also include such person or persons as may from time to time be authorized in writing by AUTHORITY or by the Executive Director or applicable law to act for the Executive Director with respect to any or all matters pertaining to this Agreement.

**FAA** shall mean the Federal Aviation Administration, or its authorized successor(s).

**Fiscal Year** shall mean the annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve consecutive months, ending with the last day of June of any year.

**Host Airline** shall mean a Signatory Airline that is accommodating an Affiliate(s) within its Airline Premises.

**Joint Use Premises** shall mean those Terminal areas which may be assigned to two or more Scheduled Air Carriers, as more fully described in Article 4 and shown in Exhibit "C" of this Agreement.

**Landing Area** shall mean those portions of the Airport provided for the landing, taking off, and taxiing of aircraft, including without limitation, approach and turning zones, avigation or other easements, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith; as the same now exist or hereafter may be modified, changed or developed.

**Maximum Gross Landed Weight** shall mean the maximum gross certificated landed weight in one thousand pound units, approved by the FAA for landing such aircraft at the Airport.

**Net Requirement** shall mean the Net Terminal Requirement and Net Airfield Requirement set forth in Exhibit "E".

**Operation and Maintenance Expenses** or **O&M Expenses** shall mean, for any period, all expenses paid or accrued by AUTHORITY, in accordance with generally accepted accounting practices for airports of similar characteristics, for the operation, maintenance, administration and ordinary current repairs of the Airport to maintain and operate the Airport in a reasonable and prudent manner, and including items normally included as essential expenses in the operating budget of governmentally owned airports. O&M Expenses shall not include (a) the principal of, the premium, if any, or interest payable on any notes, bonds or other indebtedness for borrowed money of the AUTHORITY including capital leases, and the purchase price of any such obligations purchased pursuant to tender or otherwise; (b) any allowance for amortization or depreciation of the Airport; (c) any other expense for which (or to the extent to which) the AUTHORITY is or will be paid or reimbursed from or through any source and which is not included or includable as Revenues; (d) any extraordinary items arising from the early extinguishment of debt; (e) the City Airport Assessment; and (f) Capital Expenditures.

**Operation and Maintenance Reserve Requirement** or **O&M Reserve Requirement** shall mean a reserve sufficient to pay not less than three months of budgeted O&M Expenses.

**Other Debt Service** shall mean the amount required during any period for the payment of principal of, interest and premium on, and other fees and amounts associated with Other Indebtedness of the AUTHORITY.

**Other Indebtedness** shall mean any obligation incurred by AUTHORITY to fund a Capital Expenditure which is neither Bonds nor Subordinated Indebtedness.

**Preferential Use Premises** shall mean those portions of the Terminal area and Ramp Area assigned to AIRLINE, as more fully described in Article 4 and shown in Exhibits "C" and "D" of this Agreement, to which AIRLINE shall have priority over all other users, subject to the provisions of Article 16.

**Ramp Area** shall mean the aircraft parking and maneuvering areas adjacent to the Terminal, and shall include within its boundaries all Aircraft Aprons as the same now exist or hereafter may be modified, changed or developed.

**Resolution** shall mean any ordinance, resolution, indenture, or other instrument of the AUTHORITY authorizing the issuance of and providing security for Bonds, Subordinated Indebtedness, or Other Indebtedness, as such may be supplemented or amended from time to time, subject to the general provisions established in Section 20.01 herein.

**Revenues** shall mean income accrued by the AUTHORITY in accordance with generally accepted accounting practices, including investment earnings, from or in connection with the operation of the Airport or any part thereof, or the leasing or use thereof, all as further defined in any Resolution(s) or other financing document(s) of the AUTHORITY. For purposes of this Agreement, Revenues shall not include PFCs, federal, state or local grants, or investment earnings on these funds.

**Scheduled Air Carrier** shall mean any Air Transportation Company performing or desiring to perform, pursuant to published schedules, commercial air transportation services over specified routes to and from the Airport and holding the necessary authority from the appropriate federal or state agencies to provide such transportation.

**Signatory Airline** shall mean a Scheduled Air Carrier which has an agreement with AUTHORITY substantially similar to this Agreement and which operates a minimum of five (5) scheduled flights a week, and any Affiliate as long as it is accommodated by a Signatory Airline.

**Special Purpose Facility** shall mean any capital improvement, equipment or facility financed from proceeds or obligations not payable from Revenues.

**Subordinated Indebtedness** shall mean any bonds or other financing instrument or obligation having a lien on Revenues subordinate only to Bonds.

**Terminal** shall mean the direct cost center consisting of the passenger terminal complex presently in use by AUTHORITY, together with associated exterior curbs, canopies, lighting, sidewalks and landscaped areas adjacent to the terminal building; as the same now exist or hereafter may be modified, changed or developed.

#### **1.02 Additional Defined Terms**

Additional words and phrases used in this Agreement but not defined herein shall have the meanings as set forth in a Resolution(s) or other financing document(s) of the AUTHORITY, or, if not so set forth, shall have their usual and customary meaning.

#### **1.03 Cross References**

All references to articles, sections, paragraphs, subparagraphs and exhibits in this Agreement relate to material in this Agreement, unless specifically noted otherwise.

## **ARTICLE 2: EFFECTIVE DATE**

### **2.01 Effective Date**

**This Agreement shall be effective on \_\_\_\_\_.**

### **2.02 Cancellation of Prior Agreements**

**On the Effective Date, all agreements and leases, between AIRLINE and AUTHORITY shall terminate, except as set forth in Exhibit "G."**

**ARTICLE 3: TERM**

**3.01 Term**

**This Agreement shall be in effect during the period commencing with its Effective Date and shall terminate on \_\_\_\_\_ unless sooner terminated pursuant to the provisions of this Agreement. Unless either party shall give the other written notice ninety (90) days prior to the end of the then current term of its intent to terminate at the end of the then current term, the Agreement shall be automatically renewed for two (2) additional terms of one year each (\_\_\_\_\_)**

**ARTICLE 4: PREMISES**

**4.01 Airline Premises**

**AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, Exclusive Use Premises, Preferential Use Premises and Joint Use Premises in the Terminal, as shown in Exhibit “C” and Exhibit “D”, as follows:**

**Exclusive Use Premises:**

<b>Ticket Counter</b>	_____ s.f.
<b>Ticket Offices, Upper Level Offices, VIP rooms</b>	_____ s.f.
<b>Baggage Service Offices</b>	_____ s.f.
<b>Baggage Make-up</b>	_____ s.f.
<b>Operations Area</b>	_____ s.f.
<b>Unenclosed Operations Area</b>	_____ s.f.

**Preferential Use Premises:**

<b>Holdroom(s)</b>	_____ s.f.
<b>Aircraft Parking Position(s)</b>	_____ gate(s)
<b>Loading Bridge(s), unless owned by AIRLINE</b>	_____ units

**Joint Use Premises:**

<b>Baggage Claim Area</b>	_____ s.f.
<b>Tug Drives</b>	_____ s.f.

**4.02 Terminal Fixtures and Equipment**

**Included in Airline Premises are Terminal fixtures and Terminal equipment. Terminal fixtures and equipment owned and acquired by AUTHORITY for use by AIRLINE in its Airline Premises shall remain the property and under the control of AUTHORITY.**

#### **4.03 Employee Parking**

AUTHORITY may, at its discretion, make available area(s) at the Airport for vehicular parking for AIRLINE's personnel employed at the Airport; provided, however, such area(s) shall not be used for the long-term storage of vehicles or trailers. Long-term shall mean periods greater than two (2) weeks. AIRLINE shall comply with AUTHORITY rules and regulations governing employee parking at the Airport, a copy of which is attached hereto as Exhibit "H".

#### **4.04 Public Address System**

AUTHORITY shall provide and maintain a public address system in the Terminal, including microphones or other equipment necessary for the operation of said system, which AIRLINE and others similarly authorized by AUTHORITY shall have the right to use for flight announcements, paging and similar purposes, subject to rules and regulations established by AUTHORITY.

#### **4.05 Common Flight Information Display System**

AUTHORITY shall provide and maintain a common flight information display system (FIDS) system in the Terminal, which AIRLINE and others similarly authorized by AUTHORITY shall use for flight information displays subject to rules and regulations established by AUTHORITY. AIRLINE shall timely provide accurate data input, including changes in schedule, for the AUTHORITY's FIDS on a regular and routine basis as directed by the AUTHORITY.

#### **4.06 Federal Inspection Facilities**

AUTHORITY shall designate areas in the Terminal or elsewhere on the Airport to be used by agencies of the United States government for the inspection of passengers and their baggage and for the exercise of the responsibilities of said agencies with respect to the movement of persons and property to and from the United States.

## ARTICLE 5: USE OF THE AIRPORT AND RELATED FACILITIES

### 5.01 AIRLINE Rights and Privileges

Subject to the terms of this Agreement, including the exclusions and reservations contained in Section 5.02, AIRLINE shall have the right: to conduct an Air Transportation Business at the Airport; to use, in common with others so authorized, the common areas of the Airport (including the Landing Area and the public areas of the Terminal) in addition to Airline Premises; and to perform all operations and functions as are connected, incidental, or necessary to AIRLINE's Air Transportation Business at the Airport including, without limitation, the following:

A. to accommodate, as a Host Airline, any Affiliate(s) within its Airline Premises, subject to the following provisions:

(1) Each Affiliate executes an agreement with AUTHORITY in a form acceptable to the AUTHORITY containing provisions including, but not limited to, liability insurance and indemnity provisions substantially similar to this Agreement. Host Airline shall be responsible for payment of all rentals, fees, and charges due to AUTHORITY for its Affiliates.

(2) Host Airline shall at all times be and remain responsible for all matters pertaining to its Airline Premises.

(3) Upon the discontinuation of regularly scheduled air service at the Airport by the Host Airline, AUTHORITY may, in its sole discretion, at any time thereafter:

(a) Elect to cancel this Agreement in accordance with the provisions of Article 12. In the event it does so, AUTHORITY shall (i) use its best efforts to assist each Affiliate operating at the Airport to acquire adequate facilities; (ii) use its best efforts, consistent with optimum facility utilization, to avoid involuntarily relocating such Affiliates; and (iii) shall offer each Affiliate operating at the Airport the opportunity to obtain Signatory Airline status, provided such Affiliate is willing and able to meet the obligations of such status. AIRLINE expressly acknowledges that in fulfilling its obligations under this section, AUTHORITY is not obligated to permit such remaining Affiliates to continue to use and/or lease any or all of the Airline Premises; or

**(b) Elect to continue this Agreement in full force and effect. In the event AUTHORITY does so continue this Agreement, notwithstanding the provisions of Section 5.01.R, AIRLINE and each Affiliate operating at the Airport shall continue to be responsible for its respective obligations under this Agreement and shall be entitled to its respective rights and privileges granted herein.**

**B. to land, take off, fly over, taxi, tow and condition AIRLINE's aircraft and, in areas designated by AUTHORITY, park, service, deice, load or unload, store, or maintain AIRLINE's aircraft and support equipment subject to Paragraphs 5.01.G, 5.01.H, and 5.02.C and subject to the availability of space and such charges as are set forth herein, or imposed by AUTHORITY for areas not included in Airline Premises. Such rights shall also be subject to such regulations as AUTHORITY may establish. AIRLINE shall not knowingly use or permit the use of the Airfield by any aircraft operated or controlled by AIRLINE which exceeds the design strength or capability of the Airfield as described in the then current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then current ALP, including the then current Airport Certification Manual.**

**C. to sell air transportation tickets and services, process passengers and baggage for air travel, and to sell and provide mail, freight, and express services.**

**D. to train personnel employed or to be employed by AIRLINE and to test aircraft and other equipment to be utilized at the Airport in the operation of AIRLINE's Air Transportation Business; provided, however, said training and testing shall be incidental to the use of the Airport in the operation by AIRLINE of its Air Transportation Business and shall not hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. The AUTHORITY reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport and/or represents significant environmental impacts on the Airport and its environs.**

**E. to sell, dispose or exchange AIRLINE's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, or other similar equipment or supplies; provided, however, AIRLINE shall not sell or permit to be sold aviation fuels or propellants except (i) to such Air Transportation Company which is a successor company to AIRLINE; (ii) for use in aircraft of others which are being used solely in the operation of AIRLINE's Air Transportation Business, including, but not limited to, AIRLINE's**

Affiliate(s); or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from AIRLINE.

F. to purchase at the Airport or elsewhere, fuels, lubricants and any other related supplies and services, from any person or company, subject to Paragraph 5.01.E and to the AUTHORITY's right to require that each provider of services and/or supplies to AIRLINE secures a permit from AUTHORITY to conduct such activity at the Airport, pays required fees, and abides by all rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases; provided, however, nothing herein shall be construed to permit AIRLINE to store aviation fuels at the Airport. The right to store aviation fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

G. to service by AIRLINE or its suppliers aircraft and other equipment being utilized at the Airport by AIRLINE on AIRLINE's Aircraft Aprons, fixed-base operator leased premises, or such other locations as may be designated by the AUTHORITY.

H. to load and unload persons, property and mail by motor vehicles or other means of conveyance approved by AUTHORITY on AIRLINE's Aircraft Aprons or such other locations as may be designated by the AUTHORITY ; provided, however, AIRLINE shall not use Aircraft Aprons to load or unload any cargo-only aircraft.

I. to provide at no cost to AUTHORITY, either alone or in conjunction with other Scheduled Air Carriers or through a nominee, porter or skycap service, adequate wheelchair services for the convenience of the public and passenger screening services required pursuant to federal law and regulations.

J. to install and maintain, at AIRLINE's sole cost and expense, identifying signs in AIRLINE's Exclusive Use Premises subject to the prior written approval of the AUTHORITY, which approval shall not be unreasonably withheld or delayed.

K. to install, maintain and operate, at no cost to AUTHORITY, such radio communication, computer, meteorological, and aerial navigation equipment and facilities on AIRLINE's Exclusive Use Premises as may be necessary or convenient for the operation of its Air Transportation Business; provided, however, that the locations and manner of such installations shall be subject to the prior

written approval of the AUTHORITY. AUTHORITY reserves the right to restrict or prohibit such electronic or electrical devices, radio, communication, meteorological and aerial navigation equipment and facilities which it deems may interfere with the use of the Airport.

L. to the use of such rights of way as may from time to time be required by AIRLINE for communications, computer equipment, teletype, telephone, interphone, pneumatic tubes, conveyor systems, and power and other transmission lines in and between Airline Premises and the Terminal, subject to the availability of space as determined by the AUTHORITY. The AUTHORITY reserves the right to require the execution of a separate agreement between AUTHORITY and AIRLINE for the lease and use of such space outside Terminal areas.

M. to install personal property, including furniture, furnishings, supplies, machinery, and equipment, in AIRLINE's Exclusive Use Premises as AIRLINE may deem necessary or prudent for the operation of its Air Transportation Business. Title to such personal property shall remain with AIRLINE. The installation of such personal property shall be subject to the review and approval of the AUTHORITY for reasons of safety, adequacy of ingress and egress, compatibility with applicable building codes, compatibility with overall décor, comparability to other similar furnishings and equipment in the Terminal, and interference with the public line of sight.

N. to construct modifications, fixtures, and improvements in Exclusive Use Premises as AIRLINE may deem necessary or prudent for the operation of its Air Transportation Business, subject to the provisions of Article 9.

O. to have ingress to and egress from the Airport and Airline Premises for AIRLINE's officers, employees, agents, and invitees, including passengers, customers, suppliers of materials, providers of services, aircraft, equipment, vehicles, machinery, and other property. Such right shall be subject to all applicable laws, including any security directives by the Transportation Security Administration (TSA) or other governmental agency, and the AUTHORITY's right to establish rules and regulations governing (i) the general public, including AIRLINE's passengers, and, (ii) access to non-public areas at the Airport by AIRLINE's employees, suppliers of materials, and providers of services. Any such rules and regulations of the AUTHORITY shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business. AUTHORITY reserves the right to temporarily or permanently restrict the use of any roadway or other area at the Airport. In the event of such restrictions, if necessary and

to the extent reasonably available, AUTHORITY shall provide an equivalent means of ingress and egress.

**P.** to provide complimentary food and beverages, at AIRLINE's sole cost and expense, to AIRLINE's passengers in AIRLINE's Airline Premises, subject to the prior written approval of the AUTHORITY. Except as may be provided in a separate agreement, AIRLINE shall not maintain or operate in the Terminal or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling food and beverages to the public or to AIRLINE's employees and passengers. Nothing in this paragraph shall prohibit AIRLINE from selling food, beverages, periodicals, or gifts in a "VIP room" or similar private club at the Airport.

**Q.** The rights and privileges granted to AIRLINE pursuant to this Article may be exercised on behalf of AIRLINE by other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport, subject to the prior written approval of AUTHORITY and further subject to all laws, rules, regulations, and fees and charges as may be applicable to the activities undertaken.

**R.** Subject to the provisions of Article 15, AIRLINE may exercise any of the rights granted AIRLINE herein on behalf of any other Air Transportation Company or any Affiliate(s), so long as AIRLINE is concurrently exercising those same rights in the operation of AIRLINE's own Air Transportation Business at the Airport. This right is subject to all other provisions of this Agreement including applicable rules, regulations, and the payment of fees and charges for such activities.

#### **5.02 Exclusions and Reservations**

**A.** Nothing in this Agreement shall be construed as authorizing AIRLINE to conduct any business separate and apart from the conduct of its Air Transportation Business, including but not limited to any revenue-generating business in areas open to the public without the prior written approval of AUTHORITY.

**B.** AIRLINE shall not knowingly interfere or permit interference with the use, operation or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport. AIRLINE shall not engage in any activity prohibited by the AUTHORITY's noise abatement procedures in effect from time to time.

**C. AIRLINE shall remove any of its disabled aircraft from the Landing Area or Ramp Area and shall place any such disabled aircraft only in areas designated by the AUTHORITY, and shall store such disabled aircraft only upon such terms and conditions as may be established by AUTHORITY; provided, however, AIRLINE shall be requested to remove such disabled aircraft from AIRLINE's Aircraft Apron(s) only if deemed necessary by the AUTHORITY. In the event AIRLINE shall fail to remove any of its disabled aircraft within a reasonable period of time, AUTHORITY may, but shall not be obligated to, cause the removal of such disabled aircraft. In the event AUTHORITY causes the removal of such disabled aircraft: i) AUTHORITY shall give AIRLINE prior notice of its intent to remove such disabled aircraft, (ii) AUTHORITY shall use reasonable efforts and care to remove such aircraft, and (iii) AIRLINE shall pay to AUTHORITY, upon receipt of invoice, the labor costs, including fringe benefits, incurred for such removal at two and one-half times the actual labor costs and any material or equipment costs incurred at two times the actual cost of such materials or equipment.**

**D. AIRLINE shall not do or permit its agents or employees to do anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If AIRLINE's act, or failure to act, shall cause cancellation of any policy, then AIRLINE shall immediately, upon notification by AUTHORITY, do whatever shall be necessary to cause reinstatement of said insurance. Furthermore, if AIRLINE does or permits to be done any act not permitted under this Agreement, or fails to do any act required under this Agreement which causes an increase in the AUTHORITY's insurance premiums, regardless of whether such act shall constitute a breach of this Agreement, AIRLINE shall immediately remedy such actions and pay any increase in premiums upon notice from AUTHORITY to do so; but in any event, AIRLINE will hold AUTHORITY harmless for all expenses and damages resulting from any action or failure to act as set forth in this Paragraph.**

**E. No telecommunication devices, personal computers, amusement or vending machines or other machines operated by coins or tokens, cards, paper currency, or any imaging or voice process, and no cash machines shall be installed or maintained in or upon the Airline Premises except with the permission of AUTHORITY and the number, type, kind and locations thereof shall be in the discretion of AUTHORITY. This prohibition includes, but is not limited to, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies;**

telephones; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, entertainment devices, phone cards, and internet access. AIRLINE shall not permit the installation of any such machines, except by a concessionaire authorized by AUTHORITY. Nothing in this paragraph shall prohibit AIRLINE from (i) installing or maintaining vending machines in its non-public Exclusive Use Premises for the sole use of AIRLINE's employees, the type, kind and locations subject to the prior written approval of the AUTHORITY.

F. AUTHORITY may, at its sole option, install or cause to be installed advertising and revenue generating devices, excluding vending machines, in Joint Use Premises; provided, however, that such installations shall not unreasonably interfere with AIRLINE's operations authorized hereunder or diminish the useable square footage contained in Airline Premises.

G. AIRLINE shall not provide nor enter into any agreements providing for pay telephones or wireless cell phone connectivity for the public anywhere at the Airport. AUTHORITY may, at its sole option, install pay telephones in any part of the Terminal; excluding the public areas of AIRLINE's Exclusive Use Premises unless requested to do so by AIRLINE. AUTHORITY shall be entitled to access upon Airline Premises to install or service such telephones.

H. To the extent not pre-empted by Federal Communications Commission rulings and regulations, AIRLINE will not install, deploy or otherwise engage in the use of any transmitting wireless device, application and/or technologies on its Airline's Premises or any portion of the Airport without having first obtained the prior approval of AUTHORITY. Such wireless applications shall only be for AIRLINE's operational use. At the request of AUTHORITY, AIRLINE will cease operation of a particular device due to interference with another transmitting device of AUTHORITY, emergency services, and/or other already approved wireless device. AUTHORITY reserves the right to impose a fee for the use of such wireless equipment and/or to charge for any space required for the installation of such equipment, as additional rentals payable under this Agreement, for the use of such area. AIRLINE shall not have any right to install any type of wireless device, application and/or technology at the Airport for commercial and/or revenue generating purposes.

I. The rights and privileges granted AIRLINE pursuant to this Agreement shall be subject to any and all reasonable and nondiscriminatory rules and regulations established by AUTHORITY, as such may be amended from time to time; provided, however, that such rules and regulations shall not interfere unreasonably with AIRLINE's exercise of the rights granted hereunder.

**J. AUTHORITY reserves the right to review and approve AIRLINE's aircraft parking layouts and parking positions for reasons of safety, efficient utilization of facilities, and compatibility with the operations of other Air Transportation Companies.**

**K. Any and all rights and privileges not specifically granted to AIRLINE for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to AUTHORITY.**

## ARTICLE 6: OPERATION AND MAINTENANCE OF THE AIRPORT

### 6.01 AUTHORITY Obligations

A. AUTHORITY shall with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport with adequate qualified personnel and keep the Airport in good repair, unless such maintenance, operation, or repair shall be AIRLINE's obligation pursuant to the terms of this Agreement.

B. AUTHORITY shall use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by AIRLINE.

C. AUTHORITY, its agents, employees, and contractors, shall not be liable to AIRLINE for temporary failure to furnish all or any of the services required by this Agreement when due to mechanical breakdown or any other cause beyond the control of AUTHORITY.

### 6.02 AIRLINE Obligations

A. AIRLINE shall at all times and at its own expense preserve and keep its Exclusive Use Premises and Preferential Use Premises in an orderly, clean, neat and sanitary condition ~~satisfactory~~ so as to meet the reasonable expectations of the AUTHORITY.

B. AIRLINE shall keep at its own expense the Aircraft Aprons free of fuel, oil, debris and other foreign objects arising from operations by Airline or by any Air Transportation Company to which AIRLINE grants the right to use its Aircraft Aprons.

C. AIRLINE shall operate and maintain at its own expense any improvements and/or equipment installed by AIRLINE in a good state of repair and operating condition, including the replacement and refurbishing of any items that require same during the term hereof.

D. AIRLINE shall conduct its business using best management practices consistent with industry standards, including but not limited to (i) managing passenger check-in lines in compliance with applicable fire codes and regulations, (ii) providing accurate and timely flight information for input into Airport's FIDS and baggage information display (BIDS), (iii) notifying AUTHORITY at least

thirty (30) days in advance of planned schedule changes, including but not limited to equipment changes, flight times, and number of flights, and (iv) notifying AUTHORITY of disruptions and operational or equipment changes that will impact AUTHORITY and operations of the Airport.

#### **6.03 Designation of Operation and Maintenance Responsibilities**

In addition to the obligations of AIRLINE and AUTHORITY set forth in Sections 6.01 and 6.02, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit "F," attached hereto and made a part hereof.

#### **6.04 Right of Entry and Inspection**

A. AUTHORITY and its authorized agents shall have the right to enter upon Airline Premises to examine and inspect the Premises for purposes necessary or incidental to the performance of its obligations under this Agreement or in the exercise of its governmental functions. Except in the case of an emergency, AUTHORITY shall conduct such inspections during normal business hours upon notice to AIRLINE and in the presence of AIRLINE's representative. AUTHORITY's right to entry and inspection includes, but is not limited to, entry to (i) determine whether AIRLINE is complying with the terms and conditions of this Agreement, (ii) perform maintenance and make repairs where AUTHORITY is obligated to do so, and in any other case where AUTHORITY in its reasonable judgment determines that it is necessary or desirable to do so in order to immediately preserve the structural safety of such Airline Premises or of the Airport generally, (iii) correct any condition likely to cause injuries or damages to persons or property, (iv) perform fire and life safety inspections with respect to Airline Premises, and (v) take all necessary action for security-related purposes.

B. In addition to any other rights that AUTHORITY enjoys at law or equity or pursuant to this Agreement, should AIRLINE fail to perform its obligations hereunder, and such failure continues for fifteen (15) days from AIRLINE's receipt of AUTHORITY's notice of non-compliance, AUTHORITY shall have the right to enter the Airline Premises and perform such activities. Except in the case of an emergency, AUTHORITY's notice to AIRLINE shall be in writing at least fifteen (15) days prior to the exercise of this right. If such right is exercised, AIRLINE shall pay to AUTHORITY, upon receipt of invoice, the labor costs incurred for such services at two and one-half times the actual labor costs, including fringe benefits, and any materials, supplies or equipment costs incurred at two times the actual cost of such materials, supplies or equipment.

**C. No entry by or on behalf of AUTHORITY upon the Airline Premises shall cause or constitute a termination of the letting thereof or be deemed to constitute an interference with the possession thereof by AIRLINE. During any inspection and repairs, AUTHORITY may close doors, entrances, corridors and other facilities, all without any liability to AUTHORITY for inconvenience, interference or annoyance. Such repairs and replacements shall be made in coordination with AIRLINE to the extent reasonably possible.**

## ARTICLE 7: RENTALS, FEES AND CHARGES

AIRLINE shall pay AUTHORITY rentals for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted hereunder during the Term of this Agreement at the rates calculated in accordance with Exhibit "E", and shall file periodic reports as specified herein. All rentals, fees, and charges due to the AUTHORITY by AIRLINE under this Agreement shall be calculated and assessed in a manner to include the activities of AIRLINE's Affiliates.

### 7.01 Landing Fees

AIRLINE shall pay monthly to AUTHORITY fees for all aircraft landings for the preceding month. AIRLINE's landing fees shall be determined as the product of the landing fee rate for the period calculated in accordance with Exhibit "E", and AIRLINE's total landed weight for the month, based upon the Maximum Gross Landed Weight of each type of AIRLINE's aircraft operated by AIRLINE ~~and all of its Affiliates~~ at the Airport during the preceding month. AIRLINE's total landed weight, ~~including all of its Affiliates~~, for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landed Weight of each type of aircraft by the number of total landings for each said aircraft during such month.

### 7.02 Terminal Rentals

A. AIRLINE's annual Terminal rentals in each period, payable on a monthly basis in twelve (12) equal installments, shall be the sum of AIRLINE's rentals for Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises. AIRLINE's Terminal rental payment for Exclusive Use Premises and Preferential Use Premises shall be determined as the sum of the products obtained by multiplying the appropriate Terminal rental rate for the period calculated in accordance with Exhibit "E", by the amount of the corresponding type of space leased by AIRLINE as Exclusive Use Premises and Preferential Use Premises, as set forth in Exhibit "E".

B. Total annual Terminal rentals for Joint Use Premises shall be calculated as the product of the Terminal rental rate for the period calculated in accordance with Exhibit "E", and the amount of each category of Joint Use Premises. Total rentals due monthly for each category of Joint Use Premises shall be prorated among the Scheduled Air Carriers, including any Affiliate(s), using said category of Joint Use Premises based upon each such Scheduled Air Carrier's Enplaned Passengers during the month as

a percentage of total Enplaned Passengers of all Scheduled Air Carriers using said category of Joint Use Premises during such month.

C. For purposes of the above Joint Use Premises calculation, AIRLINE shall include in its report of monthly Enplaned Passengers the total number of Enplaned Passengers handled or otherwise accommodated by AIRLINE for other Air Transportation Companies not having an agreement providing for the direct payment to AUTHORITY of appropriate charges for the use of Joint Use Premises.

#### **7.03 Terminal Fixtures and Equipment Charges**

AIRLINE shall reimburse AUTHORITY for use of Terminal fixtures and equipment. AIRLINE's charges for fixtures and equipment leased by AIRLINE from AUTHORITY shall be calculated by AUTHORITY based on the annual Capital Charges, Capital Charge Coverage, any required reserves, and O&M Expenses incurred by AUTHORITY for any such fixtures and equipment leased by AIRLINE from AUTHORITY.

#### **7.04 Other Fees and Charges**

A. AUTHORITY may assess reasonable and non-discriminatory fees for concessions and other services provided by AIRLINE for others or for AIRLINE by others pursuant to Paragraphs 5.01.F, Q and R of this Agreement, if such services or concessions would otherwise be available from a concessionaire or licensee of AUTHORITY. No such fees shall be charged for services provided by AIRLINE or for AIRLINE by or to an air service provider pursuant to a contract with AIRLINE. Such contractual relationship shall be subject to the approval of AUTHORITY.

B. AUTHORITY may assess pro rata shares of any actual charges for the provision of any services or facilities which AUTHORITY is required to provide by any governmental entity (other than AUTHORITY acting within its proprietary capacity) having jurisdiction over the Airport.

C. AUTHORITY reserves the right to charge AIRLINE or its employees a fee for the employee parking area(s) provided at the Airport pursuant to this Agreement.

**D. Public address system and common FIDS expenses shall be determined based on the annual Capital Charges, Capital Charge Coverage, any required reserves, and O&M Expenses incurred by AUTHORITY for such system and will be included in the calculation of rates and charges.**

**E. AUTHORITY shall charge AIRLINE monthly rental and usage charges for telephone, internet, and data equipment services provided by AUTHORITY in AIRLINE's Premises.**

**F. AIRLINE shall pay charges for other services or facilities not enumerated herein provided by AUTHORITY to AIRLINE at AIRLINE's request. Such services or facilities may include, but are not limited to, Federal Inspection Services (FIS) facility fees, or equipment and vehicle storage areas. Charges will be based on the actual cost of providing such facilities or services and will not be otherwise included in the calculation of rates and charges.**

**G. AIRLINE shall pay the required fees for all permits and licenses necessary for the conduct of its Air Transportation Business at the Airport. AIRLINE shall also pay all taxes, assessments, and charges which may be levied by the Commonwealth of Virginia, local governments or any other levying body on property, real or personal, owned by AIRLINE in or about Airline Premises, provided that the AUTHORITY timely forwards to AIRLINE any assessment notices for such taxes, assessments or charges received by AUTHORITY, and provided further that AIRLINE shall not be deemed to be in default under this Agreement for failure to pay any such taxes, assessments or charges pending the outcome of any proceedings instituted by AIRLINE to contest the validity or the amount of such taxes, provided that such failure to pay does not result in any forfeiture.**

#### **7.05 Payments**

**A. Payments of one-twelfth (1/12) of the total annual Terminal Rentals and Terminal Fixtures and Equipment Charges for AIRLINE's Exclusive Use Premises and Preferential Use Premises shall be due in advance, without demand or invoice, on the first business day of each month. Said rentals and charges shall be deemed delinquent if payment is not received by the fifteenth (15) calendar day of the month.**

**B. Payment of AIRLINE's landing fees shall be due as of the date of AUTHORITY's invoice and shall be deemed delinquent if payment is not received by AUTHORITY within twenty-one (21) days of the date of such invoice.**

**C. Payment for Joint Use Premises shall be due as of the date of AUTHORITY's invoice and shall be deemed delinquent if not received by AUTHORITY within twenty-one (21) days of the date of such invoice.**

**D. Payment for all other fees and charges due hereunder shall be due as of the date of the AUTHORITY's invoice. Said fees and charges shall be deemed delinquent if payment is not received by AUTHORITY within twenty-one (21) days of the date of such invoice.**

**E. A service charge at the lower of one and one half percent (1.5%) per month, or the highest rate allowed by law, shall accrue against any and all delinquent payment(s) from the date due until the date payments are received by AUTHORITY. In addition to such service charge, the Authority shall be entitled to interest at the judgment rate plus all costs of collection of amounts past due, including without limitation, reasonable attorneys' fees and court costs. This provision shall not preclude AUTHORITY from canceling this Agreement for default in the payment of rentals, fees or charges, or from exercising any other rights contained herein or provided by law or equity. In the event AUTHORITY terminates this Agreement for an event of default related to payments, the above service charge shall continue to accrue until full payment by AIRLINE.**

**F. In the event AIRLINE fails to submit its monthly activity reports as required herein, AUTHORITY shall calculate the rentals, fees and charges based upon one hundred twenty-five percent (125%) of the highest monthly total of rentals, fees and charges from the previous twelve (12) months of activity reported by AIRLINE and issue an invoice to AIRLINE for same. If no activity data are available, AUTHORITY shall estimate such activity and invoice AIRLINE for same. AIRLINE shall be liable for any deficiencies in payments based on estimated payments made under this provision; and payment for said deficiencies shall be deemed due as of the date such rental was due and payable. If such estimated payments result in an overpayment by AIRLINE, AUTHORITY shall apply such overpayment as a credit against the subsequent month(s) amounts due for such rentals, fees and charges from AIRLINE; provided, however, AIRLINE shall not be entitled to any credit for interest on payments of such estimated amounts.**

**G. In the event AIRLINE's obligations with respect to Airline Premises or rights, licenses, or privileges granted hereunder shall commence or terminate on any date other than the first or last day**

of the month, AIRLINE's rentals, fees and charges shall be prorated on the basis of the number of days such premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

H. All payments due and payable hereunder shall be paid in lawful money of the United States of America, without set off, by wire transfer or check made payable to the Norfolk Airport Authority and delivered or mailed to:

Director of Finance  
Norfolk Airport Authority  
Norfolk International Airport  
2200 Norview Avenue  
Norfolk, VA 23518-5807

Any check shall be received by AUTHORITY subject to collection, and AIRLINE agrees to pay any bank charges for the collection of such check.

**7.06 Information to be Supplied by AIRLINE**

A. Upon written request by AUTHORITY, AIRLINE, no less than six (6) months prior to the expiration of the then-current Fiscal Year, and annually thereafter, shall furnish AUTHORITY with its projected total aircraft landing weight and its projected number of Enplaned Passengers for the subsequent Fiscal Year.

B. Not later than ten (10) days after the end of each month, AIRLINE shall file with AUTHORITY written reports on forms provided by AUTHORITY for activity conducted by AIRLINE and its Affiliates during said month, and for activity handled by AIRLINE for other Air Transportation Companies not having an agreement with AUTHORITY providing for its own submission of activity data to AUTHORITY, provided such other Air Transportation Companies are operating from Airline Premises.

C. AUTHORITY shall have the right to rely on said activity reports in determining rentals and charges due hereunder; provided, however, AIRLINE shall have full responsibility for the accuracy of said reports. Payment deficiencies due to incomplete or inaccurate activity reports shall be subject to service charges as set forth in Paragraph 7.05.E.

**D. AIRLINE shall at all times maintain and keep books, ledgers, accounts, or other records, wherein are accurately kept all entries reflecting the activity statistics to be reported pursuant to Paragraph 7.06.B. Such records shall be retained by AIRLINE for the greater period of five (5) years subsequent to the activities reported therein, or such other retention period as set forth in any applicable federal law or regulation, and made available at the offices of the AIRLINE headquarters for audit and/or examination by AUTHORITY or its duly authorized representative during all normal business hours. AIRLINE, at its expense, shall produce copies of such books and records at the offices of the AUTHORITY in Norfolk, Virginia within thirty (30) days of AUTHORITY's written request to do so.**

**E. The cost of audit and/or examination shall be paid by AUTHORITY from Airport Revenues; provided, however, the total cost of said audit shall be borne by AIRLINE if either or both of the following conditions exist:**

- (1) The audit reveals an underpayment of more than five percent (5%) of rentals, fees and charges due hereunder, as determined by said audit; and/or**
- (2) AIRLINE has failed to maintain true and complete books, records, accounts, and supportive source documents as required herein.**

#### **7.07 Security for Payment**

**A. Unless AIRLINE has provided regularly scheduled flights to and from the Airport during the eighteen (18) months prior to the Effective Date of this Agreement without the occurrence of any act or omission that would have been an event of default if this Agreement had been in effect during that period, AIRLINE shall provide AUTHORITY on the Effective Date of this Agreement with a contract bond, irrevocable letter of credit, or other similar security provided by a third party acceptable to AUTHORITY (“Contract Security”) in an amount equal to the estimate of three (3) months’ rentals, fees and charges due hereunder. AIRLINE shall be obligated to maintain such Contract Security in effect until the expiration of eighteen (18) consecutive months during which period AIRLINE commits no event enumerated in Section 12.01 of this Agreement. Such Contract Security shall be in a form and with a company reasonably acceptable to AUTHORITY. In the event that any such Contract Security shall be for a period less than the full period required by this Paragraph or if Contract Security shall**

be canceled, AIRLINE shall provide a renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation.

**B. AUTHORITY shall have the right to waive such Contract Security requirements for a Signatory Airline which has not provided regularly scheduled flights to and from the Airport during the eighteen (18) months prior to the Effective Date of its Signatory Airline Agreement. Any such waiver by AUTHORITY shall be conditioned upon said Signatory Airline having provided regularly scheduled flights at six (6) other airports chosen by AUTHORITY based on geographic proximity to Airport during the most recent eighteen (18) month period, without committing any material default under the terms of the respective lease and use agreements at each of the six (6) facilities, and without any history of untimely payments for rentals, fees and charges. The burden shall be on AIRLINE to demonstrate to AUTHORITY its compliance with these requirements.**

**C. Notwithstanding the foregoing, if at any time during the Term hereof, AUTHORITY deems the amount of the Contract Security insufficient to protect the AUTHORITY from loss hereunder because AIRLINE is or has been in arrears with respect to such obligations or because AIRLINE has, in the opinion of the AUTHORITY, violated other terms of this Agreement, AIRLINE agrees that it will, after receipt of notice, increase the Contract Security to an amount required by AUTHORITY on or before the date specified in such notice; provided however, the increase in Contract Security shall not exceed 50% of the existing Contract Security amount.**

**D. AUTHORITY's rights under this Article shall be in addition to all other rights and remedies provided to AUTHORITY under this Agreement.**

**E. If AIRLINE shall fail to make payment to the AUTHORITY when due or shall commit an Event of Default under this Agreement, the AUTHORITY shall have the right to use such Contract Security to pay AIRLINE's rentals, fees and charges, supplemental charges, PFCs and any other amount owed to the AUTHORITY by AIRLINE then due and payable or to apply the proceeds thereof to any cost or expense or damages incurred by the AUTHORITY as a result of AIRLINE's default. In the event that any such Contract Security or portion thereof is utilized, as aforesaid, AIRLINE shall replenish or provide a renewal or replacement Contract Security within ten (10) days of being notified to do so by the AUTHORITY. The AUTHORITY's rights under this Article shall be in addition to all other rights and remedies provided to the AUTHORITY under this Agreement.**

**7.08 Passenger Facility Charges**

**A. AUTHORITY reserves the right to assess and collect Passenger Facility Charges (PFCs) subject to the terms and conditions and such methods of collection set forth in the applicable federal law and regulations currently in effect, or as amended in the future (the “PFC Act”).**

**B. AIRLINE shall make monthly payments and reports of PFCs collected for the Airport in strict accordance with the payment and collection requirements of the PFC Act. In accordance with the PFC Act, the PFCs collected and held by AIRLINE are property in which AIRLINE holds merely a possessory interest and not an equitable interest and AIRLINE has no other right, title, or interest in the PFCs. All such funds are held, in trust, solely for the exclusive benefit of AUTHORITY.**

**C. The foregoing provisions shall be binding upon the AIRLINE, its successors and assigns, and any trustee in bankruptcy.**

**7.09 No Further Charges**

**Except as provided in this Agreement, no further rentals, fees or charges shall be charged against or collected from AIRLINE, its passengers, its shippers and receivers of freight, its suppliers of material, its contractors or providers of services, by AUTHORITY, acting in its capacity as Airport proprietor, for the premises, facilities, rights, licenses, and privileges granted to AIRLINE herein.**

**ARTICLE 8: CHANGES IN RATES FOR RENTALS,  
FEES AND CHARGES**

**8.01 Annual Rate Changes**

**A. No later than April 1 each year, AUTHORITY shall, in writing, notify AIRLINE of the proposed operating budget, Capital Improvement Program and schedule of rates for rentals, fees and charges for the next Fiscal Year. Said rates shall be determined and presented to AIRLINE in conformance with the methods and format set forth in Exhibit "E."**

**B. The Signatory Airlines through the AAAC shall have the right to review and comment upon the proposed operating budget, Capital Improvement Program, and schedule of rates for rentals, fees and charges. In addition, upon written request of the AAAC, through its chairman, on or before May 1, AUTHORITY shall meet with the AAAC at a mutually convenient time for the purpose of discussing the proposed operating budget, Capital Improvement Program, and schedule of rates for rentals, fees and charges. Such meeting shall be held not later than May 15. In advance of said meeting, AUTHORITY shall make available to the AAAC any reasonably requested additional information relating to the determination of the proposed rates. AUTHORITY agrees to fully consider the comments of the Signatory Airlines prior to finalizing its operating budget, Capital Improvement Program, and schedule of rates for rentals, fees and charges for the ensuing Fiscal Year.**

**C. Following said meeting with the AAAC and prior to the end of the then current Fiscal Year, AUTHORITY shall notify AIRLINE of the rates, subject to settlement procedures pursuant to Section 8.04, for rentals, fees and charges to be established for the next Fiscal Year.**

**D. If calculation of the new rates for rentals, fees and charges is not completed by AUTHORITY and the notice provided in Paragraph 8.01.C is not given prior to the end of the current Fiscal Year, the rates for rentals, fees and charges then in effect shall continue to be paid by AIRLINE until such calculations are concluded and such notice is given. Upon the completion of such calculations and the giving of such notice, AUTHORITY shall determine the difference(s), if any, between the actual rentals, fees and charges paid by AIRLINE to date for the current Fiscal Year and the rentals, fees and charges that would have been paid by AIRLINE if the new rates had been in effect beginning on the first day of the Fiscal Year. Any such differences shall be applied to the particular rentals, fees or charges for which a difference(s) in rates resulted in an overpayment or underpayment, and shall be remitted by**

AIRLINE or credited by AUTHORITY in the month immediately following the calculation of the new rates and charges and the giving of notice to AIRLINE. AUTHORITY shall use its best efforts to finalize its budget on a timely basis.

#### **8.02 Other Rate Changes**

Rates for rentals, fees and charges may, at the option of AUTHORITY, be changed at any other time that unaudited monthly Airport financial data indicates that total rentals, fees and charges payable pursuant to the then current rate schedules are estimated and anticipated by AUTHORITY to vary by more than ten percent (10%) from the total rentals, fees and charges that would be payable based upon the use of the monthly financial data then available for said Fiscal Year. In the event such recalculated rates result in a reduction from the then-current rates payable by Signatory Airlines, AUTHORITY and Signatory Airlines may mutually agree to maintain the then-current rates. Rates for rentals, fees and charges shall also be changed whenever required by the terms and provisions of any Resolution(s) or other financing document(s) of AUTHORITY; provided, however, that Signatory Airlines' total rental, fees and charges payable to AUTHORITY shall be allocated to AIRLINE in accordance with this Agreement.

#### **8.03 Incorporation of Exhibit "E"**

Adjustments to rates for rentals, fees and charges shall not require the formal amendment of this Agreement. A revised Exhibit "E" shall be issued to AIRLINE each Fiscal Year or for any adjustment period without the necessity of formal amendment of this Agreement.

#### **8.04 Settlement**

By November 1 each year, or as soon as audited financial data for the preceding Fiscal Year is available, final rates for rentals, fees and charges for the preceding Fiscal Year shall be recalculated and AIRLINES' Share of Surplus Revenue shall be calculated using audited financial data according to the methods set forth in Exhibit "E." Upon the determination of any difference between the actual rentals, fees and charges paid by Signatory Airlines during the preceding Fiscal Year and the rentals, fees and charges that would have been paid by Signatory Airlines using recalculated rates and AIRLINE Share of Surplus Revenue credits, AUTHORITY shall, in the event of overpayment, promptly credit to AIRLINE the amount of such overpayment. In the event of underpayment,

**AUTHORITY shall invoice AIRLINE for the amount of such underpayment. The invoiced amount shall be due within thirty (30) days of the date of such invoice, after which any unpaid balance shall be subject to interest.**

**For all purposes herein, AIRLINE's share of Surplus Revenue shall not include any revenue from AUTHORITY facilities which may now or in the future be financed by any non-AMT Bonds issued by the AUTHORITY. In addition, AUTHORITY reserves the right to withhold AIRLINE's share of Surplus Revenue to the extent that AIRLINE is delinquent or otherwise not current in its payments to AUTHORITY of any rentals, fees or charges of any kind, or upon the occurrence of any event of default by AIRLINE.**

**8.05 AUTHORITY Covenants**

**A. AUTHORITY covenants that for purposes of assigning and allocating costs, it shall utilize generally accepted accounting practices utilized for airports operating as an enterprise fund, and include only those charges properly attributable to the Airport.**

**B. AUTHORITY shall operate the Airport in a manner so as to produce Revenues from concessionaires, tenants, and other users of the Airport of a nature and amount which would be produced by a prudent operator of an airport of substantially similar size, use, and activity, with due regard for the interests of the public, tenants and other users, and subject to existing leases.**

**C. AUTHORITY shall, consistent with applicable federal, state and local statutes and regulations, use all Revenues of the Airport exclusively for lawful purposes.**

## ARTICLE 9: CAPITAL EXPENDITURES

### 9.01 AUTHORITY Capital Expenditures

AIRLINE acknowledges that AUTHORITY may be required to make Capital Expenditures to preserve, protect, enhance, expand or otherwise improve the Airport, or any part thereof, during the Term of this Agreement. Such Capital Expenditures shall be included in the determination of rates, fees and charges as provided in this Agreement.

### 9.02 AIRLINE Capital Expenditures

A. In accordance with the provisions of this Agreement, AIRLINE may construct and install, at AIRLINE's sole expense, improvements in its Exclusive Use Premises or Preferential Use Premises as AIRLINE deems to be necessary for its operations. The plans and specifications, location, construction schedule and proposed construction contractor for such improvements shall be approved by AUTHORITY in writing prior to the commencement of such construction or installation. No reduction or abatement of rentals, fees and charges shall be allowed for any interference by such construction with AIRLINE's operations.

B. Prior to the commencement of any improvements at a cost of greater than ~~Twenty Five~~ Fifty Thousand Dollars (\$2550,000), AUTHORITY shall have the right to require that AIRLINE shall obtain a contract surety bond in a sum equal to the full amount of any construction contract awarded by AIRLINE for the improvements. Said bond shall (i) name AUTHORITY as an obligee thereunder; (ii) be drawn in a form and from such company acceptable to AUTHORITY and authorized to do business in the Commonwealth of Virginia; (iii) guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and (iv) protect AUTHORITY against any losses and liability, damages, expenses, claims, and judgments caused by or resulting from any failure to perform completely the work described in accordance with the construction contract. AUTHORITY further reserves the right to require that AIRLINE acquire a payment bond with any contractor or contractors of AIRLINE as principal in a sum equal to the full amount of the construction contract awarded by AIRLINE for the improvements. Said bond shall name AUTHORITY as an obligee thereunder and shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies and equipment used in the performance of said construction contract.

**C. Any work associated with such construction or installation by AIRLINE shall be completed in a first class manner, and shall not unreasonably interfere with the operation of the Airport, or otherwise unreasonably interfere with the permitted activities of other Terminal tenants and users. Upon completion of approved construction, and within ninety (90) days of AIRLINE's receipt of a certificate of occupancy, a complete set of as-built drawings shall be delivered to AUTHORITY for its permanent records.**

**D. AIRLINE shall furnish or require contractors to furnish satisfactory evidence of statutory workers' compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a builder's risk form with the interest of AUTHORITY endorsed thereon as an additional insured, in such amounts and in such manner as AUTHORITY may require. AUTHORITY may require additional insurance for any alterations or improvements approved hereunder, in such limits as AUTHORITY reasonably determines to be necessary.**

**E. Any construction or installation shall be at the sole risk of AIRLINE, shall be in accordance with all applicable state and local codes and laws, shall be subject to inspection by AUTHORITY, and shall be undertaken and completed in accordance with the plans and specifications approved pursuant to this Section in a first class manner comparable to and consistent with similar facilities at the Airport and with the standards for construction maintained by the AUTHORITY for improvements and alterations at the Airport.**

**F. Subject to the provision of Section 14.02, all improvements, additions, and alterations made by AIRLINE to its Airline Premises shall be deemed to be and become a part of the realty and shall be the sole and absolute property of AUTHORITY upon completion. In accordance with Section 7.04(F) and 7.09, AUTHORITY shall treat such improvements as having a zero capital cost basis for calculation of the schedule of rates for rentals, fees and charges. AIRLINE may include a capital charge for such improvements in the calculation of its subleasing rental rate.**

**G. AIRLINE shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen, and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with the performance of any construction or installation, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them.**

**H. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Airline Premises or any part thereof, any improvements thereto or thereon, or any other part of the Airport, and AIRLINE shall not permit any lien to be attached to such areas.**

## ARTICLE 10: DAMAGE OR DESTRUCTION

### 10.01 Partial Damage

If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render Airline Premises untenable as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as provided herein. No abatement of rentals shall accrue to AIRLINE so long as Airline Premises remain tenable.

### 10.02 Substantial Damage

If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be so extensively damaged by fire or other casualty as to render any portion of such Airline Premises untenable but capable of being repaired within a reasonable period of time as determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as provided herein. In such case, the rentals payable hereunder with respect to AIRLINE's affected Airline Premises shall be paid up to the time of such damage and shall thereafter be abated equitably in proportion as the part of the area rendered untenable bears to total Airline Premises until such time as such affected Airline Premises shall be restored for AIRLINE's use. AUTHORITY shall use reasonable efforts to provide AIRLINE with alternate facilities to continue its operation while repairs are being completed at a rental rate not to exceed that provided for in this Agreement for the damaged space regardless of the particulars of the alternate premises.

### 10.03 Destruction

A. If any part of Airline Premises or adjacent facilities directly and substantially affecting the use of Airline Premises shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of such Airline Premises incapable of being repaired as determined by AUTHORITY, AUTHORITY shall notify AIRLINE within a period of one hundred eighty (180) days after the date of such damage of its decision whether to reconstruct or replace said space; provided, however, AUTHORITY shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected Airline Premises shall be paid up to the time of such

damage and thereafter shall be abated equitably in the same manner as set forth in Section 10.02 until such time as replacement or reconstructed space becomes available for use by AIRLINE.

**B.** In the event AUTHORITY elects to reconstruct or replace affected Airline Premises, AUTHORITY shall make every effort to provide AIRLINE with alternate facilities, if available, to continue its operation while reconstruction or replacement is being completed at a rental rate not to exceed that provided for in this Agreement for existing space of the same type.

**C.** In the event AUTHORITY elects not to reconstruct or replace affected Airline Premises, AUTHORITY shall meet and consult with AIRLINE regarding suitable replacement space for affected Airline Premises. In such event, AUTHORITY agrees to amend this Agreement to reflect related additions and deletions to AIRLINE's Airline Premises. If AIRLINE determines that the replacement space is not suitable for AIRLINE's needs, AIRLINE may terminate this Agreement.

#### **10.04 Damage Caused By AIRLINE**

Notwithstanding the provisions of this Article, in the event that due to the negligence or willful act or omission of AIRLINE, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire or other casualty, there shall be no abatement of rent during the repair or replacement of said Airline Premises provided AUTHORITY offers suitable temporary premises. To the extent that the cost of repairs exceeds the amount of any insurance proceeds payable to AUTHORITY by reason of such damage or destruction, AIRLINE shall pay the amount of such additional costs to AUTHORITY.

#### **10.05 AUTHORITY's Responsibilities**

AUTHORITY shall maintain appropriate and adequate levels of insurance customary in the industry. AUTHORITY's obligations to repair, reconstruct, or replace affected premises under the provisions of this Article shall be limited to restoring affected Airline Premises to substantially the same condition that existed at the date of damage or destruction. AUTHORITY shall in no way be responsible for the restoration or replacement of any equipment, furnishings, property, improvements, signs, or other items installed and/or owned by AIRLINE in accordance with this Agreement unless AIRLINE proves that damage is caused by the negligence or willful act or omission of AUTHORITY, its officials, agents, or employees.

## ARTICLE 11: INDEMNIFICATION AND INSURANCE

### 11.01 Indemnification by AIRLINE

A. To the fullest extent permitted by law, and except to the extent caused by the negligent or willful act or omission of the AUTHORITY, its officers, agents, employees, or contractors, or by any other AIRLINE tenant, AIRLINE agrees to indemnify, defend, save, and hold harmless the AUTHORITY, its commissioners, officers, directors, employees, agents, successors and assigns, individually or collectively, against and from any claim, action, loss, damage, injury, liability, and the cost and expense of whatsoever kind or nature (including, but not limited to, attorney's fees, disbursements, court costs, and expert fees) arising from or related, in whole or in part, in any way to the conduct of AIRLINE's operations at the Airport, or from any accident in or upon the AIRLINE Premises, or from any breach or default on the part of the AIRLINE in the performance of any covenant or agreement on the part of the AIRLINE to be performed pursuant to the terms of this Agreement, or arising from any negligence or willful act or omission of the AIRLINE or any of its agents, contractors, employees, licensees, invitees, or successors and assigns. If any action or proceeding be brought against the AUTHORITY by reason of any such claim, the AIRLINE upon notice from AUTHORITY covenants to resist or defend at AIRLINE's expense such action or proceeding by counsel of AUTHORITY's choice.

B. To the fullest extent permitted by law, AIRLINE shall indemnify, save, hold harmless, and defend AUTHORITY, its commissioners, officers, directors, employees agents, successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the cost and expense of whatsoever kind or nature (including, but not limited to, attorney's fees, disbursements, court costs, and expert fees) and any fines in any way arising from or based upon the violation by AIRLINE, its agents, contractors, employees, licensees, invitees, or successors and assigns of any federal, state, or municipal law, rule or regulation, or any regulation, rule or resolution of AUTHORITY, except to the extent such violation is caused by the negligent or willful act or omission of the AUTHORITY, its officers, agents, employees, or contractors. If any action or proceeding be brought against the AUTHORITY by reason of any such claim, the AIRLINE upon notice from AUTHORITY covenants to resist or defend at AIRLINE's expense such action or proceeding by counsel of AUTHORITY's choice.

C. To the fullest extent permitted by law, AIRLINE shall indemnify, save, hold harmless, and defend AUTHORITY, its commissioners, officers, directors, agents, employees, successors and assigns,

individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses actually incurred by the AUTHORITY (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees) of any environmental claim arising out of or resulting from AIRLINE's use and occupancy of Airline Premises or use of the Airport, including, but not limited to any claim for (i) discharge of pollutants (including but not limited to oil and glycol), hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface water, ground water, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport or at any other site, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from AIRLINE's Airport-related activities, but with respect to non-Airport property, including the air, surface water, ground water, or soil. AUTHORITY agrees to provide AIRLINE with prompt notice of the pendency of any such claim. Notwithstanding the above, AIRLINE shall not be liable for any environmental claim solely and directly attributable to a pre-existing condition on any Airport area newly leased by AIRLINE hereunder and not previously occupied by AIRLINE or any corporate predecessor to AIRLINE at any prior time. The above indemnification obligation of the AIRLINE shall include any liabilities incurred by the AUTHORITY solely as a result of its status as the owner of the property. Further, AIRLINE shall not be liable for any environmental claim to the extent caused by the negligence or willful acts of the Authority, its officers, employees, contractors and agents; and in case any action or proceeding be brought against the AUTHORITY by reason of any such claim, the AIRLINE upon notice from AUTHORITY covenants to resist or defend at AIRLINE's expense such action or proceeding by counsel of AUTHORITY's choice.

D. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to occurrences during the term of this Agreement or occasioned by acts or omissions of the AIRLINE during the term of this Agreement.

## **11.02 Insurance**

**A. The parties expressly agree that the insurance requirements set forth herein shall in no way modify, limit, or reduce in any way the indemnities made in this Agreement by AIRLINE to AUTHORITY, nor act to limit AIRLINE's liability under this Agreement to the limits of the policies of insurance required to be maintained by AIRLINE.**

**B. AIRLINE shall procure and maintain in force at all times during the Term of this Agreement a Commercial General Liability Insurance Policy and an Aviation Liability Insurance Policy to protect against bodily injury and personal injury liability, property damage liability, all loss of income and extra expenses incurred by the AUTHORITY to continue operations to the best of its ability.**

**(1) The limits for AIRLINE operating aircraft larger than sixty (60) seats shall be in the aggregate amount of not less than One Hundred Million Dollars (\$100,000,000) per occurrence, combined single limit and including at least \$500,000 Fire Damage Liability limits; provided, however, coverage for non-passengers shall be in the aggregate amount of not less than Twenty Five Million Dollars (\$25,000,000) per occurrence, combined single limit and including at least \$500,000 Fire Damage Liability limits. The limits for AIRLINE operating aircraft with sixty (60) seats or less shall be in an aggregate amount of not less than Fifty Million Dollars (\$50,000,000) per occurrence, combined single limit and including at least \$500,000 Fire Damage Liability limits.**

**(2) Coverage shall include, but not be limited to, Airline Premises operations; blanket contractual liability; passenger liability, personal injury and advertising liability (employee exclusion deleted) which coverage shall be \$10,000,000; products and completed operations; aircraft non-owned liability; liability for vehicles on the restricted access areas of the Airfield Area including baggage tugs, aircraft pushback tugs, provisioning trucks, air stair trucks, belt loaders and ground hangar keeper's liability. Explosion, collapse and underground property damage liability coverages shall not be excluded from such insurance coverage.**

**C. AIRLINE shall procure and maintain in force at all times during the Term of this Agreement, "Special Causes of Loss" property insurance covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property, and any other property in AIRLINE's care, custody or control (other than aircraft hull, spaces, cargo and passenger baggage and personal effects) in an amount equal to the full replacement cost and with no penalty for coinsurance. Said policy may take**

into consideration any limitations on liability that may exist in favor of AIRLINE for customer goods.

**D. AIRLINE shall procure and maintain in force at all times during the Term of this Agreement a Business Automobile Policy and a Non-Owned and Hired Business Automobile Liability Policy, including coverage for Bodily Injury of at least twenty million dollars (\$20,000,000), Medical Payments to others for Owned Vehicles of at least Five Thousand Dollars (\$5,000) and Uninsured Motorist Coverages for at least One Million Dollars (\$1,000,000) on an occurrence form, with a company or companies licensed to conduct business within the Commonwealth of Virginia, and furnish the AUTHORITY with a Certificate of Insurance reflecting at least a sixty (60) day notice of either cancellation, change in coverage or limits, or non-renewal, in addition to naming the AUTHORITY as an Additional Insured.**

**F. AIRLINE shall provide a Certificate of Insurance to AUTHORITY reflecting standard Workers' Compensation and Employers Liability coverages as mandated by the Virginia Workers' Compensation Commission, giving AUTHORITY a sixty (60) day notice of cancellation or non-renewal, is in force on behalf of the AIRLINE. Should any events be of a maritime nature, the Workers' Compensation coverages shall reflect the existence of the proper Maritime Compensation Coverages, as mandated by the Virginia Workers' Compensation Commission. The Employers Liability limits shall be not less than Five Hundred Thousand Dollars (\$500,000) Each Accident for Bodily Injury by Accident; Five Hundred Thousand Dollars (\$500,000) Policy Limit for Bodily Injury for Diseases; and Five Hundred Thousand Dollars (\$500,000) Each Employee for Bodily Injury for Diseases. The Workers' Compensation policy shall be further endorsed to include the Voluntary Compensation and Employers Liability Coverage Endorsement to include all employees not subject to the Workers' Compensation Law or Occupational Disease Laws or the United States Longshoremen's and Harbor Workers' Act of the Commonwealth of Virginia.**

**G. The parties acknowledge and agree that circumstances affecting, among other things, the Airport, AUTHORITY, AIRLINE, the aviation industry and the insurance market may occur during the term of this Agreement and, as a consequence, AUTHORITY may, upon written notice and after consultation with AIRLINE, adjust the insurance requirements set forth in this Article at any time during the term if, in AUTHORITY's judgment, the insurance requirements of this Agreement are deemed inadequate to properly protect AUTHORITY and/or the Airport, and AIRLINE shall promptly comply with such adjustment(s). Any changes to insurance requirements will be implemented at the next applicable insurance policy renewal term.**

**H.** Upon execution of this Agreement, AIRLINE shall furnish AUTHORITY with a certificate or certificates of insurance as evidence that such insurance is in force. AUTHORITY reserves the right to require a certified copy of each certificate upon request. AIRLINE shall name AUTHORITY as an additional insured on such insurance policy or policies to the extent of the AIRLINE's obligations assumed under Section 11.01. Said policies shall be issued by either AM Best A rated insurance companies or financially solvent captive insurance companies, and in a form and content satisfactory to AUTHORITY, and shall provide for sixty (60) days advance written notice to AUTHORITY prior to the cancellation of, or any adverse material change, in such policies. AIRLINE's failure to provide and/or maintain the required insurance coverage as set forth herein shall be grounds for immediate cancellation of this Agreement.

#### **11.03 Premium Payments**

Notwithstanding the provisions of Section 11.02, AUTHORITY shall have the right to pay the premium for each insurance policy required under this Agreement and AIRLINE hereby understands and agrees to reimburse AUTHORITY for all premiums and related expenses associated with the procurement of the necessary insurance coverages that are included and agreed upon by AIRLINE under the terms and conditions of this Agreement. Failure by AUTHORITY to secure such insurance for AIRLINE shall not impose any liability upon AUTHORITY and such failure shall not operate to waive or invalidate any obligation assumed thereunder by AIRLINE.

#### **11.04 Real and Personal Property and Employee Dishonesty**

**A.** AUTHORITY shall not be liable or responsible for any loss or damage to any real or personal property of AIRLINE, including all loss of income or extra expense costs, arising out of any incident which is the proximate cause of any peril included within the "Special Causes of Loss" form of the standard Commercial Property Policy as used within the Commonwealth of Virginia, and including additional perils of flood, the dishonest acts of AIRLINE's employees, earthquake, earth movement, collapse of any building or structure, weather conditions, acts of God or any other causes of loss arising out of nature.

**B.** AIRLINE shall hold AUTHORITY harmless for the dishonest acts of AIRLINE's employees.

#### **11.05 Waiver of Subrogation**

**AUTHORITY and AIRLINE hereby mutually waive any and all rights of recovery against the other party arising out of damage or destruction of the buildings, Airline Premises, or any other real or personal property from causes included under any property insurance policies to the extent such damage or destruction is covered by the proceeds of such policies and whether or not such damage or destruction shall have been caused by the parties, their officers, employees, or agents, but only to the extent that the insurance policies then in force permit such waiver. All property insurance policies shall contain, to the extent available, this waiver of subrogation provision and the cost of such provision shall be borne by the primary insured.**

#### **11.06 Notice of Claims and Events**

**AIRLINE shall provide AUTHORITY written notice of any claim made on AIRLINE's insurance arising out of or related to its operations at the Airport within five (5) business days after AIRLINE learns of the claim. In the event of any injury, loss, damage, or other activity that could reasonably give rise to a claim on its insurance or indemnification by AIRLINE pursuant to this Article, AIRLINE shall provide a written report regarding the event to AUTHORITY within five (5) business days after AIRLINE learns of the event.**

#### **11.07 Third Party Beneficiaries**

**AIRLINE and AUTHORITY specifically agree that it is not intended by any of the provisions nor any part of the Agreement to cause or create in the public or any individual or other entity a third party beneficiary or to authorize anyone not a party to the Agreement to maintain an action for personal injuries or property damage pursuant to the terms or provisions of the Agreement.**

## ARTICLE 12: CANCELLATION BY AUTHORITY

### 12.01 Events of Default

The occurrence of any of the following shall constitute a material breach of the Agreement by AIRLINE and an event of default:

- A. AIRLINE fails to pay any terminal rentals, landing fees, PFCs or any other payment provided in this Agreement within ten (10) days after the date it is due. If a dispute arises between AUTHORITY and AIRLINE with respect to any obligation or alleged obligation of AIRLINE to make payments to AUTHORITY, payments under protest by AIRLINE of the amount due shall not waive AIRLINE's right to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then AUTHORITY shall promptly reimburse AIRLINE any amount determined as not due. Further, throughout the duration of any appeal or contest by AIRLINE of any payment, AIRLINE will not be held in default with regard to the contested payment so long as AIRLINE makes the payment under protest in an amount it reasonably believes is due or contests the validity of said payment.
- B. The conduct of any business or performance of any act at the Airport not specifically authorized herein or by other agreements between AUTHORITY and AIRLINE, and said business or act does not cease within thirty (30) days of receipt of AUTHORITY's written notice to cease said business or act.
- C. The failure by AIRLINE to provide and maintain Contract Security in accordance with this Agreement.
- D. The failure by AIRLINE to provide and maintain insurance coverage in accordance with this Agreement.
- E. (1) The filing of a petition by or against AIRLINE for relief in bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of AIRLINE's property; or an assignment by AIRLINE for the benefit of creditors; or the taking possession of the property of AIRLINE by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or

liquidation of AIRLINE or for operating AIRLINE's business, either temporarily or permanently. If any such action is commenced against AIRLINE, the same shall not constitute a default if AIRLINE files a motion to dismiss such action within sixty (60) days after its filing and such action is dismissed or discharged within one hundred twenty (120) days after the action against AIRLINE was commenced.

(2) Neither this Agreement nor any rights or privileges hereunder shall be an asset of AIRLINE in any bankruptcy, insolvency or reorganization proceeding. If AUTHORITY shall not be permitted to terminate this Agreement because of the provisions of the United States Bankruptcy Code, AIRLINE or any trustee for it shall, within fifteen (15) days upon request by AUTHORITY to the Bankruptcy Court, assume or reject this Agreement; provided however, that AIRLINE may not assume this Agreement unless all defaults hereunder shall have been cured, AUTHORITY shall have been compensated for any monetary loss resulting from such default, and AUTHORITY shall be provided with adequate assurance of full and timely performance of all provisions, terms and conditions of this Agreement on the part of AIRLINE to be performed.

F. The divestiture of AIRLINE's estate herein by operation of law, by dissolution, or by liquidation. A merger of AIRLINE with another Scheduled Air Carrier shall not be construed as an event of default.

G. The voluntary discontinuance for a period of ten (10) consecutive days by AIRLINE of its operations at the Airport unless otherwise approved by AUTHORITY in advance and in writing. No failure by AIRLINE to settle any labor action shall be deemed a voluntary discontinuance.

H. AIRLINE's abandonment or constructive abandonment of the Airline Premises that continues for ten (10) days after receipt of notice of default by AIRLINE.

I. AIRLINE's failure to observe or perform any other provision or covenant of this Agreement, where such failure continues for thirty (30) days after written notice thereof to AIRLINE requiring the same to be remedied; provided that if the nature of the breach is such that the same cannot reasonably be cured within thirty (30) days, but can be cured within a reasonable period of time (not to exceed sixty (60) days after notice of default to AIRLINE without the express written consent of AUTHORITY), AIRLINE shall not be deemed to be in default if, and only so long as, AIRLINE commences such work within the thirty (30) day cure period and thereafter diligently and continuously prosecutes the same to completion. AIRLINE shall have the burden of proof to demonstrate to

**AUTHORITY's satisfaction that (i) the default cannot be cured within the cure period, (ii) AIRLINE is proceeding with diligence to cure said default, and (iii) such default will be cured within a reasonable period of time.**

## **12.02 AUTHORITY's Remedies**

**The following remedies shall be available to AUTHORITY upon the occurrence of any event of default by AIRLINE. The AUTHORITY's rights, options, and remedies shall be construed and held to be cumulative, and no one of them shall be exclusive of any other. The following remedies are in addition to any other rights and remedies available at law or equity or as provided to AUTHORITY in other sections of this Agreement.**

**A. AUTHORITY has the right, but not the obligation, to terminate this Agreement effective upon a date specified in a notice of cancellation. For events enumerated in 12.01(B) and 12.01(I), such date shall be not less than thirty (30) days from the date of said notice. Upon such date of termination, AIRLINE shall have no further rights hereunder and AUTHORITY shall have the right to take immediate possession of Airline Premises.**

**B. Notwithstanding any other provision of this Agreement, AUTHORITY has the right to withhold AIRLINE's share of Surplus Revenue or any portion thereof otherwise due to AIRLINE until the default is corrected or remedied.**

**C. AUTHORITY has the right, but not the obligation, to reenter the Airline Premises and to remove all or any part of AIRLINE's property and personnel from same upon a date of reentry specified in AUTHORITY's written notice of reentry to AIRLINE. For events enumerated in 12.01(B) and 12.01(I), such date shall be not less than thirty (30) days from the date of said notice. Upon any removal of AIRLINE property by AUTHORITY hereunder, AIRLINE's property may be stored at AIRLINE's sole risk, cost and expense or if abandoned, sold and the proceeds applied to any damages incurred by AUTHORITY.**

**D. AUTHORITY has the right, but not the obligation, to relet Airline Premises and any improvements thereon or any part thereof at such rentals, fees and charges and upon such other terms and conditions as AUTHORITY, in its judgment, may deem advisable, with the right to make alterations, repairs or improvements on said Airline Premises.**

**(1) In reletting the Airline Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms no less favorable to AUTHORITY than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's default.**

**(2) In the event that AUTHORITY relets Airline Premises, rentals, fees and charges received by AUTHORITY from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rentals, fees and charges by AIRLINE as the same may become due and payable hereunder. If that portion of such rentals, fees and charges received from such reletting and applied to the payment of rentals, fees and charges hereunder is less than the rentals, fees and charges payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. In no event shall AIRLINE be entitled to receive any excess of net rentals, fees, and charges collected over sums payable by AIRLINE to AUTHORITY under this Agreement. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any costs and expenses incurred by AUTHORITY in such reletting not covered by the rentals, fees and charges received from such reletting.**

**(3) AIRLINE agrees that the amount of rentals, fees, and charges payable by AIRLINE after reentry by AUTHORITY until the expiration of this Agreement shall be calculated based upon the average monthly amounts due from AIRLINE to AUTHORITY for all rentals, fees, and charges for the twelve (12) months immediately preceding the event of default.**

**(4) Reentry or reletting of Airline premises by AUTHORITY, or the exercise of any other remedy or right by AUTHORITY in the event of default, shall not be construed as an election on AUTHORITY's part to terminate this Agreement unless a written notice of termination is given to AIRLINE.**

**E. The AUTHORITY may recover from AIRLINE all damages, without limitation, proximately resulting from the event of default.**

(1) AIRLINE shall pay to AUTHORITY all costs incurred by AUTHORITY in the exercise of any remedy, including but not limited to, attorney's fees, disbursements, court costs, penalties, interest, late fees and expert fees.

(2) If AUTHORITY pays any sum or incurs any cost as a result of a default, AIRLINE shall reimburse AUTHORITY for all such costs or expenses, plus a ten percent (10%) administrative fee, within thirty (30) days from the date of AIRLINE's receipt of AUTHORITY'S invoice. AIRLINE shall reimburse AUTHORITY for labor costs incurred at two and one-half times the actual labor costs, including fringe benefits, and for any materials, supplies or equipment costs incurred at two times the actual cost of such materials, supplies or equipment.

#### **12.03 Continuing Responsibilities of AIRLINE**

Notwithstanding the occurrence of any event of default, AIRLINE shall remain liable to AUTHORITY for all rentals, fees and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Unless AUTHORITY elects to cancel this Agreement through written notice, AIRLINE shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until the expiration of this Agreement.

#### **12.04 Nonwaiver**

A. The failure or delay on the part of either party to enforce or exercise at any time any of the provisions, rights, or remedies in the Agreement shall in no way be construed to be a waiver thereof, nor in any way to affect the validity of this Agreement or any act hereof, or the right of the party to thereafter enforce each and every such provision, right, or remedy. No waiver of any breach or default of this Agreement shall be held to be a waiver of any other or subsequent breach or default.

B. The receipt by AUTHORITY of payments from AIRLINE from and after the time when the non-payment becomes an event of default hereunder shall not be construed as a waiver of such default. The receipt by AUTHORITY of a lesser amount than the payments due shall not be construed to be other than a payment on account of the payments then due, nor shall any statement on AIRLINE's check or any letter accompanying AIRLINE's check be deemed an accord and satisfaction, and AUTHORITY may accept such payment without prejudice to AUTHORITY's right to recover the

**balance of the payments due or to pursue any other remedies provided in this Agreement or at law or equity.**

**C. No act or thing done by AUTHORITY or AUTHORITY's agents or employees during the term of this Agreement and any extension thereof shall be deemed an acceptance of a surrender of the leased premises, and no agreement to accept such a surrender shall be valid, unless in writing and signed by AUTHORITY.**

## ARTICLE 13: CANCELLATION BY AIRLINE

### 13.01 Events of Default

The following shall be deemed events of default by AUTHORITY hereunder:

- A. AUTHORITY fails to keep, perform, or observe any material term, covenant, or condition herein contained to be kept, performed, or observed by AUTHORITY and such failure continues for thirty (30) days after receipt of written notice from AIRLINE. If by its nature the default cannot be cured within thirty (30) days, AUTHORITY will be deemed to have cured the default if it promptly commences to cure the default and thereafter diligently continues to cure to completion. AUTHORITY's performance under this Paragraph shall be conditioned by the Force Majeure provisions of this Agreement.
- B. Airport is closed to flights in general or to the flights of AIRLINE for reasons other than those circumstances within AIRLINE's control, and Airport is not reopened to such flights within thirty (30) consecutive days from such closure.
- C. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction; or AIRLINE is unable to use Airport for a period of at least thirty (30) consecutive days due to any law or any order, rule or regulation of any governmental authority having jurisdiction over the operations of the Airport; or any court of competent jurisdiction issues an injunction preventing AUTHORITY or AIRLINE from using Airport for airport purposes for reasons other than those circumstances within AIRLINE's control, and such injunction remains in force for a period of at least thirty (30) consecutive days.
- D. The United States Government or any of its authorized agencies assumes the operation, control or use of the Airport in such a manner as to substantially restrict AIRLINE from conducting its operations for a period of thirty (30) consecutive days or more.

**13.02 AIRLINE's Remedy**

**So long as AIRLINE is not in default of this Agreement, AIRLINE may cancel this Agreement upon the occurrence of an event of default as set forth in this Article. In such event, AIRLINE shall provide thirty (30) days advance written notice of cancellation to AUTHORITY. All rentals, fees and charges payable by AIRLINE shall cease as of the date of the event of default and AIRLINE shall surrender the Airline Premises in accordance with Article 14 hereof.**

## ARTICLE 14: SURRENDER OF AIRLINE PREMISES

### 14.01 Surrender and Delivery

Upon termination or cancellation of this Agreement, AIRLINE shall promptly and peaceably surrender to AUTHORITY its Airline Premises and all improvements thereon to which AUTHORITY is entitled in the same condition received, reasonable wear and tear and damage due to structural or pre-existing defects excepted, unless caused by AIRLINE; provided, however, nothing in this Section shall be construed to modify the obligations of the parties set forth in Article 9, Article 10, and Article 11.

### 14.02 Removal of Property

Provided AIRLINE is not in default for payment of rentals, fees and/or charges hereunder, AIRLINE shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft, tools, equipment, trade fixtures, and other personal property, title to which shall remain in AIRLINE, unless otherwise set forth in this Agreement. AIRLINE shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) days following termination of this Agreement, unless otherwise approved in writing by AUTHORITY and subject to any valid lien which AUTHORITY may have thereon for unpaid rentals, fees and/or charges. AIRLINE shall not abandon any portion of its property at the Airport without the written consent of AUTHORITY. Any and all property not removed by AIRLINE within fifteen (15) days following the date of termination of this Agreement shall, at the option of AUTHORITY: (i) become the property of AUTHORITY at no cost to AUTHORITY; (ii) be stored by AUTHORITY at no cost to AUTHORITY; or (iii) be sold in a commercially reasonable manner for the account of AIRLINE at no cost to AUTHORITY. Except as may be otherwise agreed by AUTHORITY, all AUTHORITY property damaged by or as a result of the removal of AIRLINE's property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.

### 14.03 Holding Over

In the event AIRLINE uses its Airline Premises without the written consent of AUTHORITY after this Agreement has been canceled or expires, AIRLINE shall be deemed a tenant at sufferance during the period of such use and shall pay rates equal to the rates for rentals, fees and charges

**established by AUTHORITY for Air Transportation Companies which are not Signatory Airlines during such period. In such event, AUTHORITY shall have the right to all remedies provided under this Agreement or applicable laws, and it is expressly agreed that the acceptance of any payment by the AUTHORITY from AIRLINE shall not constitute a waiver by the AUTHORITY of its right to immediate possession of the Airline Premises or any other rights or remedies. AUTHORITY's consent for Airline to remain in possession shall not be unreasonably withheld during any period of good faith lease negotiations between AIRLINE and AUTHORITY.**

## ARTICLE 15: ASSIGNMENT, SUBLETTING AND HANDLING AGREEMENTS

### 15.01 Assignment and Subletting by AIRLINE

A. AIRLINE shall not, directly or indirectly, assign, sell, hypothecate, or otherwise transfer this Agreement or any portion of Airline Premises without the prior written consent of AUTHORITY. The foregoing shall not prevent the assignment of this Agreement or any portion thereof to any corporation with which AIRLINE may merge or consolidate or to which AIRLINE may transfer all or a substantial portion of all of its assets, provided however (i) that such successor shall provide publicly available financial information as requested by AUTHORITY; and (ii) that such successor no later than thirty (30) days after the date of such merger, consolidation, succession or transfer shall provide written acknowledgment by a duly authorized corporate officer to the AUTHORITY that it has assumed all obligations of AIRLINE and will fully honor all the terms and conditions set forth in this Agreement.

B. With the exception of subleasing to an Affiliate, AIRLINE shall not sublease Airline Premises without the prior written consent of AUTHORITY. Exclusive use of AIRLINE's Exclusive Use Premises or any part thereof by anyone other than AIRLINE shall be deemed a sublease.

C. AIRLINE shall include with its request for permission to assign or sublease, a copy of the proposed assignment or sublease agreement. In the event such proposed agreement has not been prepared, a written summary of the material terms and conditions to be contained in such agreement shall be included with AIRLINE's request for tentative approval by AUTHORITY. The assignment or sublease agreement or written summary submitted with AIRLINE's request shall include the following information: (i) the term; (ii) the area or space to be assigned or subleased; (iii) the sublease rentals to be charged; (iv) financial data for the successor entity as requested by AUTHORITY in the event of an assignment; and (v) the provision that assignee or sublessee must execute a separate operating agreement with AUTHORITY. Any other information requested by AUTHORITY pertaining to the sublease or assignment shall be promptly provided by AIRLINE. A fully executed copy of the sublease or assignment shall be submitted to AUTHORITY for final approval at least thirty (30) days in advance of the occupancy of any portion of Airline Premises by the assignee or sublessee.

D. In the event the rentals, fees and charges for subleased premises exceed the rentals, fees and charges payable by AIRLINE for said premises pursuant to this Agreement, AIRLINE shall pay to AUTHORITY the excess of the rentals, fees and charges received from the sublessee over that specified

to be paid by AIRLINE herein; provided, however, AIRLINE may charge a reasonable fee for administrative costs, not to exceed fifteen percent (15%) of the specified sublease rental and such fee shall not be considered part of excess rentals, fees and charges. AIRLINE may also charge a reasonable fee to others for the use of AIRLINE's capital equipment, tenant fixtures and furnishings, and may charge for use of utilities and other services being paid for by AIRLINE.

E. AUTHORITY may require such additional Contract Security from AIRLINE as AUTHORITY shall determine appropriate as a condition of providing the consent to any assignment or sublease.

#### **15.02 Handling Agreements**

In the event AIRLINE agrees to ground handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the foregoing, AIRLINE shall not ground handle any Air Transportation Company which does not have in force an agreement with AUTHORITY for the operation of its Air Transportation Business at the Airport.

#### **15.03 Primary Liability**

No assignment, sublease, ground handling agreement or other transfer shall relieve AIRLINE from primary liability for any of its obligations hereunder, and AIRLINE shall continue to remain primarily liable for the payment of rentals, fees and charges applicable to such premises and facilities hereunder.

#### **15.04 Insurance**

No subleasing or assignment of any interest in any part of this Agreement shall be effective unless and until AUTHORITY in writing acknowledges that it has received satisfactory evidence of a sublessee's or assignee's insurance policies and/or coverage as required under this Agreement.

## **ARTICLE 16: AIRPORT ACCESS AND AIRLINE ACCOMMODATIONS**

### **16.01 Declaration of Intent**

**AUTHORITY intends to maintain a policy of providing open access to the Airport and achieving balanced utilization of Airport facilities. To achieve that goal, AUTHORITY reserves the right to require sharing and temporary use of Airline Premises in accordance with the following procedures: (1) vacant or unassigned facilities and aircraft parking positions shall be utilized first to accommodate airlines requiring facilities at the Airport; (2) facilities and aircraft parking positions leased to Signatory Airlines shall be utilized second. Any facilities and aircraft parking positions leased and assigned to Signatory Airlines shall be utilized in the inverse order of their degree of utilization by such Signatory Airlines. Such utilization shall be determined by taking into account the following: (i) the average number of flights per aircraft parking position per day, which average shall be calculated by dividing the total number of flight departures per day from all of AIRLINE's assigned aircraft parking positions by the total number of airline(s) assigned aircraft parking positions; (ii) scheduling considerations; (iii) aircraft parking position locations; and (iv) other operational considerations. In the event AIRLINE is required to share its Airline Premises pursuant to this Article, AIRLINE shall be given priority in all aspects of usage over all other airlines using such Airline Premises.**

### **16.02 Vacant or Unassigned Facilities**

**AUTHORITY shall retain under its exclusive control and possession all vacant or unassigned facilities at the Airport. Such facilities will be made available first, subject to the provisions of Section 21.13, to meet space requirements of Signatory Airlines; second, to Signatory Airlines being relocated by AUTHORITY pursuant to Article 10; and third, to airlines not requiring permanent facilities or for the temporary accommodation of airlines pending allocation of permanent facilities.**

### **16.03 Sharing and Temporary Use of Airline Premises**

If at any time the AUTHORITY determines that any airline needs facilities and aircraft parking positions to accommodate passengers or aircraft, the AUTHORITY may, from time to time in accordance with the procedure set forth in Section 5.01 grant such airline the right of temporary or shared use of all or a designated portion of AIRLINE's Premises and assigned aircraft parking positions, including rights of ingress and egress and the right to use loading bridges and appurtenant equipment which are necessary for the effective use of such areas, provided that:

- A. the proposed user of such areas has furnished a certificate of insurance evidencing insurance of the types and with the limits and deductibles required to be carried by AIRLINE and endorsed to include AIRLINE as an additional insured;
- B. such proposed user has provided AIRLINE with indemnification satisfactory to AIRLINE; provided, however, that AIRLINE may not require any indemnification more favorable to it than that which it provides to Authority hereunder;
- C. such proposed use does not result in an actual or threatened strike, boycott, picketing, slow-down, work stoppage or other type of labor action; and
- D. such proposed user has agreed to pay AIRLINE the sum of the following:
  - (1) An amount equal to a pro rata share of the sum of the fees and charges payable by AIRLINE with respect to such areas during the shared or temporary use period as calculated pursuant to Article 7;
  - (2) Additional amounts sufficient to recover AIRLINE's direct costs, if any, of such shared or temporary use, including a reasonable allocation of any capital and equipment costs not funded through AUTHORITY; and
  - (3) A reasonable administrative fee not to exceed fifteen percent (15%) of the sum of items (1) and (2).

### **16.04 Competitive Access Requirements**

**Pursuant to the requirements of 14 CFR Part 158, or any other federal law or regulation of similar intent, AUTHORITY shall have the right to terminate this Agreement upon thirty (30) days written notice to AIRLINE by registered or certified mail in the event that any portion of its existing Airline Premises is not fully utilized and is not made available for use by potentially competing air carriers or foreign flag carriers. The foregoing provision shall apply only if and to the extent required by 14 CFR Part 158, any other federal law or regulation of similar intent, or by any PFC or federal grant assurances executed by AUTHORITY pursuant to said regulation.**

## ARTICLE 17: GOVERNMENT INCLUSION

### 17.01 Government Agreements and Matters of Record

This Agreement shall be subordinate to the provisions of any existing or future agreements between AUTHORITY and the United States, the Commonwealth of Virginia or the City of Norfolk, relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the Airport. AUTHORITY agrees to provide AIRLINE written advance notice of any such provisions which would adversely modify the material terms of this Agreement. The Agreement also shall be subject to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record; and any land use or zoning laws or regulations of the Commonwealth of Virginia and the Cities of Norfolk and Virginia Beach.

### 17.02 Federal Government's Emergency Clause

All provisions of this Agreement shall be subordinate to the rights of the United States of America to operate the Airport or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operations of the Airport by the United States of America.

### 17.03 Nondiscrimination; Compliance with Federal Law

A. AIRLINE covenants and agrees that: (i) AIRLINE, its personal representatives, successors in interest, and assigns will not discriminate against any person on the grounds of race, color, sex, creed or national origin, and will not exclude any person from the use or the benefits of Airline Premises or the services provided thereon, based on race, color, sex, creed or national origin; (ii) no person, on the grounds of race, color, sex, creed or national origin, shall be excluded from participation in, denied the benefit of, or otherwise subjected to discrimination in the construction of any improvements on, over or under Airline Premises or the furnishing of services thereon; (iii) AIRLINE shall comply with all other requirements imposed by or pursuant to Department of Transportation (DOT), Code of Federal Regulations (C.F.R.), Part 21, title 49, Subtitle A, "Nondiscrimination in Federally-Assisted Programs" of the DOT-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be

amended; and (iv) AIRLINE shall comply with all applicable provisions of the Americans with Disabilities Act, Public Law 101-336 (42 USC '12101, et seq., as amended), with regard to the operations on the Airport.

B. AIRLINE shall undertake an affirmative action program as required by Department of Transportation, Code of Federal Regulations (C.F.R.) Part 152, Title 14, Subpart E, as amended, and will otherwise comply with all requirements of this Subpart, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in or receiving the services or benefits of any program or activity covered by this Subpart. AIRLINE assures that it will require that its covered suborganizations provide assurance to the AIRLINE that they similarly will undertake affirmative action programs, that they will otherwise comply with all requirements of Subpart E, and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E.

C. AIRLINE acknowledges that the provisions of 49 CFR, Parts 23 and 26, Disadvantaged Business Enterprises (DBE), as said regulations may be amended, and such other similar regulations as may be enacted, are applicable to the activities of AIRLINE under the terms of this Agreement, unless exempted by said regulations, and hereby agrees to comply with said regulations to the extent required by law and with the Federal Aviation Administration and the U.S. Department of Transportation, in reference thereto. These requirements may include, but not be limited to, compliance with DBE participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if so directed, the contracting of specified percentages of goods and services contracts to DBEs.

D. In the event of breach of any of the above nondiscrimination covenants, AUTHORITY shall have the right to cancel this Agreement after such enforcement action as the United States Government may direct related to this covenant has been followed and completed, including exercise or expiration of appeal rights.

#### **17.04 Assurance Agreements**

This Agreement is subject and subordinate to the terms of any "Sponsor's Assurance Agreement" or like agreement that has been or may be furnished to the FAA by AUTHORITY or required by law. In the event that the FAA or its successors require modification or changes in this

**Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport or as a requirement of any prior grants, AIRLINE hereby approves any and all such modifications, amendments, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be required.**

**ARTICLE 18: ENVIRONMENTAL, HEALTH,  
AND SAFETY COMPLIANCE**

**18.01 Compliance**

**A. AIRLINE shall ensure that its operations, equipment and Airline Premises shall comply with all applicable federal, state, and local environmental, health, and safety laws and regulations. AIRLINE agrees to make such accommodation or changes in its operations and procedures as are necessary to comply with such requirements, or with requirements established by AUTHORITY to ensure environmental compliance by all tenants at the Airport.**

**B. All environmental permits and licenses issued by federal, state, and local regulatory agencies shall be obtained and held by AUTHORITY in its name, unless AIRLINE requests and is granted in writing by AUTHORITY permission to obtain a separate permit for AIRLINE's Exclusive Use facilities, equipment, or operations. AIRLINE shall not (i) conduct any activity; (ii) construct any structure or facility, or (iii) install any equipment, requiring an environmental permit or license without the necessary permit having been obtained by the AUTHORITY, or by the AIRLINE in accordance with this Section.**

**C. If any environmental permit or license is required due to the separate activities, operations or requirements of AIRLINE not shared generally by other airlines at the Airport, AIRLINE agrees to reimburse the AUTHORITY for the reasonable costs of application for and maintaining the permit. If AIRLINE requests and receives permission from AUTHORITY to obtain a permit in AIRLINE's name, AIRLINE shall bear all costs for obtaining and maintaining this permit.**

**D. AIRLINE shall consult with AUTHORITY with regard to its intent to construct facilities or acquire or install equipment that requires an environmental permit or license for construction or operation. AIRLINE shall be responsible for ensuring sufficient advance notice to enable AUTHORITY to obtain required permits in accordance with the applicable law or regulations.**

**E. AIRLINE acknowledges that federal, state, and local environmental regulatory agencies have authority to conduct inspections of Airport, including Airline Premises, and agrees to cooperate with AUTHORITY and such agencies to facilitate inspections, and to make records available to such agencies as required by law.**

**F. AIRLINE further agrees to allow inspections and audits to be conducted by AUTHORITY, its contractors, or consultants, for the purpose of determining whether AIRLINE's and Airport's operations and facilities are in compliance with applicable environmental laws and regulations. AIRLINE agrees to make available to AUTHORITY, its contractors or consultants, records that may be reasonably required to assist in such inspections and audits.**

**G. AIRLINE agrees to comply with all requirements and conditions imposed upon AUTHORITY by order of, or agreement with, environmental regulatory agencies. AUTHORITY will consult with AIRLINE prior to entering into any agreement or consent order with such regulatory agencies that will affect AIRLINE's operations or Exclusive Use Space.**

**H. AIRLINE agrees to submit to AUTHORITY such reports, documents, data, and information, as may be reasonably required or established from time to time by AUTHORITY for the purpose of facilitating environmental compliance or management of the Airport. Such reports, documents, data, and information shall be supplied by AIRLINE at its cost.**

## ARTICLE 19: SECURITY

### 19.01 Written Program

AIRLINE shall establish, and at all times during the term of this Agreement maintain and follow, a written security program for its operations at the Airport. A copy of AIRLINE'S written program shall be submitted to AUTHORITY upon written request by AUTHORITY. AUTHORITY acknowledges that such AIRLINE security program is of a confidential nature and agrees that no person shall be permitted to gain access to such knowledge and information except as is reasonably necessary to implement the Airport security program or required by law.

### 19.02 Unauthorized Access

Pursuant to its program, AIRLINE shall take reasonable precautions to maintain Airline Premises in a manner as to keep them secure from unauthorized intrusion and shall with respect to any area of the Airline Premises opening to an air operations area of the Airport provide for an adequate security system designed to prevent unauthorized persons or vehicles from entering such air operations areas. An "air operations area" is any area of the Airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

### 19.03 Compliance with TSA

AIRLINE, its officers, employees, agents, and all those under its control, shall at all times comply with security measures required of AIRLINE by the TSA and all other governmental entities or contained in any Airport master security plan or other nondiscriminatory rule or regulation established by the AUTHORITY. AIRLINE's security program must be consistent and compatible in all respect with AUTHORITY's overall security program for the Airport, and must be acceptable to AUTHORITY and the TSA.

### 19.04 Noncompliance

If AIRLINE, its officers, employees, agents, or those under its control shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty or other damages being assessed against AUTHORITY, then, in addition to any other provisions of this Agreement,

**AIRLINE shall be responsible and shall reimburse AUTHORITY in the full amount of any such monetary penalty or other damages. Nothing contained herein shall prohibit AIRLINE from contesting with the government the validity or amount of such penalty.**

**19.05 Confidential Information**

**In connection with its operations, AIRLINE may receive, gain access to, or otherwise obtain, certain knowledge and information related to AUTHORITY's overall Airport security program. AIRLINE acknowledges that all such knowledge and information is of a highly confidential nature. AIRLINE covenants and agrees that no person, whether an employee of AIRLINE or a third party, shall be permitted or gain access to such knowledge and information, unless such person has been approved by AUTHORITY in advance in writing, which approval may be granted or withheld by AUTHORITY in its sole discretion.**

## ARTICLE 20: BONDS AND FINANCING

### 20.01 Subordination to Resolution

A. This Agreement and all rights granted to AIRLINE hereunder are expressly subordinated and subject to the lien and provisions of the pledges, transfer, hypothecation, or assignment made by AUTHORITY in any Resolution, or any proceedings authorizing and providing security for Other Indebtedness. AUTHORITY and AIRLINE agree that to the extent required by any Resolution(s) or other financing document(s) of the AUTHORITY, or law, the holders of the Bonds, Subordinated Indebtedness, or Other Indebtedness, or their designated representatives, shall have the right to exercise any and all rights of AUTHORITY hereunder.

B. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to the Resolution, or any proceedings authorizing and providing security for Other Indebtedness that would materially alter the terms and provisions of this Agreement. AUTHORITY and AIRLINE shall use their best efforts to agree on the implementation of any such material amendments or supplements desired solely by AUTHORITY for its own purposes.

### 20.02 Internal Revenue Code of 1986 (“Code”)

With respect to Bonds that have been or may be issued, the interest on which is intended to be excludable from gross income of the holders for Federal income tax purposes under the Code, AIRLINE agrees that it will not act, or fail to act (and will immediately cease and desist from any action, or failure to act) with respect to the use of the Airline Premises, if the act or failure to act may cause AUTHORITY to be in noncompliance with the provisions of the Code, and AIRLINE will not take or persist in any action or omission which may cause the interest on such bonds or Bonds to be includable in the gross income of the holders thereof for Federal income tax purposes.

### 20.03 Alternative Minimum Tax (AMT) Issues.

A. For purposes of this Agreement, AIRLINE's Share of Surplus Revenue shall not include any revenue from AUTHORITY's facilities which may now or in the future be financed by any outstanding non-AMT Bonds issued by AUTHORITY.

**B.** It is the intention of AIRLINE and AUTHORITY that the terms and conditions of this Agreement shall not serve as an impediment to addressing any Alternative Minimum Tax issues as currently in the Code or as such Code provisions may be amended from time to time. Those modifications of a term or terms of this Agreement as may be necessary to specifically address any Alternative Minimum Tax issue affecting this Agreement may be made during the term of this Agreement and without amendment to this Agreement. AUTHORITY shall provide notification to AIRLINE of any required modification to a term or terms of this Agreement to satisfy the requirements set forth in this Article.

**C.** AUTHORITY is authorized to consult with bond and/or tax counsel from time to time during the term of this Agreement with respect to "private activity bonds" and the affects of Alternative Minimum Tax as set forth in the Code on the terms and conditions of this Agreement, and to further determine the necessity of a modification of a term or terms contained herein to satisfy the intention of AIRLINE and AUTHORITY to insure that this Agreement and Bonds issued by AUTHORITY shall not be affected by the Alternative Minimum Tax provisions.

**D.** The modifications of any term or terms of this Agreement pursuant to the provisions contained in this Article are specifically limited to any required modification to a term or terms of this Agreement to satisfy the requirements set forth in this Article. AUTHORITY and AIRLINE agree to be bound by any modifications of this Agreement made pursuant to the provisions contained in this Article.

#### **20.04 Capitalized Interest and Coverage on Bonds**

Bonds, Subordinated Indebtedness, and/or Other Indebtedness issued by the AUTHORITY to fund projects in Airline-supported Cost Centers will provide for the capitalization of interest during the construction period for each project. Unless the mandatory imposition and collection of capital charge or other bond debt service coverage can be shown to reduce overall cumulative Net Requirement in an Airline-supported Cost Center, AUTHORITY shall not impose or collect a separate coverage charge from AIRLINE.

## ARTICLE 21: GENERAL PROVISIONS

### 21.01 Rights Non-Exclusive

Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement are "non-exclusive" and AUTHORITY reserves the right to grant similar privileges to others.

### 21.02 Quiet Enjoyment

A. AUTHORITY agrees that, so long as AIRLINE's payment of rentals, fees and charges is timely and AIRLINE keeps all covenants and agreements contained herein, AIRLINE shall peaceably have and enjoy its Airline Premises and all rights, privileges, and licenses of the Airport, its appurtenances and facilities granted herein, subject to the terms and conditions herein contained.

B. Consistent with the nature of AIRLINE's business, AIRLINE agrees that occupancy of its Airline Premises will be lawful and quiet and that it will not knowingly use or permit the use of Airline Premises in any way that would violate the terms of this Agreement, create a nuisance, or disturb other tenants or the general public. AIRLINE shall be responsible for the activity of its officers, employees, agents, and others under its control with respect to this provision.

### 21.03 Performance

The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

### 21.04 Avigation Rights

AUTHORITY reserves unto itself, its successors, and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport, including Airline Premises, for navigation or flight in the said airspace for landing on, taking off from, or operating at the Airport.

## **21.05 Rules and Regulations**

**A. AIRLINE, its officers, employees, agents, and others under its control shall observe and obey all laws and regulations of the federal, state, and local governments which may be applicable to AIRLINE's operations at the Airport.**

**B. AUTHORITY, in accordance with the Act, may from time to time adopt, amend, or revise nondiscriminatory rules and regulations for the conduct of operations at the Airport, for reasons of safety, health, preservation of the property, or for the maintenance of the good and orderly appearance of the Airport. AIRLINE, its officers, employees, agents, and others under its control shall faithfully comply with and observe such rules and regulations, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental authority having appropriate jurisdiction. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to such rules and regulations that would adversely or materially alter the terms of this Agreement.**

**C. AIRLINE shall be strictly liable and responsible for obtaining, maintaining current, and fully complying with, any and all permits, licenses, and other governmental authorizations, however designated, as may be required at any time throughout the entire Term of this Agreement by any federal, state, or local governmental entity or any court of law having jurisdiction over AIRLINE or AIRLINE's operations and activities.**

**D. AIRLINE shall provide the AUTHORITY a copy of any notice, warning, summons, or other legal process for the enforcement of any laws, ordinances, rules, regulations, decisions, or orders within five (5) business days of receipt. In addition to any other indemnity provisions herein, AIRLINE agrees to indemnify and hold the AUTHORITY harmless from and against any and all claims, actions, damages, liabilities, fines, penalties, costs, and expenses including reasonable attorney fees suffered or incurred by the AUTHORITY as a result of AIRLINE's noncompliance with any applicable laws, ordinances, rules, regulations, decisions or orders.**

**21.06 No Individual Liability**

No commissioner, member, officer, agent, director, or employee of AUTHORITY or AIRLINE shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

**21.07 Relationship of Parties**

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of landlord and tenant.

**21.08 Capacity to Execute**

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

**21.09 Construction of Agreement**

A. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against AUTHORITY by reason of the preparation of this Agreement by AUTHORITY.

B. All exhibits and attachments referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

C. Section titles are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Agreement and shall not be

construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

D. This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to its choice of law rules.

E. The language of the Agreement shall be construed according to its fair meaning and not strictly for or against either AUTHORITY or AIRLINE.

#### **21.10 Successors and Assigns Bound**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Agreement.

#### **21.11 Severability**

In the event that any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition, or provision herein contained will not affect the validity of any other covenant, condition or provision provided that the invalidity of such covenant, condition or provision does not materially prejudice either AUTHORITY or AIRLINE in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

#### **21.12 Amendments**

This Agreement constitutes the entire agreement between the parties. Except as expressly provided elsewhere in this Agreement, no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

#### **21.13 Covenant Not to Grant More Favorable Terms**

Each Air Transportation Company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and

other charges with respect to facilities and equipment directly and substantially related to conducting its Air Transportation Business as are applicable to all such Air Transportation Companies which make similar use of the Airport and which utilize similar facilities and equipment, subject to classifications such as tenants or nontenants and Signatory Airlines and nonsignatory airlines. Classification or status as tenant or Signatory Airline shall not be unreasonably withheld by AUTHORITY provided Air Transportation Company assumes obligations substantially similar to those already imposed on Air Transportation Companies in such classifications or status.

**21.14 Other Agreements**

Other than as expressly set forth elsewhere in this Agreement, nothing contained in this Agreement shall be deemed or construed to nullify, restrict or modify in any manner the provisions of any other lease or contract between AUTHORITY and AIRLINE authorizing the use of the Airport, its facilities and appurtenances.

**21.15 Approvals**

A. Unless otherwise stated, whenever this Agreement calls for approval by AUTHORITY, such approval shall be evidenced by the written approval of the AUTHORITY's Executive Director, or designated representative.

**21.16 Notice**

A. All notices, requests, consents, approvals, and process served or given under this Agreement shall be served or given in writing by certified or registered mail or by commercial courier express service. If intended for AUTHORITY, notices shall be delivered to:

Executive Director  
Norfolk Airport Authority  
Norfolk International Airport  
2200 Norview Avenue  
Norfolk, VA 23518-5807

or to such other address as may be designated by AUTHORITY by written notice to AIRLINE.

**B. Notices to AIRLINE shall be delivered to:**

[

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or to such other address as may be designated by AIRLINE by written notice to AUTHORITY.

**21.17 Venue and Service of Process**

The parties hereto agree that all actions or proceedings arising out of this Agreement shall be litigated only in the Circuit Court of the City of Norfolk, or if Federal jurisdiction is established, in the United States District Court, Eastern District of Virginia (Norfolk Division). AIRLINE hereby consents to the jurisdiction and venue of the aforesaid courts and waives personal service of any and all process upon the AIRLINE herein, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to AIRLINE at the address herein stated, and service so made shall be completed two (2) days after the same shall have been posted as aforesaid.

**21.18 Force Majeure**

Except as otherwise provided in this Agreement, neither AUTHORITY nor AIRLINE shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than the payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control.

**21.19 Waiver of Jury Trial**

It is mutually agreed that AUTHORITY and AIRLINE hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other as to any matters arising out of or any way connected with this Agreement.

**21.20 Entire Agreement**

**It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by AIRLINE that AUTHORITY and AUTHORITY's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by AIRLINE against AUTHORITY for, and AUTHORITY shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement. Any other written or parole agreement with AUTHORITY is expressly waived by AIRLINE, except as may be included herein by reference in Exhibit "G."**

**IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year first above written.**

**NORFOLK AIRPORT AUTHORITY**

**WITNESS:**

**By** \_\_\_\_\_

**By** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title: Executive Director**

\_\_\_\_\_  
**(AIRLINE)**

**WITNESS:**

**By** \_\_\_\_\_

**By** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_