

*Draft Agreement dated August 18, 2020*

**NON-SIGNATORY AIRLINE OPERATING PERMIT**

**AND**

**TERMINAL BUILDING LEASE**

by and between

THE CITY OF SAN ANTONIO, TEXAS

and

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Exhibit C – Leased Premises

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Exhibit E – Responsibility of City and Airline for Services, Maintenance and Operations

Exhibit F – Financial Responsibility for Airline and City Janitorial Space

Exhibit G – Janitorial Specifications

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**PREAMBLE**

**NON-SIGNATORY AIRLINE OPERATING PERMIT AND  
TERMINAL BUILDING LEASE**

**THIS NON-SIGNATORY AIRLINE OPERATING PERMIT AND TERMINAL BUILDING LEASE (“AGREEMENT”)**, is entered into by and between the City of San Antonio, a Texas home-rule municipal corporation, (hereinafter referred to as “City”), being the duly and lawfully constituted owner and operator of the San Antonio International Airport, acting by and through its City Manager or her designee pursuant to Ordinance No. 59073 enacted July 26, 1984, Ordinance No. 2011-11-17-0972 enacted November 17, 2011, Ordinance No. 2014-06-12-0433 enacted June 12, 2014, and Ordinance 2015-11-12-0948 enacted November 12, 2015, and

\_\_\_\_\_ Airlines, Inc., a \_\_\_\_\_  
corporation doing business in Texas, acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors (hereinafter referred to as “Airline”); whose initial addresses are as follows:

City

Director of Aviation  
City of San Antonio  
9800 Airport Blvd.  
San Antonio, Texas 78216

Airline

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**WHEREAS**, Airline is a corporation primarily engaged in the business of Air Transportation by aircraft for the carriage of persons, property, and mail; and

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**WHEREAS**, Airline desires to use certain facilities and to exercise certain rights and privileges at San Antonio International Airport in connection with the operation of its Air Transportation Business, and City, through the Director, is willing to agree to such use, rights and privileges as set forth herein;

**NOW, THEREFORE**, the City and Airline for and in consideration of the covenants and mutual agreements hereinafter contained do hereby covenant and agree as follows:

## **ARTICLE 1. DEFINITIONS**

### **1.1 DEFINITIONS**

The terms used in this Agreement shall have the meanings indicated in this Article 1 unless the context clearly indicates otherwise. Words used in this Agreement in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and neuter. The singular number includes the plural and the plural includes the singular. The word "person" means a business or corporation as well as a natural person. Additional words and phrases used in this Agreement shall have the meanings set forth in the Bond Ordinances (as defined below) or, if not so set forth, shall have their usual and customary meanings.

- 1.01 **“Activity Report”** means the reporting form required to be submitted by Airline to City each month attached hereto as Exhibit H.
- 1.02 **“Affiliate”** means any air carrier that (a) is wholly owned by Airline, or any parent airline that wholly owns Airline, or any sister airline wholly owned by the same company that wholly owns Airline provided that Airline shall be responsible for the operations at the Airport of such Affiliate, including payment of all related rents, fees, and charges incurred by such Affiliate; (b) shares an IATA code with the Airline; or (c) conducts all of its air carrier operations at the Airport during the Term of this Agreement solely under Airline's name, tradename, or a derivative thereof, any of the foregoing only with respect to such operations conducted under Airline's name, tradename, or a derivative thereof, and only if Airline shall have agreed, in writing with the City, to be responsible for such Affiliate's operations, including payment of all related rents, fees, and charges and such Affiliate operates aircraft in Airline's livery and has Airline's flight numbers. An Affiliate shall further be prohibited from the sale of tickets in its own name while operating at the Airport.
- 1.03 **“Airline”** means the Air Transportation Company identified in the preamble of this Agreement, and includes any Affiliates of Airline.
- 1.04 **“Airlines”** means all Air Transportation Companies, including any Affiliates of Airline, authorized by the City to engage in the business of scheduled or non-scheduled commercial transportation by air of persons, property, cargo, or mail at the Airport.
- 1.05 **“Air Transportation”** means the carriage of persons, property, cargo, or mail by aircraft to and from the Airport.



- 1.06 **“Air Transportation Business”** means those service(s) and operation(s) related to or provided by Airline at the Airport for the commercial transportation of passengers, property, parcels, cargo, or mail by air, including services and operations necessary and incidental thereto.
- 1.07 **“Air Transportation Company”** means an air carrier providing carriage by air of passengers, property, parcels, cargo, or mail.
- 1.08 **“Air Transportation Service(s)”** means those service(s) and operation(s) related to or provided by Airline at the Airport for the commercial transportation of passengers, property, parcels, cargo, or mail by air, including services and operations necessary and incidental thereto.
- 1.09 **“Aircraft Arrivals”** means any and all landings by aircraft of all airlines at the Airport, but shall exclude any landings by general aviation aircraft or by aircraft owned or operated by the U.S. Government or any landings by aircraft that return after take-off for emergency or precautionary reasons.
- 1.10 **“Airport”** means San Antonio International Airport as it now exists or as it shall be or may be modified in the future, as shown on Exhibit A.
- 1.11 **“Apron Area Fee”** means the fee imposed by City on a linear foot basis for the use of the Apron Area space.
- 1.12 **“Baggage Handling System (“BHS”)** means the areas and non-TSA equipment at the Airport associated with the consolidated BHS and related areas designed to automatically transfer checked baggage from airline-monitored inputs to a TSA operated inline checked baggage inspection system with sortation capabilities to automatically transfer checked baggage inspection system cleared bags to designated baggage makeup carousels for pickup by Airline and other airline personnel.
- 1.13 **“Baggage Handling System (BHS) Fee”** means a fee assessed by City on a per Enplaned Passenger basis for use of the BHS.
- 1.14 **“City Gate”** means a gate not leased to a carrier under an Airline Operating Agreement and Terminal Building Lease authorized pursuant to Ordinance No. 2011-11-17-971 enacted November 17, 2011.
- 1.15 **“Common Use Passenger Processing System (CUPPS)”** means City-owned systems and equipment provided, operated or maintained by the City for use by Airline in

common with other Air Transportation Companies, including but not limited to systems and equipment for passenger processing, flight and baggage information display, and baggage handling.

- 1.16 **“Deplaned Passenger”** means the total number of passengers deboarding aircraft at the Airport
- 1.17 **“Director”** means the person holding the position of Aviation Director of the City or any other person designated by the Director, the City Manager, or the City Council to exercise functions with respect to the rights and obligations of the Director.
- 1.18 **“Enplaned Passenger”** means the total number of passengers boarding aircraft at the Airport.
- 1.19 **“Environmental Audit”** has the meaning as set forth in Section 12.4.1.
- 1.20 **“Environmental Costs”** has the meaning as set forth in Section 12.4.1.
- 1.21 **“Environmental Laws”** has the meaning as set forth in Section 12.4.1.
- 1.22 **“Exclusive Use” or “Exclusive Use Space” or “Exclusive Use Premises”** means the space in the Terminal Building at the Airport assigned by the Director to Airline for its use and occupancy to the exclusion of all others.
- 1.23 **“FAA”** means the Federal Aviation Administration of the United States Government or any federal agency or agencies succeeding to its jurisdiction.
- 1.24 **“FIS”** means Federal Inspection Services spaces within the Terminal Building which are dedicated to processing arriving international passengers. FIS space includes sterile connectors from the aircraft to passport control (U.S. Immigration and Naturalization Service), baggage control (Customs), and other federal agencies.
- 1.25 **“FIS Fee”** means a fee assessed by City on a per Deplaned Passenger basis for use of the FIS.
- 1.26 **“Fiscal Year”** means the twelve (12) month period beginning October 1 of any year and ending September 30 of the following year, or any other period adopted by City for its financial affairs.
- 1.27 **“Gates”** means those portions of the Terminal Building consisting of a passenger holdroom and associated Apron Area and Loading Bridge.
- 1.28 **“Hazardous Materials”** has the meaning as set forth in Section 12.4.1.

- 1.29 **“International Air Transport Association (IATA) Code”** means a three-letter code designating an airport and metropolitan area as defined by the (IATA).
- 1.30 **“Joint Use” or “Joint Use Space”** means space managed by City that may be made available to Airline from time to time for use in common with other airlines, as assigned by the Director, subject to applicable Rules and Regulations.
- 1.31 **“Joint Use Charges”** means a formula used to prorate charges for a particular facility, service, or space used in common with others, as follows: Fifteen percent (15%) of the charges are prorated equally among all Airlines leasing Terminal Building space under this Agreement for the facilities, service, or space. Eighty-five percent (85%) of the charges are prorated according to the ratio of the number of Airline’s Enplaned Passengers at the Airport to the total number of Enplaned Passengers of all Airlines using such facilities, service, or space. For invoicing, City will use the most recent six (6) months of available information to calculate the Joint Use Charges.
- 1.32 **“Landed Weight”** means the maximum gross certificated landed weight, in thousand (1,000) pound units, that Aircraft Arrivals operated by Airline is authorized by the FAA to land at the Airport, as recited in each Airline’s flight manual governing that aircraft type. For all landing fee computations, said sum shall be rounded up to the nearest thousand (1,000) pounds.
- 1.33 **“Landing Fee”** means a fee assessed by City on Air Transportation Companies based on the Landed Weight of each Revenue Landing.
- 1.34 **“Leased Premises”** mean the Exclusive Use Space, Joint Use Space, and Loading Bridges leased by Airline.
- 1.35 **“Loading Bridge Fee”** means the annual fee charged for use of a Loading Bridge.
- 1.36 **“Non-Signatory Airline”** means any Air Transportation Company providing service at the Airport that is not a Signatory Airline. Non-Signatory Airlines shall pay the Non-Signatory Airline rates, fees and charges presented in the Rates and Fee Schedule, which will include a fifteen percent (15%) premium over the rates, fees and charges charged to Signatory Airlines.
- 1.37 **“Non-Terminal RON Parking Fee”** means the fee charged by the City for use of an aircraft parking position designated for the parking of aircraft that cannot be accommodated at Gates.

- 1.38 **“Non-Terminal RON Parking Position”** means those aircraft parking positions designated for the parking of aircraft that cannot be accommodated at Gates.
- 1.39 **“Passenger Facility Charges” or “PFCs”** means those charges collected by the City pursuant to the authority granted by 49 U.S.C. Section 40117 and 14 Code of Federal Regulations (CFR) Part 158, as amended from time to time, in respect of any component of the Airport and interest earnings thereon, net of amounts that collecting air carriers are entitled to retain for collecting, handling, and remitting such PFC revenues.
- 1.40 **“Per Use Fee – CUPPS”** means a charge assessed by City for each use of the CUPPS by Airline.
- 1.41 **“Per Use Fee – Gate”** means a charge assessed by City for each use of an unassigned aircraft gate facility for a period not to exceed two (2) hours. The gate facility includes holdroom, loading bridge, pre-conditioned air, and 400 Hertz systems. Per Use Fees.
- 1.42 **“Per Use Fee - Ticket Counter”** means a charge assessed by City for each use of unassigned ticket counter (two (2) positions) for a period not to exceed three (3) hours.
- 1.43 **“Performance Guarantee”** as described in Section 5.15.
- 1.44 **Rates and Fees Schedule”** means the Rates and Fees Schedule attached hereto as Exhibit D.
- 1.45 **“Revenue Landing”** means any aircraft landing by Airline at the Airport for which Airline receives revenue and those non-Revenue Landings whenever the same aircraft subsequently departs the Airport as a revenue flight.
- 1.46 **“Rules and Regulations”** has the meaning set forth in Section 12.1.
- 1.47 **“San Antonio Airline Consortium” or “SAAC”** means the San Antonio Airline Consortium, Incorporated (SAAC), a Texas not-for-profit limited liability corporation, formed by certain airlines operating at the Airport to provide services within the Leased Premises and certain other areas of the Terminal Building assigned to the airlines and to operate and maintain certain systems, equipment, and facilities in and about the Terminal Building on behalf of SAAC member and nonmember airlines and the City.
- 1.48 **“San Antonio International Airport”** means San Antonio International Airport as it presently exists and as it may be changed from time to time in the future.

1.49 **“Signatory Airline”** means either: (1) an Air Transportation Company that has the right to operate at the Airport pursuant to an agreement with City substantially similar to this Agreement and is obligated to pay City fixed terminal rents in the amount of at least \$750,000 per year; or (2) an all-cargo Air Transportation Company that has the right to operate at the Airport pursuant to an agreement with City substantially similar to this Agreement and has been granted leased premises by the City consisting of an air cargo building and apron.

1.50 **“Term”** has the meaning set forth in Article 2.

1.51 **“Terminal Building”** has the meaning set forth in the Rates and Fees Schedule.

1.52 **“TSA”** means the Transportation Security Administration of the United States Government or any federal agency or agencies succeeding to its jurisdiction.

## **1.2 CROSS-REFERENCES**

All references in the text of this Agreement to articles, sections, and exhibits pertain to articles, sections, and exhibits of this Agreement, unless otherwise specified.

## **ARTICLE 2. TERM**

### **2.1 TERM**

This Agreement shall commence upon execution of this Agreement by City's authorized representative ("Effective Date"), and continue on a month-to-month basis until such time as either party provides to the other party in writing at least thirty (30) days' notice of cancellation/termination.

### **2.2 AIRLINE'S RIGHTS UPON EXPIRATION OF AGREEMENT**

Upon expiration or early termination of this Agreement, all of Airline's rights, authority, and privileges to use the Leased Premises, services, and facilities of the Airport as herein granted shall cease.

### **2.3 SURRENDER OF LEASED PREMISES**

Upon expiration or early termination of this Agreement, Airline shall surrender the Leased Premises to City in similar condition as such Leased Premises were in at the time of the original occupancy by Airline, excepting, however, (a) reasonable wear and tear that could not be prevented through routine maintenance required to be performed by Airline, (b) damage by fire or other casualty, (c) conditions existing prior to Airline's occupancy of Leased Premises, and (d) acts of God or the public enemy. Airline shall provide the environmental demonstrations concerning the Leased Premises set out in Section 12.4 below.

Except as otherwise provided in this Article 2, all equipment, trade fixtures, and other personal property installed or placed by Airline in the Leased Premises or on or about the Airport and which can be removed without structural damage to the Leased Premises or any other City-owned property shall remain the property of Airline unless otherwise provided in subsequent agreements between Airline and City, and Airline shall have the right at any time during the Term of this Agreement and prior to its expiration or early termination to remove any and all of said property from the Airport provided Airline is not in default in its payments hereunder (beyond all applicable notices and opportunity to cure periods). Airline agrees to repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of the removal of Airline's property shall be restored at Airline's expense to the same condition as, or better condition than, it was prior to such damage.

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Any and all property not removed by Airline within thirty (30) days after the expiration or earlier termination of this Agreement and the cessation of operations from all or a portion of the Leased Premises is deemed to be abandoned property. Airline hereby authorizes City to remove and dispose of its abandoned property. Airline agrees to reimburse City for the cost of removing and disposing of its abandoned property.

## **ARTICLE 3. LEASED PREMISES**

### **3.1 LEASED PREMISES**

Airline hereby leases from City and City hereby leases to Airline the areas of the Terminal Building shown on Exhibit C (“Leased Premises”), attached hereto and by reference made a part hereof for all purposes, which areas are to be used for the general purposes summarized below.

### **3.2 EXCLUSIVE USE SPACE**

- a. Ticket Offices
- b. Operations
- c. Baggage Services Offices
- d. Airline Passenger Clubs or Lounges

### **3.3 JOINT USE SPACE, SYSTEMS, AND EQUIPMENT**

- a. Baggage Claim Area
- b. Passenger Screening Area
- c. Baggage Makeup
- d. Tug Lane
- e. Baggage Handling System

### **3.4 “AS-IS” CONDITION OF LEASED PREMISES AND GENERAL ENVIRONMENTAL OBLIGATIONS OF AIRLINE**

With the exception of those facilities and fixtures that City is required to maintain and repair hereunder and any other covenants or obligations of City herein and any releases of Airline herein, Airline expressly acknowledges that it has inspected or had the opportunity to inspect the Leased Premises, including, but not limited to, all finishes, furniture, fixtures, and equipment and environmental conditions therein and accepts the same “As Is” in the condition existing as of the Effective Date. Airline further acknowledges that, except as expressly set forth herein, City has made no representations or warranties of any nature whatsoever regarding the Airport or the Leased Premises including, but not limited to, the physical and/or environmental condition of the Leased Premises, or any improvements located thereon, or the value of the Leased Premises or



improvements thereto, their zoning, or the suitability of the Leased Premises, or any improvements thereto, or Airline's legal ability to use the Leased Premises or Airport for Airline's intended use.

At its option, prior to occupying the Leased Premises, Airline may conduct an environmental audit for the purposes described in Section 12.4.4 below. Airline shall manage and conduct all of its activities on or relating to Airline's Leased Premises:

- a. in compliance with applicable Environmental Laws and the environmental provisions of this Agreement;
- b. in cooperation with the Airport in the Airport's efforts to comply with applicable Environmental Laws; and
- c. in adherence with Best Management Practices (as defined below) applicable to Airline's use of the Leased Premises.

Airline shall take immediate steps to correct any non-compliance by Airline with applicable Environmental Laws or the environmental provisions of this Agreement. Airline shall manage and, to the extent within the control of Airline, secure the Leased Premises and its occupation or use of the Leased Premises so as to prevent any violation of applicable Environmental Laws by any person on the Leased Premises in connection with Airline's use of the Leased Premises hereunder.

### **3.5 ADJUSTMENT TO LEASED PREMISES**

The parties hereto agree and recognize that the space in the Terminal Building is in high demand and that City must retain the right to allot such space in a manner deemed by City, in its sole judgment, necessary to maximize the usage and allotment of such space. Accordingly, the parties agree that City, acting by and through its Director and at his sole discretion, may recapture terminal building space at any time during the term of the Agreement. City shall provide to Airline at least thirty (30) days' advance written notice of the need for such recapture.

In the event that Airline shall request that terminal building space leased hereunder be adjusted, reconfigured, enlarged or reduced, City, acting by and through its Director in his sole discretion, may agree in writing to Airline's request and adjust the rent due, subject to the terms and conditions of this Agreement.

Should any relocation, adjustment, reconfiguration, enlargement or reduction of the Leased Premises occur as set forth in this Section 3.5, the parties shall execute an amendment to this Agreement recognizing said relocation, adjustment, reconfiguration, enlargement or reduction of the Leased Premises as depicted in Exhibit C of this Agreement. ~~and in such event, a writing shall be executed by and between Airline and City, acting through the Director, to reflect the terms and conditions relating thereto. Such writing, upon execution thereof by Airline and the Director, shall be filed or recorded with the City Clerk and shall automatically become part of this Agreement.~~

### **3.6 CITY RIGHT OF ENTRY**

Authorized representative(s) of City shall have the right to enter the Leased Premises, including the non-public areas of the Exclusive Use Leased Premises, at any and all reasonable times for the purpose of inspection, including inspecting compliance with environmental laws as provided in Section 12.4 and inspection of all City-owned equipment for compliance with manufacturer's specifications regarding servicing and preventive maintenance, or for any other purpose incident to the performance of City's obligations hereunder or in the exercise of any of its governmental functions. City shall use its good faith efforts to avoid disruption of Airline's operations and, except in the event of an emergency, shall provide Airline reasonable notice prior to entering the non-public areas of the Exclusive Use Leased Premises and Airline shall have the right to have an Airline employee accompany City's representative(s) when entering the non-public areas of the Exclusive Use Leased Premises.

### **3.7 QUIET ENJOYMENT**

Upon payment by Airline of the rents, fees, and charges as herein required and subject to performance and compliance by Airline of the covenants, conditions, and agreements on the part of Airline to be performed and complied with hereunder, Airline shall peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted herein.

## **ARTICLE 4. USES OF AIRPORT**

### **4.1 PERMISSIBLE USES**

Subject to the terms and provisions of this Agreement and the Rules and Regulations, Airline, by paying all rents, fees, and charges due, shall be entitled to the use, in common with other duly authorized users, of the Airport for the sole purpose of providing Air Transportation. Such use may include, without limitation, the following purposes:

- a. The operation of an Air Transportation Business, including all activities reasonably necessary to such operation.
- b. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, delivering fuel to aircraft, repairing, maintaining, conditioning, servicing, parking, storing, and testing of aircraft or other equipment of or operated by Airline or others, including the right to provide or handle all or part of the operations or services of such others. For operations handled by Airline on behalf of others or service provided to others, Airline shall pay City a nondiscriminatory fee as established by the Director based on the gross revenues derived by Airline from such others. Services provided by third-party contractors will be subject to the nondiscriminatory fee. This fee, however, shall not apply to an Airline providing services to its Affiliates.
- c. The sale of tickets, documentation of shipments, handling of reservations, and loading and unloading of persons, property, cargo, baggage, and mail at the Airport in the operation of Airline's Air Transportation Business.
- d. The training at the Airport of employees of Airline. Training is to be limited to that incidental to Airline's Air Transportation Business at the Airport. Flight training and testing of aircraft and other equipment shall be undertaken by Airline only with the prior written approval of the Director, and to the extent permitted by, and subject to, the Rules and Regulations.
- e. The purchase of Airline's requirements of fuel, lubricants, propellants, personal property, services, food, beverage, catering services, other passenger supplies, and any other materials and supplies used by Airline that are incidental to the operation of Airline's Air

Transportation Business. Nothing herein shall restrict City from requiring a permit and levying a charge on any person or company for conducting non-Air Transportation Business (food, beverage, commissary supplies, services) at the Airport.

- f. The sale, disposal, and exchange of Airline's aircraft, engines, accessories and other equipment, and materials or supplies, provided that such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only such functions as are incidental to the operation of its Air Transportation Business at the Airport.
- g. The servicing by Airline, or by its suppliers of materials or furnishers of services, of aircraft and other equipment operated by Airline, including the provision of line maintenance or other materials or supplies, on Exclusive Use Space or at assigned Gates or other locations designated by the Director.
- h. The installation and operation of identifying signs, posters, and graphics on Airline's Leased Premises, subject to the prior written approval of the Director. Such signs shall be substantially uniform in size, type, and location with those of other airlines, consistent with City's graphic standards and the Rules and Regulations, and in compliance with all applicable laws and ordinances.
- i. The installation, maintenance, and operation of such radio, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport as may be necessary or convenient in the opinion of Airline for its operations; provided that: (i) the location of such equipment and facilities shall be subject to the prior written approval of the Director; (ii) the use and location of such equipment and facilities shall not conflict with other similar equipment and facilities at the Airport; and (iii) the use and location of such equipment and facilities on the Airport shall be subject to the payment of standard rental rates established for such use.
- j. The installation, maintenance, and operation of Airline Passenger Clubs or Lounges in Airline's Exclusive Use Space, provided that such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline

to perform only such functions as are incidental to the operation of its Air Transportation Business.

- k. The installation, maintenance, and operation of computer data lines, non-revenue generating wi-fi networks, telephone communications equipment, associated cables, associated conduits, and telephone communications switchgear and support computers at suitable locations on the Airport as may be necessary or convenient in the opinion of Airline for its operations; provided that: (i) the location of such equipment shall be subject to the prior written approval of the Director; (ii) the use and location of such equipment shall not interfere with the use of other similar equipment on the Airport; (iii) the use and location of such equipment, except for cables, on the Airport shall be only in Exclusive Use Space, or Joint Use Space for which rents, fees and charges are being timely paid by Airline pursuant to this Agreement; (iv) all cables are installed in conduits, and when such cables are no longer needed, they are promptly removed by Airline without damage to the space and the conduits are also promptly removed by Airline if so required by the Director; and (v) all installation or removal is performed in accordance with the Airport's Physical Telecommunications Infrastructure & Security Policy and the Premises Distribution System Policy for the Terminal Building, as each may be amended from time to time.
- l. Nothing herein shall restrict City from requiring a permit and levying a charge on any person or company for conducting business at the Airport. Furthermore, City intends to levy a charge for business conducted at the Airport, including Airline's provision of non-Air Transportation services to others, except for ground transportation services provided free of any fee or charge.
- m. The storage and parking of equipment, cargo, and vehicles, but only at such locations as specifically designated by the Director.
- n. The maintenance and repair of equipment and vehicles, but only at such locations as specifically designated by the Director.

#### **4.2 INGRESS AND EGRESS**

Subject to the other provisions hereof and to the Rules and Regulations adopted by City, the following privileges of ingress and egress with respect to the Airport are hereby granted:

- a. For Airline, its agents, employees, contractors, subcontractors, and permitted sublessees and assigns, access to the public areas of the Airport and to those areas and facilities designated herein for Exclusive Use or Joint Use by Airline or by Airline in common with other airlines. This right shall extend to Airline's aircraft, vehicles, machinery, and equipment used in its Air Transportation Business.
- b. For Airline's passengers, guests, and invitees, access to areas leased exclusively to Airline and to areas provided for the use of Airline's passengers, guests, and invitees in common with those of other airlines and to public areas and public facilities. This privilege shall extend to vehicles of such passengers, guests, and invitees.
- c. For Airline's suppliers of materials and furnishers of service, access to the public areas of the Airport and to areas and facilities leased exclusively to Airline and to areas and facilities provided for the Joint Use by Airline or its suppliers of materials and furnishers of services. This privilege shall extend to vehicles, machinery, or equipment of such suppliers and furnishers used in their business of furnishing such supplies and services to Airline.

The ingress and egress provided for above shall not be used, enjoyed, or extended to any person, airline, or vehicle engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized by the Director.

#### **4.3 RESTRICTIONS**

In connection with the exercise of Airline's rights under this Agreement, Airline or any of its agents, employees, directors, officers, contractors, invitees, licensees, or representatives shall not do any of the following:

- a. Do anything that may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler

system, alarm system, fire hydrants and hoses, if any, installed or located on or within the premises of the Airport.

- b. Do anything that may invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- c. Keep or store, at any time, flammable or combustible liquids except in storage facilities especially constructed for such purposes in accordance with federal, State, and City laws, including the Uniform Fire Code and the Uniform Building Code. For purposes of this Agreement, flammable or combustible liquids shall have the same definitions as set forth in the Uniform Fire Code, as that Code may be amended from time to time.
- d. Do anything that may be in conflict with 14 CFR Part 139 Airport Certification as that regulation may be amended from time to time, or jeopardize the operating certificate of the Airport.
- e. Do anything that may be in conflict with 49 CFR Part 1542 Airport Security or the TSA-approved security plan for the Airport.
- f. Permit any amusement machine, vending machine, public pay telephone, facsimile machine, copy machine, or other machine operated by coins, tokens, or credit cards to be installed or maintained in any publicly accessible area without the express written determination of the Director. Airline or its nominee may, however, install, maintain, and operate vending machines in Airline's Exclusive Use Space not accessible to the public for the purpose of providing and making available foods, beverages, and sundry food items to Airline's employees only.
- g. Provide commercial ground transportation services to any person upon payment of any fee or charge. However, Airline is expressly excluded from the requirements of any Rules and Regulations promulgated, so long as this ground transportation is provided free of any fee or charge to any passenger (as a result of irregular operations) or employee.
- h. Perform aircraft engine run-ups, except at locations and during time periods approved in writing in advance by the Director.

- i. Airline shall not enter into activities that compete with City in City's development of any non-airline revenue from Airport passengers, tenants, and other users. Should Airline engage in non-airline business activities not specifically permitted in this Agreement, City may levy a non-discriminatory fee.

#### **4.4 CONCESSION SERVICES RIGHTS RESERVED BY CITY**

Except as otherwise provided herein, City reserves the exclusive right to itself, its agents, and its franchisees to operate all concession services (including, but not limited to, food/beverage and news/gift concessions, specialty retail shops and carts, vending machines, pay telephones, facsimile machines, and other voice and data telecommunications systems, advertising displays, baggage lockers, and baggage carts) in the Terminal Building and the Federal Inspection Services (FIS), including the Leased Premises, such as holdrooms and loading bridge exterior areas, and to retain the revenue there from; provided, however, that City agrees that no concession services shall be located or operated by City or its nominees in any non-public Exclusive Use Space without Airline's prior consent and providing that City shall not exercise such right in a manner that will materially impede passenger ingress or egress or Airline's business operations. Any concession services in public use Leased Premises must be approved by Airline.

City shall operate all concessions and provide such other services (with reasonable due consideration to requests made by Airline) for scheduled airline passenger operations at the Airport as it deems necessary or appropriate. Nothing herein shall limit or preclude City from operating whatever concessions or providing whatever services it may desire at any and all airports and other facilities owned by City.

The distribution, serving or sale of food and/or beverages (including alcoholic beverages) meant to be consumed aboard Airline's aircraft by Airline or its in-flight catering provider shall be limited to Airline's passengers who are in the passenger loading bridge or entrance to the passenger loading bridge and in the process of boarding Airline's aircraft, unless otherwise agreed in writing by the Director. The provisions of this Section notwithstanding, all distribution of alcoholic beverages shall comply with applicable laws.

Airline shall be allowed to provide water and typical on-board snacks (such as peanuts, pretzels, etc.) in passenger holdrooms at no cost to Airline's passengers in the event of originating flights with



delays greater than 2 hours, diverted flights or originating flights that have returned to the Gate. All such food and/or beverages shall be purchased only from City's food and beverage concessionaires operating at the Airport or others that pay permit fees to the City or used from Airline's provisional flight supplies. Otherwise, distribution of food and/or beverages at no cost to Airline's passengers by Airline shall be permitted only with advance written approval of the Director.

Airline shall have the right to utilize the Leased Premises for the purpose of maintaining and operating Airline Passenger Clubs or Lounges for its guests, invitees, and passengers and may serve beverages, including alcoholic beverages, and appetizers therein with or without charge and subject to all applicable laws, regulations and ordinances; provided, however, that the City reserves the right to charge Airline applicable percentages of its gross revenues from the sale of food and beverages consistent with the percentages charged to its food and beverage concessionaires at the Airport, not to exceed 14% on the sale of food and nonalcoholic beverages and 18% on the sale of alcoholic beverages, provided that no such payment shall be required with respect to items obtained from concessionaires already obligated to make such payments to City with respect to such obtained items.

Except as allowed herein or approved in writing by the Director, all other serving, distribution or sale of food or beverages by Airline at the Airport is prohibited.

#### **4.5 GROUND HANDLING SERVICES BY AIRLINE OR OTHERS**

Airline may contract with, or receive from other airlines serving the Airport or other companies, ground handling services (both above and below the wing services) for Airline's aircraft, provided that Airline provides advance written notice to the Director (or his designated representative) of such arrangements and uses reasonable efforts to ensure that such other airline or other company shall have entered into an operating permit or agreement or other similar contract with City prior to commencing ground handling services with Airline. Nothing herein shall restrict City from levying a nondiscriminatory concession fee for ground handling services on any person or company (including Airline when Airline is providing these services to other non-Affiliate airlines). Airline's insurance, as required in this Agreement, shall provide insurance coverage for such ground handling services to the extent it is not covered by ground handling services company's own insurance.

#### **4.6 SECURITY OF EXCLUSIVE USE AND JOINT USE SPACE**

Airline understands and agrees that it shall fully indemnify, defend, and hold harmless City, its elected representatives, officers, agents, volunteers, and employees from and against all penalties, fines, or demands of any kind (including, but not limited to, costs of investigation, attorney fees, court costs, and expert fees) to the extent arising out of Airline's acts or omissions resulting in alleged violations of 49 CFR Part 1542 Airport Security or any successor regulations related to airport security. If Airline, its officers, employees, agents, or those persons under Airline's control; not including Airline's passengers, shall fail or refuse to comply with the aforementioned security requirements and such non-compliance results in a monetary penalty being assessed against City, Airline shall be responsible for the costs thereof and shall reimburse City in the full amount of any such monetary penalty.

#### **4.7 REMOVAL OF DISABLED AIRCRAFT**

Upon release of Airline's disabled aircraft by the proper authorities, Airline shall promptly remove any such disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and Gate positions) and place any such disabled aircraft in such storage area as may be designated by the Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly in accordance with this paragraph, the Director may, but shall not be obligated to, cause the removal of such disabled aircraft. However, City's obligation to remove or store such disabled aircraft shall not be inconsistent with federal laws and regulations. Airline agrees to reimburse City for all costs of such removal.

#### **4.8 EMPLOYEE PARKING FACILITIES**

Airline and its Airport employees shall have the right to use the vehicular parking facilities at the Airport, in common with employees of other airlines, tenants, and Airport-related services. Use of the employee parking facilities is subject to the payment of such employee parking fees as established from time to time by City. Such facilities shall be located in an area designated by the Director. Airline shall, on request of the Director, provide verification that it is only providing parking for its on-Airport employees or non-based employees at the specific locations where these employees park their vehicles at the Airport.

## **ARTICLE 5. RENTS, FEES, AND OTHER CHARGES**

In consideration for use of the Leased Premises, facilities, rights, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City during the Term of this Agreement, without deduction or set-off, certain rents, fees, and other charges as set forth in this Article 5 and as recalculated according to the procedures of the Rates and Fees Schedule.

### **5.1 TERMINAL BUILDING RENTS**

Airline shall pay the City for its Exclusive Use Space and Joint Use Space in the Terminal Building monthly rent based on the annual rental rates for areas calculated each Fiscal Year in accordance with the Rates and Fees Schedule.

### **5.2 LOADING BRIDGE FEES**

Airline shall pay City a monthly fee for its use of City-owned passenger Loading Bridges at the Terminal Building. Such fee shall be calculated each Fiscal Year in accordance with the Rates and Fees Schedule.

**Commented [BE1]:** Do non-signatory airlines pay LB fees & Apron Area fees or are these included in Per Use Fee -Gates?

### **5.3 BAGGAGE HANDLING SYSTEM FEES**

Airline shall pay City a monthly fee for its use, in common with other airlines, of the Baggage Handling System in the Terminal Building. Such charges shall be calculated each Fiscal Year in accordance with the Rates and Fees Schedule.

### **5.4 LANDING FEES**

Airline shall pay City for its use of the Airfield Area monthly Landing Fees based on the annual Landing Fee rate calculated each Fiscal Year in accordance with the Rates and Fees Schedule. City will use its best efforts to charge and collect Landing Fees from all commercial Air Transportation users of the Airfield Area as the Director may reasonably determine.

### **5.5 PER USE FEES**

Airline shall pay City for its use of the CUPPS, City Gates, and non-preferential use of other airlines' Gates (including loading bridges and Apron Area Fees), unless otherwise agreed to by the parties, as well as ticket counters based on the annual per use charges calculated each Fiscal Year in accordance with the Rates and Fees Schedule.

**5.6 FIS CHARGES**

Airline shall pay City for its use of the City FIS as established annually by City in accordance with the Rates and Fees Schedule.

**5.7 NON-TERMINAL RON PARKING FEES**

Airline shall pay City for RON parking in accordance with the Rates and Fees Schedule.

**5.8 OTHER CHARGES**

City reserves the right to assess, and Airline agrees to pay, reasonable charges for the use of City-provided facilities and equipment, including, but not limited to, telecommunications trunk equipment, employee parking facilities, and the issuance of security identification badges.

**5.9 ADMINISTRATIVE FEES**

Airline shall pay, each month, an Administrative Fee equal to 15% of the monthly Ticket Counter Charges, Common Use, Joint Use Area Charges, and Gate Use Charges.

**5.10 SAAC CHARGES**

Airline shall separately contact with SAAC (Article 11 and Exhibit H of the Airline Operating Agreement and Terminal Building Lease authorized pursuant to Ordinance No. 2011-11-17-971 enacted November 17, 2011), if required, to enter an agreement with SAAC for payment of fees, if applicable. By signing this Agreement, Airline is a non-signatory, non-voting member of SAAC.

**5.11 NO FURTHER FEES AND CHARGES**

Following the effective date of this Agreement, except as provided elsewhere herein, upon the payment of the rents, fees, and charges described herein, no additional charges shall be levied against Airline for the use and occupancy of the Leased Premises as described herein and use of the Airfield Area for the landing and taking off of aircraft, except as provided by separate agreement between the parties.

**5.12 TIME OF PAYMENT**

The following sets forth the time of Airline payments of rents, fees, and charges to City.

- a. Rents and fees for Exclusive Use Space shall be due and payable, without deduction or setoff, in monthly installments in advance on or before the first day of each month.
- b. Landing Fees, Joint Use Charges, City Gate Charges, Baggage Handling System Fees, Per Use Fees – Gate, Per Use Fees – Ticket Counter, FIS Fees, **Administrative Fees**, and Non-Terminal RON Parking Fees for each month of operations shall be due and payable without deduction or setoff within fifteen (15) days after transmittal of an invoice, given that Airline's monthly statistical report as required in Article 7.1 shall be received by the City within ten (10) days after the last day of the month after such month of operations.
- c. Airline shall faithfully collect and promptly remit to City (without notice or demand by City and in accordance with 14 CFR 158 Passenger Facility Charges as this regulation may be amended from time to time) the proceeds of the City's Passenger Facility Charge so long as the City has an approved Passenger Facility Charge in effect.
- d. Rents, fees, and charges not described in paragraphs (a), (b), and (c) above shall be due and payable within thirty (30) days after transmittal of a monthly invoice therefore by City. City will provide such invoice within thirty (30) days of activity for which charge is generated.
- e. The acceptance of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline or preclude Airline from later demonstrating that Airline's report was inaccurate and that a lesser amount was properly owed (and to recover any such overpayment).
- f. In establishing the rents, fees, and charges set forth in this Agreement, City is anticipating timely payment of such rents, fees, and charges. Untimely payment of these rents, fees, and charges jeopardizes the operation of the Airport. Therefore, in the event that rents, fees, and charges are not paid timely by Airline, the Director is authorized and directed to seek any necessary legal and administrative remedy to obtain collection of the unpaid rents, fees, and charges and to assure timely payment of future rents, fees, and charges. These remedies shall be in addition to late fees required herein and may include any of the following:

1. Seeking administrative relief through appropriate federal agencies, including the FAA.
  2. Equitable and judicial remedies.
  3. Such other legal and administrative remedies as permitted by law.
- g. Failure to send a timely invoice does not relieve Airline from any obligation of payment.

#### **5.13 PAYMENTS**

Rents, fees, and charges shall be paid in United States Dollars by wire, electronic funds transfer, or check payable to San Antonio International Airport the City of San Antonio, which shall be delivered or mailed, postage prepaid, to City of San Antonio, Aviation Department, Accounting Section, 457 Sandau Road, San Antonio, TX 78216 or which may be paid by wire transfers to accounts of the Airport designated in writing by the Director.

To arrange payment by wire or electronic funds transfer, Airline shall contact the Aviation Department's Accounting Section at (210) 207-7242 for further information.

#### **5.14 LATE FEES ON OVERDUE PAYMENTS**

Without waiving any other right available to City, in the event of a default in Airline's payment of any rents, fees, and charges under this Agreement, including Passenger Facility Charge proceeds, in the event that Airline is delinquent for a period of thirty (30) calendar days or more from the date when such payment is due to City, Airline shall pay City late fees thereon, from the date such rents, fees, or charges become payable to the date of payment at the rate of one and one-half percent (1.5%) per month; provided, however, that if the maximum rate then provided by law is less than 1.5% per month, then the rate shall be such maximum legal rate. City may, but is not obligated to, provide Airline with a written reminder when invoiced rents, fees, or charges have not been received within thirty (30) calendar days of transmittal of the invoice therefore and prior to assessing late fees in accordance with this Section 5.14.

#### **5.15 PERFORMANCE GUARANTEE**

To guarantee Airline's faithful performance of all terms and conditions contained herein, including but not limited to the timely payment of all rents, fees, and charges, Airline shall remit

to City prior to Airline's use of the space or the commencement of Airline's operations or activities in regard to the Airport and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect City, a Performance Guarantee in the amount of:

- a. Airline's estimated rents for Exclusive Use Space for two (2) months
- b. Airline's estimated Loading Bridge Fees for two (2) months
- c. Airline's estimated Joint Use Charges for two (2) months (as determined using activity data for the most recent six (6) calendar months to determine Airline's obligation using the Joint Use Charges formula).
- d. Airline's estimated Landing Fees for two (2) months, (determined on the basis of Airline's estimated landed weight each year times two-twelfths at the actual Landing Fee rate effective for the Fiscal Year). Either Airline or its Affiliate will also include a Performance Guarantee for the Affiliate.
- e. Airline's estimated Administrative Fees for two (2) months.

The Performance Guarantee may be adjusted by City annually, or more frequently, if there is a material change to the amount required in this Section 5.15 from the Airline. Such Performance Guarantee shall be in the form of a Letter of Credit, Bond, or other instrument satisfactory to City, in a form acceptable to the Director. The Performance Guarantee must provide that it shall remain in full force and effect for a period extending three (3) months following termination of this Agreement.

In the event City is required to draw down or collect against Airline's Performance Guarantee for any reason, Airline shall, within ten (10) business days after City's written demand, take such action as may be necessary to replenish the existing Performance Guarantee to its original value or to provide a replacement Performance Guarantee from another source so that the aggregate of the Performance Guarantee(s) is equal to two (2) months' estimated rents and landing fees payable by Airline as described above.

In the event that any such Performance Guarantee shall be for a period less than the full period required above or if the Performance Guarantee will be cancelled, Airline shall provide a

renewal or replacement Performance Guarantee for the remaining required period so that there is no interruption in coverage.

Upon Airline's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and the Federal Judgeship Act of 1984 or any successor statute, as such may be amended, supplemented, or replaced, City, by written notice to Airline given at any time within ninety (90) days of the date such event becomes known to City, may impose or re-impose the Performance Guarantee requirements on Airline. In such event, Airline shall provide City with the required Performance Guarantee within ten (10) days from its receipt of such written notice and shall thereafter maintain such Bond in effect until the expiration or termination of this Agreement.

If Airline shall fail to obtain or keep in force such Performance Guarantee required hereunder, such failure shall be grounds for immediate termination of this Agreement. City's rights under this Article shall be in addition to all other rights and remedies provided to City under this Agreement.

Airline and City agree that this Agreement constitutes an 'unexpired lease' for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 U.S.C.) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Furthermore, Airline and City agree that if Airline provides a Performance Guarantee in the form of a Contract Bond or irrevocable letter of credit, such Performance Guarantee provided by Airline is not 'property of the estate' for purposes of Section 541 of the United States Bankruptcy Code (Title 11 U.S.C.), it being understood that any Performance Guarantee is the property of the third (3rd) party providing it (subject to City's ability to draw against the Performance Guarantee) and that all PFCs, less the allowable collection fees, collected by Airline with respect to Enplaned Passengers at the Airport are the property of City.



## **ARTICLE 6. CALCULATION OF AIRLINE RENTS, FEES, AND OTHER CHARGES**

### **6.1 AIRLINE RENTS, FEES, AND CHARGES**

Each Fiscal Year during the Term of the Agreement, the City will set applicable rates for Airline rents, fees, and charges by Ordinance. Exhibit D of this Agreement presents the City's current schedule of rents, fees, and charges which shall be applicable upon the Effective Date of this Agreement. The City will calculate Airline rents, fees, and charges to provide for the recovery of the City's cost of maintenance, operation, and replacement of Airport facilities necessary for the operation of Airlines and to meet the regular service needs of airline customers (arriving and departing).

### **6.2 ANNUAL ADJUSTMENTS**

Each year, the City will provide Airline an updated Exhibit D presenting the City's current schedule of Airline rents, fees, and charges.

If adjustments to Airline rents, fees and charges are not completed by the City on or prior to the end of any Fiscal Year, the rents, fees, and charges then in existence shall continue to be paid by Airline until adjustment is concluded. At the time such adjustment is concluded, appropriate revisions shall be made to adjust rent, fees and charges paid to date in said Fiscal Year retroactively to the amounts that would have been paid had the new rates been effective at the beginning of said Fiscal Year.

### **6.3 FISCAL YEAR ADJUSTMENTS**

If it appears to City during the course of any Fiscal Year that the budgeted expenses or projected levels of airline activity the City used to calculate the rents, fees, and charges are likely to vary by more than ten percent (10%) from actual results, City may make adjustments to such rents, fees, and charges. City shall provide Airline with at least thirty (30) days' advance written notice of any adjustments to be made under this paragraph. Any such adjustment will be effective the first day of the month following the notification period. Any adjustments to rents, fees, and charges pursuant to this Section shall apply and shall be paid by Airline as directed by City without the necessity of formal amendment of this Agreement.

## **ARTICLE 7. MONTHLY ACTIVITY REPORTS**

### **7.1 REQUIRED MONTHLY ACTIVITY REPORTS**

Airline shall furnish to the Director, on or before the tenth (10th) day of each month, an accurate verified report detailing its operations for the previous month on forms prescribed by the Director. Said report shall include the information presented in Exhibit H and shall be submitted electronically at [AirlineMonthlyReports@sanantonio.gov](mailto:AirlineMonthlyReports@sanantonio.gov). The City reserves the right to periodically audit these reports to verify the accuracy of the information.

### **7.2 FAILURE TO FURNISH REPORT**

If Airline fails to furnish City with the report described above, the City reserves the right to calculate Airline's Landing Fee by assuming that the total Landed Weight for Airline during the preceding month was one hundred twenty-five percent (125%) of the total Landed Weight for the most recent month for which such figure is available or other available data. Any necessary adjustment in such Landing Fee shall be calculated after an accurate report is delivered to the Director by Airline for the month in question, and resulting surpluses or deficits shall be applied to Airline's Landing Fee for the next succeeding month. An accounting fee of \$100 for each occurrence will be charged to Airline and shall be payable by Airline for the additional services required by City pursuant to this paragraph.

**ARTICLE 8. BOND ORDINANCE SUBORDINATION AND  
APPLICATION OF REVENUES**

**8.1 SUBORDINATION TO BOND ORDINANCE**

This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made (at any time) by City to secure Airport Bond financing. This Agreement is subject and subordinate to the terms, covenants, and conditions of the Bond Ordinance authorizing the issuance of Airport Bonds by the City of San Antonio. City may amend or modify the Bond Ordinance or make any change thereto that does not materially adversely affect Airline rights under this Agreement. Conflicts between this Agreement and the Bond Ordinance shall be resolved in favor of the Bond Ordinance.

All definitional terms that are not specifically defined herein are to have the meanings set forth in the Bond Ordinance.

## **ARTICLE 9. MAINTENANCE AND OPERATING RESPONSIBILITIES**

### **9.1 DESIGNATION OF TERMINAL BUILDING MAINTENANCE RESPONSIBILITIES**

The parties' responsibilities for maintenance, cleaning, and operation of the Leased Premises are set forth in the Maintenance Schedule presented in Exhibit E. Airline agrees to perform the obligations set forth in the Maintenance Schedule, which are assigned to Airline, and City agrees to perform the obligations set forth in the Maintenance Schedule, which are assigned to City.

### **9.2 AIRLINE-CONSTRUCTED IMPROVEMENTS**

Airline shall cause all improvements and facilities, and additions thereto, constructed or installed by Airline, either alone or in conjunction with others, and all vehicles and equipment operated by Airline on the Airport to be kept and maintained in a safe condition and in good repair in accordance with uniform standards applicable to all similarly situated Airport tenants as established from time to time by the Director. Airline shall keep the Exclusive Use Space and improvements thereon in a sanitary and neat condition.

### **9.3 MAINTENANCE RESPONSIBILITIES**

Airline shall perform ordinary preventive maintenance and upkeep and nonstructural repair of all facilities located in its Exclusive Use Space. Airline shall be responsible for interior window cleaning for its Exclusive Use Space. Exhibit E shows a matrix of Airline and other airlines maintenance responsibilities and the City's responsibilities.

Nonstructural maintenance of Airline's Exclusive Use Space shall be at Airline's sole cost and expense. Nonstructural maintenance costs for Joint Use Space will be prorated among the airlines by SAAC using the Joint Use Charges formula.

Structural maintenance of the Leased Premises will be provided by City at the sole cost and expense of City so long as the need for structural maintenance was not caused by Airline or other airlines, in which case City shall be reimbursed for repair costs by the party or parties causing the need for structural maintenance.

**9.4 PERFORMANCE BY CITY UPON FAILURE OF AIRLINE TO MAINTAIN**

In the event Airline fails within thirty (30) days after receipt of written notice from City to perform any of its obligation required hereunder, City may enter the Leased Premises involved, without such entering causing or constituting a termination of this Agreement or an interference with the possession of said Leased Premises by Airline, and do all things reasonably necessary to perform such obligation. Director may charge Airline the City's cost of performing such maintenance or repair plus twenty-five percent (25%) for administration. Airline agrees to pay to City upon demand such charges in addition to any other amounts payable by Airline hereunder; provided, however, that if Airline's failure to perform any such obligation endangers the safety of the public, the employees or property of City, or other tenants of the Airport and Director so states in its written notice to Airline, City may perform such obligation of Airline at any time after the giving of such notice and charge to Airline the reasonable cost and expense of such performance which Airline shall pay as aforesaid.

**9.5 ALTERATIONS AND IMPROVEMENTS**

Airline shall make no alterations, additions, improvements, or installations on the space assigned or allocated to it by City without prior written approval from the Director and without obtaining all applicable permits.

## **ARTICLE 10. DAMAGE OR DESTRUCTION OF LEASED PREMISES**

### **10.1 LEASED PREMISES INHABITABLE**

If any of the Leased Premises shall be partially damaged by fire or other casualty, but such Leased Premises remain inhabitable, same will be repaired with due diligence by City to the condition existing just prior to such casualty, but City's responsibility in this regard shall be limited to the extent of the proceeds of insurance received with respect to such premises and to the extent funds are appropriated for such repair by the City's governing body.

### **10.2 LEASED PREMISES UNINHABITABLE**

If any of the Leased Premises shall be completely destroyed or partially damaged by fire or other casualty rendering all or a substantial portion of the Leased Premises uninhabitable and it is reasonably estimated by the Director that it will take more than one hundred eighty (180) days to repair, the Director will notify Airline in writing within ninety (90) days of such casualty whether the damaged or destroyed Leased Premises will be repaired. If any or all of the Leased Premises is to be repaired, it will be repaired with due diligence by City, and the rent allocable to the damaged or destroyed Leased Premises will be abated for the period from the occurrence of the damage to the substantial completion of the repairs. If the repair period is estimated to exceed 180 days, City will make good faith efforts to provide Airline with temporary substitute space, if available, during such period of repair, at a rental rate for comparable space based on the rents, fees, and charges principles set forth in this Agreement. If Airline's Leased Premises have been reduced due to City's election not to repair damaged premises, Airline shall be entitled to either (i) request, and City shall duly consider, further proportionate reductions in the Leased Premises so that Airline has use of an operative remainder or (ii) terminate this Agreement.

### **10.3 AUTOMATIC DELETION OF UNREPAIRED DAMAGED PREMISES**

If City shall fail to notify Airline of its decision as set forth in the above paragraph (or gives written notice of its intent not to repair), City will be deemed to have elected to not repair the damaged premises, and the damaged premises shall be automatically deleted from the Leased Premises as of the date of the damage or destruction, with no further liability therefore by either City or Airline except those liabilities that accrued, including rent, prior to such damage or destruction. Airline shall reconstruct all its improvements in the damaged or destroyed Leased

Premises necessary for the conduct of Airline's business operations in the manner existing just prior to the casualty, consistent with the City's obligations set forth in the paragraphs above. Parties will negotiate in good faith if additional premises should be deleted.

**10.4 CITY INSURANCE**

The Terminal Building in which Airline's Exclusive Use is located, exclusive of Airline's property, will be insured by City under a policy of fire and extended insurance coverage to the extent of not less than eighty percent (80%) of the insurable value of such property if such percentage of coverage is available. Insurance moneys and funds received on account of the damage to or destruction of such property will be applied by City to the repair, construction, or replacement of such damaged or destroyed property. Premiums paid by City for insurance provided in compliance herewith shall be included by City as part of Airport Maintenance and Operating Expenses.

## **ARTICLE 11. INSURANCE**

### **11.1 INSURANCE**

By use and occupancy of Airport premises, Airline understands and agrees that it shall, at its sole expense and in a manner acceptable to City, purchase and maintain or caused to be maintained in force the following insurance coverage for itself and its officers, agents, employees, passengers, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, and suppliers. Airline shall maintain in full force and effect the forms of insurance specified in this Article 11. All such insurance hereunder shall be maintained with insurance underwriters with an AM Best rating of A- or better, or its international equivalent.

All liability insurance policies shall provide coverage that includes, or has the same substantive effect as, the following wording:

1. "The City of San Antonio its officers, employees, volunteers, and elected representatives are additional insured parties where required by written contract."
2. "Airline's insurance shall be primary insurance and non-contributory including a waiver of subrogation with respect to all other available sources."
3. "This insurance shall not be materially changed, altered, canceled, or non-renewed until after thirty (30) days advance written notice has been given to the City of San Antonio except that only ten (10) day notice shall be required in the event of cancellation due to non-payment of premium."

At least ten (10) calendar days prior to the Effective Date of this Agreement, Airline shall furnish City with evidence of all insurance policies required hereunder. Prior to the expiration of any then-current policy of insurance, Airline shall deliver to City evidence showing that such insurance coverage has been renewed. At least five (5) calendar days prior to the date of cancellation or reduction of coverage, as received in the written notice from the insurer, Airline shall deliver to the Director evidence showing reinstatement or other provision for the required insurance.

All such evidence shall be in the form of certificates of insurance satisfactory to the Director.



- a. Aviation liability insurance, covering bodily injury, personal injury, property damage, products/completed operations liability, premise liability, and contractual liability, with a liability limit of not less than Five Hundred Million Dollars (\$500,000,000.00) combined single limit per occurrence, on occurrence form policy. Said limit shall be reduced to Two Hundred Fifty Million Dollars (\$250,000,000.00) where Airline's maximum seating capacity on the largest aircraft operated at the Airport by Airline is thirty (30) or less. With respect to coverage for products/completed operations and personal injury, except with respect to passengers, a sublimit of not less than Twenty-Five Million Dollars (\$25,000,000.00) per occurrence, and in the annual aggregate, shall be permitted with the approval of the Director. Said aircraft liability shall be applicable to owned, non-owned, and hired aircraft.
- b. Automobile liability insurance with a liability limit of not less than Ten Million Dollars (\$10,000,000.00) for all owned, non-owned, and hired vehicles operated by or on behalf of Airline at the Airport, including any additional or replacement vehicles.
- c. Liquor liability insurance for Airline serving alcoholic beverages in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence.
- e. Employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- f. Environmental impairment liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. In lieu of environmental impairment liability insurance, Airline may submit proof of self-insurance by submitting a letter to City attesting to the limit and extent of coverage.
- g. Airline shall likewise maintain workers' compensation insurance or evidence of self-insurance, in accordance with the laws of the State of Texas, covering all of its employees who may from time to time be at the Airport in such capacity. Airline shall require each of its agents, licensees, subcontractors, and suppliers of the Leased Premises to maintain such workers' compensation insurance covering their employees coming on Airport premises in connection with Airline's operations hereunder. The workers' compensation policy(s)

required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against City, its officers, agents, elected representatives, volunteers, and employees. Upon request by the Director, Airline shall furnish the Director with evidence of such workers' compensation insurance in a form acceptable to City.

- h. The minimum limits of the insurance herein required may become inadequate during the Term of this Agreement and that, in any way, directly or indirectly, contingently, or otherwise, affect or might reasonably affect the City. City hereby reserves the right to review all coverages and amounts and request adjustments as necessary in City's reasonable discretion.
- i. If, at any time, Airline fails to obtain or maintain in force the insurance required herein, such failure, if not cured within 48 hours, shall constitute a default permitting City, upon prior reasonable written notice to Airline, to terminate Airline's use of the space or Airline's operations or activities in regard to the Airport and that, in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect City. Notice shall be deemed prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit. Accident or property damage claims in an amount less than One Thousand Dollars (\$1,000.00) shall be excluded from the requirements of this paragraph.
- j. If any claim for damages is filed with Airline or if any lawsuit is instituted against Airline, Airline shall give prompt and timely notice thereof to the Director, provided that claims and lawsuits subject to such notice are only those that arise out of or are in any way connected with Airline's or its officers', representatives', agents', employees', passengers', guests', patrons', contractors', subcontractors', licensees', subtenants', invitees', or suppliers' use of the Leased Premises or Airline's operations or activities in regard to the Airport and that, in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect City. Notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of a claim or ten (10) calendar days following the date of service of process of a lawsuit. Accident or property damage claims

in an amount less than One Thousand Dollars (\$1,000.00) shall be excluded from the requirements of this paragraph.

- k. If any claim for damages is filed with City or if any lawsuit is instituted against City, City shall give prompt and timely notice thereof to Airline, provided that claims and lawsuits subject to such notice are only those that arise out of or are in any way connected with the operation of the Airport by City and that, in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect Airline. Notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of a claim or ten (10) calendar days following the date of service of process of a lawsuit. Accident or property damage claims in an amount less than One Thousand Dollars (\$1,000.00) shall be excluded from the requirements of this paragraph.
- l. The time limitations set forth above are directory. If the notice required to be given by these paragraphs is not given within the time limitations set forth herein, then the party giving the notice shall not be precluded from establishing that the notice actually given was timely under the circumstances of the particular claim or lawsuit, unless by the failure to give such notice within the applicable time period, the other party has been prejudiced in its ability to consider such claim or to respond to, or properly defend, such lawsuit. If the other party is so prejudiced by a late notice, then the late notice shall not be deemed to be prompt and timely.

## **11.2 INDEMNIFICATION**

Airline covenants and agrees to fully indemnify, defend, and hold harmless, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Airline's activities under this Agreement, including any acts or omissions of Airline, any agent, officer, director, representative, employee, Airline or subcontractor of Airline, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, or its elected officials, employees, officers, directors, volunteers, contractors, agents, or representatives, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT AIRLINE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this Article 11. are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Airline shall promptly advise the City in writing of any claim or demand against the City or Airline known to Airline related to or arising out of Airline's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Airline's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Airline of any of its obligations under this paragraph.

## **ARTICLE 12. FEDERAL, STATE, AND LOCAL REGULATIONS**

### **12.1 RULES AND REGULATIONS**

City, in its governmental capacity, has adopted and will enforce “Rules and Regulations” which are the laws, rules, regulations, policies, and other written guidance documents respecting the occupancy and use of the Airport, its services, and facilities by persons, vehicles, aircraft, and equipment that in the City’s opinion will reasonably ensure the safe, efficient, and economically practicable operation of the Airport and provide for the safety and convenience of those using the Airport, as well as protect the Airport and its facilities and the public from damage or injury resulting from operations on, into, and from the Airport. The Rules and Regulations include the rules and regulations adopted in the City’s Code of Ordinances, Chapter 3, Airports.

The Director is authorized to enforce the Rules and Regulations and promulgate other rules and regulations, from time to time, in furtherance of said purposes and/or that the Director deems are necessary to implement the intent and express terms of this Agreement. All such Rules and Regulations, promulgated through the Director’s authority but without governmental action or mandate, shall be reasonable and not unjustly discriminatory and shall not be inconsistent with any legally authorized rule or regulation of the FAA, or any other federal or State agency that is binding in law on Airline or City, as the same now are or may from time to time be amended or supplemented nor inconsistent with the reasonable exercise by Airline of any right or privilege granted under this Agreement.

City shall provide Airline with reasonable notice prior to adoption of any new or amended Rules or Regulations in order to provide Airline with the opportunity to comment on same prior to adoption. Airline, upon written request to the Director, shall be furnished (at the notice address provided herein and to Airline's on-Airport manager) a current copy of any such Airport rules or regulations and any amendments thereto.

Airline agrees to observe and obey all Rules and Regulations as are currently in place and as may be reasonably established from time to time, and to require its officers, agents, employees, contractors, and suppliers to observe and obey the same. It shall be a violation of this Agreement for Airline, or any of its officers, representatives, agents, employees, guests, contractors,

subcontractors, licensees, subtenants, invitees, or suppliers to violate, or to cause another person to violate, any Rule or Regulation promulgated by the Director regarding operation of the Airport.

City reserves the right to deny access to the Airport or its facilities to any person, firm, or corporation that fails or refuses to obey and comply with the Rules and Regulations.

## **12.2 COMPLIANCE WITH LAW**

Airline shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees for any illegal purposes and shall, at all times during the Term of this Agreement, comply with all applicable regulations, ordinances, and laws of the City, the State of Texas, and the federal government, and of any governmental bodies that have jurisdiction over the Airport.

## **12.3 COMPLIANCE WITH STATUTES, ORDINANCES, AND REGULATIONS**

At all times during the Term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:

- a. Comply with and conform to all applicable present and future statutes and ordinances, and regulations promulgated thereunder, of all federal, State, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement. Airline shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), as may be amended from time to time, and federal regulations promulgated there under that may be made applicable as a result of construction activities conducted by Airline.
- b. Make, at its own expense, all non-structural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such statutes, ordinances, or regulations. Airline shall secure the written approval of the Director before proceeding under this Section 12.3.

## **12.4 COMPLIANCE WITH ENVIRONMENTAL LAWS**

### **12.4.1 Environmental Definitions**

"**AST Facility**" means aboveground storage tanks, piping, dispensers, related underground and aboveground structures and equipment, including without limitation associated spill containment features and oil/water separators, and the surrounding area used in connection with the operation for fueling and other management of Hazardous Substances.

"**Best Management Practices**" or "**BMPs**" means the schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants. BMPs shall include those environmental or operational standards or guidelines specifying common and accepted practices appropriate for Airline's and its representatives use of the Leased Premises, and such standards or guidelines as have been articulated by pertinent trade associations, professional associations, or regulatory agencies.

"**Environmental Audit**" means a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws, with any permit issued under an environmental law, and with the requirements of this Article 12.4, conducted under ASTM Standard E2107-00 (Standard Practice for Environmental Regulatory Compliance Audits) or other standard relevant and appropriate to Airline's use of the Leased Premises.

"**Environmental Costs**" means damages, fines, costs and fees arising from any violation of or noncompliance in any material respect with: (a) any applicable Environmental Laws; or (b) any of the environmental provisions of this Agreement, and includes costs of immediate response, remediation, and restoration actions, natural resources damage, Self Help (defined in Section 12.4.6), oversight and participation costs of governmental agencies, including natural resource trustees; reasonable and documented fees and costs of project managers, attorneys, legal assistants, engineers, consultants, accountants, and experts, whether or not employees of the damaged party and whether or not taxable as costs, incurred prior to, at or after any administrative or judicial proceeding, including appeals and other forms of judicial review; and diminution in value, loss or restriction on use of the Leased Premises.

"**Environmental Laws**" means all applicable federal, State of Texas, regional and local laws, regulations, rules, permit terms, codes, ordinances and legally enforceable guidance

documents, now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, water, storm water, ground water, wellfield and wellhead protection, cultural resources protection, animals or plants, noise, or products and relate to the protection of health, safety or the environment and natural resources, including land, sediments, water, groundwater, and stormwater, and shall include, but not be limited to: the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) *et seq.*; the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 *et seq.*; and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C., Section 2601 *et seq.*; the Clean Air Act as amended, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C., Section 1251, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 *et seq.*; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C., Section 651-678; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901 *et seq.*; and their State counterparts.

**“Hazardous Materials”** means any and all substances, materials, wastes, pollutants, oils, or governmental regulated substances or contaminants as defined, designated, or regulated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under Environmental Laws. Examples of Hazardous Materials include but are not limited to, asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials, or waste.

**“Hazardous Substances”** means any and all substances, pollutants, contaminants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous, or regulated wastes or materials or any other similar term in or under any applicable Environmental Laws. Hazardous Substance shall also include, but not be limited to, fuels, petroleum, and petroleum-derived products. Hazardous Substances includes Hazardous Materials.

**“Hazardous Substance Release”** shall include the spilling, discharge, deposit, injection, dumping, emitting, releasing, placing, leaking, migrating, leaching, and seeping of any Hazardous



Substance into the air or into or on any land, sediment or waters, except any release in compliance with Environmental Laws or specifically authorized by a current and valid permit issued under Environmental Laws with which Airline is in compliance at the time of such release, but not including within the exception any such release in respect of which the State of Texas has determined that application of the State's Hazardous Substance removal and remedial action rules might be necessary in order to protect public health, safety or welfare, or the environment.

#### **12.4.2 Environmental Compliance**

Airline shall not cause or allow a Hazardous Substance Release into or onto the Leased Premises or any other location upon or above the Airport, and shall not allow any such release by its employees, agents, permittees, contractors, subcontractors, sublessees, or others in Airline's control, supervision, or employment.

- a. **Hazardous Substance Use on Leased Premises.** Airline may store and use Hazardous Substances that are associated with Air Transportation on the Leased Premises. Airline shall strive to reasonably minimize Hazardous Substance use on the Leased Premises and identify and use non-hazardous alternatives in Airline's operations.
- b. **Safety Data Sheets for Hazardous Substances.** Airline shall maintain Safety Data Sheets ("SDSs") for all Hazardous Substances used on the Leased Premises by Airline or by its agents, employees, contractors, licensees, invitees, or sublessees, to the extent required by Environmental Laws. In order to ensure that the SDSs are available to the City in the event of a Hazardous Substances Release or other emergency, the SDSs shall be kept current at all times and a copy of the SDSs shall be kept in a place known to and easily accessible to the City.
- c. **Storm Water Management System and Wash Water Discharges.** Airline must at its sole cost manage storm water associated with the Leased Premises ("**Airline's Storm Water**") prior to its discharge into any storm sewer system. Airline shall not discharge storm water to any storm sewer system without complying with applicable laws and regulations, including any applicable Environmental Laws and with the City's or Airline's stormwater permit issued under the Texas Pollution Discharge Elimination System ("TPDES").

- i. Airline acknowledges that City's TPDES municipal separate storm sewer system (MS4) permit and its TPDES industrial multi sector stormwater discharge general permit ("Industrial Stormwater Permit"), and any subsequent amendments, extensions, or renewals thereto, to the extent affecting Airline's operations at the Airport, are incorporated by reference into this Agreement. City shall provide Airline with written notice of City's MS4 and Industrial Stormwater Permit discharge permit requirements (including any modifications thereto) that are applicable to Airline's operations and that Airline shall be obligated to perform from time to time at the Airport including, but not limited to: certification of non-stormwater discharges; implementation of "good housekeeping" measures or Best Management Practices; and maintenance of necessary records.
- ii. Airline must maintain its own Industrial Stormwater Permit, and may prepare its own Storm Water Pollution Prevention Plan ("SWPPP") or subscribe to the SWPPP of the City.
- iii. Within sixty (60) days of the Effective Date of this Agreement and then annually thereafter as provided in Section 12.4.7, Airline shall provide information to the City demonstrating compliance of Airline's Storm Water management with Environmental Laws.
- iv. Airline agrees to participate, to the extent reasonably practical, in any reasonable manner requested by City in any City organized task force or other work group established to coordinate stormwater activities at the Airport.
- d. **Discharge and Treatment of Industrial Wastewater.** No industrial wastewater discharge shall be made by Airline onto or into the ground, the groundwater, surface water, or any City owned conveyance or storage system unless such discharge meets the requirements of all applicable laws and regulations, including Environmental Laws. City shall have the right, but not the duty, in its sole discretion, to review and approve or disapprove any industrial wastewater management, treatment or discharge system constructed or modified on the Leased Premises during the term of the Agreement.
- e. **Wetlands Prevention.** Airline shall not create any wetlands under any federal, state, regional or local jurisdiction on the Leased Premises during the term of this Agreement or extension thereof, or on any adjacent City-owned or non-City owned property. Airline shall

also manage the Leased Premises so that no wetlands are allowed to form on the Leased Premises and so that Airline's development and use of the Leased Premises does not cause the formation of wetlands on any adjacent City-owned or non-City owned property. If the City believes that wetlands are likely to form on the Leased Premises and Airline has not taken corrective action, the City shall have the right, but not the obligation, to exercise Self Help as provided in Section 12.4.6.

#### **12.4.3 Liability for Environmental Compliance**

- a. **Hazardous Substances Releases.** Airline shall be responsible for all response, remediation and restoration of any Hazardous Substance Release and associated Environmental Costs on or from the Leased Premises, on other properties, in the air or surface waters and ground water, that results from or occurs in connection with Airline's occupancy, possession, or use of the Leased Premises occurring during or continuing after the termination of the Agreement. If the City has reason to suspect that there has been a Hazardous Substance Release, there is an imminent threat of a Hazardous Substance Release, or that Hazardous Substances are being stored, handled, disposed of or otherwise managed onsite in violation of Environmental Law or the requirements of this Agreement, then at the City's request Airline shall, at its expense, demonstrate (through such tests, professional inspections, samplings, or other methods as may be reasonably required) that Airline has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable law. Airline shall provide copies of reports from any such testing or assessments to City. Should Airline not provide the requested demonstration to City, City may conduct, or cause to be conducted, such tests, inspections, samplings and assessments, and Airline shall reimburse City for all costs of such actions, no later than thirty (30) days following demand for reimbursement.
- b. **Limitation of Airline's Liability.** As between the City and Airline, Airline shall have no responsibility for Hazardous Substance Releases or associated Environmental Costs that are not caused by the Airline or its employees, agents, permittees, contractors, subcontractors, sublessees, or others in Airline's control, supervision, or employment.
- c. **Immediate Response.** In the event of a Hazardous Substance Release, or a threat of or reasonable suspicion of a Hazardous Substance Release for which Airline is responsible under this Agreement, Airline shall immediately undertake and diligently pursue, at

Airline's sole expense, all action necessary and appropriate to investigate, contain, stop, accomplish source control, remove and perform interim remediation regarding the Hazardous Substance Release.

- d. **Corrective Action and Remediation.** Airline shall promptly undertake, at Airline's sole expense, all actions necessary to ensure that any violation of Environmental Law, any violation of Section 12.4 of this Agreement, or any Hazardous Substance Release by Airline, its officers, directors, employees, agents, contractors, invitees, and licensees in any way associated with the Leased Premises is completely remediated to such a condition that a "No Further Action" or "Completion of Cleanup" determination, or an equivalent determination, not conditioned upon facility or use restrictions is obtained from the government agency with jurisdiction over the Hazardous Substance Release. In the alternative, Airline may seek the City's prior written approval of remediation to risk-based levels conditioned upon governmental agency approval and maintenance of facility and use restrictions. The City may approve such an alternative approach on the condition that the Airline assumes responsibility for any liability under Environmental Law and any Environmental Costs of the City resulting from the residual risks associated with the alternative approach.
- e. **Natural Resources Damages Assessment and Restoration.** Airline shall promptly undertake, at Airline's sole expense, all actions necessary to ensure that any natural resources damage associated with Airline's use of the Leased Premises and the violation of Environmental Laws, the environmental provisions of this Agreement or any Hazardous Substance Release is investigated, determined, quantified, assessed, and permanently restored and compensated for, to the extent legally required by any natural resource trustee with jurisdiction over the matter.
- f. **Allocation of Costs.** Any Environmental Costs incurred by the City for Airline's failure to comply with Environmental Laws as required herein shall be reimbursed to the City by Airline. Unless prohibited by law, regulation or judicial/governmental/law enforcement verbal or written order, City shall promptly notify Airline of any TCEQ proceedings or investigations so that Airline has the opportunity to defend against such fines or penalties as appropriate.

#### **12.4.4 Environmental Audits and Environmental Walkthroughs**

- a. During the term of the Agreement, Airline or City may decide jointly or unilaterally to conduct Environmental Audits or Environmental Walkthroughs, as described below, to determine whether the Leased Premises have been or are currently being operated in compliance with the Agreement and Environmental Laws. The types and purposes of Environmental Audits and Environmental Walkthroughs are:
  - i. **Initial.** Prior to occupying the Leased Premises, Airline and City shall jointly determine and agree whether to conduct an Environmental Audit or Environmental Walkthrough to determine if the Leased Premises are currently in compliance with the Agreement and Environmental Laws. If the parties cannot agree, then either the Airline or the City may unilaterally determine that an Initial Environmental Audit or Environmental Walkthrough is necessary, subject to the cost allocation in subparagraph b. below.
  - ii. **Special** If the City has reason to suspect that there has been a Hazardous Substance Release, there is an imminent threat of a Hazardous Substance Release, or that Hazardous Substances are being stored, handled, disposed of or otherwise managed onsite in violation of Environmental Law or the requirements of this Agreement, the City may, after written communication of those reasons to Airline, conduct an Environmental Audit or Environmental Walkthrough.
  - iii. **Exit.** At the termination or upon a transfer of this Agreement, the City and Airline shall jointly determine and agree whether an Environmental Audit or Environmental Walkthrough is necessary to establish whether the Leased Premises have been operated in compliance with the Agreement and Environmental Laws. If the parties cannot agree, then either the Airline or the City may unilaterally decide that an Exit Environmental Audit or Environmental Walkthrough is necessary, subject to the cost allocation in subparagraph b. below. An Exit Audit shall be conducted not more than one hundred and twenty (120) days, but not less than sixty (60) days, prior to the actual termination or Transfer date of this Agreement.
- b. **Environmental Audits.**
  - i. When Airline and City decide to conduct a joint Environmental Audit pursuant to this Agreement, then the time and scope of the audit shall be determined together, a

mutually acceptable environmental consultant shall be agreed upon to conduct the Environmental Audit, and the consultant shall timely provide a complete copy of the results of the Environmental Audit to Airline and City.

- ii. If an Environmental Audit is conducted unilaterally by City it shall: provide Airline with reasonable advance written notice of the Effective Date; allow Airline to have a representative present; provide Airline the opportunity to review the findings; and shall not unreasonably disrupt Airline's operations.
- iii. The City and Airline shall share equally in the cost of a joint Environmental Audit. However, if a Special Environmental Audit or an Exit Environmental Audit reveals the presence of a substantial violation of Environmental Laws, defined to mean any violation that would have resulted in mandatory enforcement under the enforcement policies of the TCEQ, or a not previously discovered Hazardous Substance Release caused by the Airline or its employees, agents, permittees, contractors, subcontractors, sublessees, or others in Airline's control, supervision, or employment, then Airline shall pay for the cost of the Environmental Audit.

**c. Environmental Walkthrough.**

- i. When Airline and City decide to conduct a joint Environmental Walkthrough pursuant to this Agreement, then it shall be conducted by one or more representatives of the Airline and City. The Environmental Walkthrough shall be for the purpose of determining by visual observation, which may include reviewing non-confidential and non-privileged environmental records, whether the Leased Premises are in compliance with the Agreement and Environmental Laws. At least one representative of Airline and one representative of City that participates in an Environmental Walkthrough shall be knowledgeable of Environmental Laws. Airline and City shall each prepare a separate list of observations believed to show where the Leased Premises is not in compliance with the Agreement or Environmental Laws. Within ten days after the completion of the Environmental Walkthrough, the Airline and City shall exchange copies of the lists.
- ii. If an Environmental Audit is conducted unilaterally by City it shall: provide Airline with reasonable advance written notice of the commencement date; allow Airline to

have a representative present; provide Airline the opportunity to review the findings; and shall not unreasonably disrupt Airline's operations.

- iii. Airline and City shall each bear its own cost in conducting an Environmental Walkthrough.

#### **12.4.5 Environmental Access**

The City reserves the right from time to time, after reasonable notice to Airline (except in cases of emergencies when notice shall not be required), to inspect the Leased Premises and Airline's operations on and use of the Leased Premises to: (a) evaluate Airline's management of Hazardous Substances; (b) conduct subsurface or stormwater sampling; (c) evaluate compliance with Environmental Laws; (d) review compliance documentation to facilitate the City's compliance with Environmental Laws or implementation of its environmental management system; and (e) perform Environmental Audits or Environmental Walkthroughs. At City's request Airline shall make available for inspection and copying any or all of the non-privileged documents and materials prepared by or for Airline pursuant to any Environmental Law or regulation. The documents may be retained by City or submitted to any governmental regulatory agency; provided, such documents and materials relate to environmental regulatory compliance and pertain to the Airport or the Leased Premises.

#### **12.4.6 Notices, Review & Approval, and Self-Help**

Airline shall promptly notify the City upon becoming aware of: (a) a violation or alleged violation of any applicable Environmental Laws related to the Leased Premises or of this Section 12.4 of the Agreement; and (b) any Hazardous Substance Release on, under, from or adjacent to the Leased Premises or threat of or reasonable suspicion of such. In addition, Airline shall also notify the City by calling the Airport's twenty-four (24) hour/seven (7) days a week Airport Communication Center: (210) 207-3433. If Airline fails to notify the City of a matter as required in this Section 12.4.6, and if the City does not otherwise acquire knowledge of the matter, Airline shall be liable for any exacerbation of such Hazardous Substance Release that could reasonably have been avoided if such notification by Airline had been provided.

- a. **Regulatory Notice - Airline.** If any Environmental Law requires Airline to file any notice or report of a release or threatened release of Hazardous Substances on, under or about the

Leased Premises or the Airport, Airline shall promptly submit such notice or report to the appropriate governmental agency and simultaneously provide a copy of such report or notice to City. In the event that any written allegation, claim, demand, action or notice is made against Airline regarding Airline's failure or alleged failure to comply with any environmental law or regulation, Airline, as soon as practicable, shall notify City in writing and provide same with copies of any such written allegations, claims, demands, notices or actions so made.

- b. **Regulatory Notice - City.** City will promptly provide written notice to Airline of any notices received by City from TCEQ or other regulatory agency regarding Airline's environmental compliance obligations.
- c. **City's Rights of Approval, Notice, Review and Comment.** Except in the case of an emergency or a regulatory agency order requiring immediate action, Airline shall give the City advance notice before beginning any immediate response, remediation or restoration action required by this Agreement or applicable Environmental Laws. The City shall have the right to approve or disapprove the proposed work and the entities and individuals conducting such work. Airline shall copy the City, at no cost to the City, on all of the immediate response, remediation or restoration action deliverables submitted to the regulatory agencies and shall allow the City a reasonable period of time based upon the surrounding circumstances to submit comments thereon to Airline. Within thirty (30) days following completion of any immediate response, remediation or restoration action required by this Agreement, Airline shall provide the City, at no cost to the City, with a written report outlining, in detail, what has been accomplished.
- d. **Airline's Split Sampling Notice.** Airline shall notify the City at least forty-eight (48) hours in advance of any proposed sampling associated with a Hazardous Substance Release in order to allow the City to be present or to collect split samples. Airline shall provide the City with copies, at no cost to the City, of any sampling results and associated chain of custody and quality assurance and quality control information within ten (10) days of receipt by Airline.
- e. **City's Right to Advise and/or Direct the Immediate Cessation of Operations in an Emergency.** The City shall have the right to advise and/or direct Airline to cease all or part of its operations immediately upon delivery of written notice if the City determines



that the Airline's operation : (i) is not being undertaken by Airline or Airline's Representatives in any material respect in accordance with applicable permits, approvals, laws or regulations; (ii) constitutes an emergency, meaning an imminent endangerment to human health, safety, or welfare or the environment; or (iii) resulted in a Hazardous Substance Release.

- f. **City's Right of Self Help.** City shall have the right, upon giving Airline seven (7) days written notice, stating the obligations in issue, to perform Airline's obligations arising under any Environmental Laws and charge Airline the resulting Environmental Cost, plus any additionally incurred charges from the date any funds were expended by the City ("**Self Help**"). Airline agrees to reimburse the City, upon demand, any amounts the City may spend pursuant to this Section on behalf of Airline. The City may not commence performance on behalf of Airline under this Section if, within such notice period, Airline promptly notifies the City, begins, and continually thereafter diligently pursues to completion the performance of the obligations stated in the City's notice. Written notice by the City is not required in the event of an emergency or a governmental agency order requiring immediate action and significant notice cannot be given.
- g. **City's Right of Final Approval.** The Director shall have authority to disapprove an activity of the Airline and/or any sublessee, on the basis of a risk assessment. The parties understand that Airport premises are not intended for use involving refining, processing, manufacturing, maintenance, overhaul, or similar heavy industrial activities entailing use, storage, manufacture, or transport of critical volumes of regulated or hazardous materials or toxic chemicals. For purposes of this Agreement, "critical volumes" are those which, in the discretion and sole judgment of the Director, pose or may pose an unreasonable risk to Airport property, its occupants, employees or the traveling public.

#### **12.4.7 Additional Environmental Provisions**

Airline shall be fully and primarily responsible to the City for any violation of any Environmental Laws or non-performance of the duties stated in this Agreement by Airline or its representatives and Airline shall be fully responsible for the same as if Airline had committed the violation or breach itself.

- a. **Annual Certification.** If requested in writing by the City, Airline shall provide on or before each anniversary of the Effective Date of this Agreement, a written statement, certified by Airline as true and complete to the best of its actual knowledge, that during the preceding year with respect to the Leased Premises and Airline's occupation and use of the Leased Premises, Airline has complied with applicable Environmental Laws. If Airline is unable to provide such certification at the time requested by the City, then Airline shall provide the City with a written statement of the steps Airline is taking to enable it to provide the City with a certification of compliance.
- b. **Sustainability.** City and Airline shall become familiar with and comply with all applicable local, state, and federal environmental laws, ordinances and policies regarding recycling, green building, water conservation, energy conservation, renewable energy, and air quality. Airline shall use reasonable efforts to comply with City's policies and programs to the extent such policies and programs are not inconsistent with the terms and conditions of this Agreement. Airline shall have the opportunity to participate in the development of such policies and programs and City shall fully consider for incorporation Airline's comments.
- c. **Noise.** Airline shall comply with any formal noise abatement program or policy established by the Airport in conformance with federal statutes, laws, rules, and regulations and use reasonable efforts to comply with informal noise abatement programs established by the Airport. The Airline shall notify the City promptly and may challenge such programs if the Airline believes such formal or informal noise abatement programs may interfere with safe aircraft operation or if Airline believes such programs are not in conformance with federal statutes, laws, rules and regulations.
- d. **Air Quality Improvements.** Airline acknowledges that in order to protect existing Airport operations, to improve air quality in the region, to meet requirements associated with the expansion of the Airport, and to otherwise comply with federal and state air quality laws, the City and its tenants will be required to implement certain changes to operating practices to address any newly regulated air pollutant, emission or contaminant in accordance with applicable Environmental Laws, including without limitation those related to climate change and indoor air quality. In addition, the City may adopt new Best Management Practices that it will request Airline to voluntarily comply with, such as Airline's conversion of ground service equipment and support vehicles to alternative fuels and use

of preconditioned air and 400 Hz gate power instead of auxiliary power units (“APUs”). The City agrees to consult with Airline during the development of such Best Management Practices to ensure that such efforts are reasonably achievable and cost effective. Airline agrees to utilize the pre-conditioned air and 400 Hz gate power provided on the jet bridge. Airline will cooperate with the City to identify cost-effective ways to minimize contributions to climate change.

- e. **Cumulative Remedies.** All such remedies of City with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement.

## **12.5 CODE OF ETHICS**

The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a. a City officer or employee; his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
- b. an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- c. an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

Pursuant to the subsection above, Airline warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Airline does not cause a City employee or officer to have a prohibited financial interest in the Contract. Airline further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

Airline further represents and warrants to City that as a condition of the use of Airport services and facilities, Airline shall comply with all applicable provisions of the Federal Nondiscrimination requirements set forth in Exhibit I.

**12.6 FAIR AND EQUAL FURNISHING OF SERVICES**

As a condition of the use of Airport services and facilities, Airline shall furnish its services on a reasonable, and not unjustly discriminatory basis to all users thereof, and it shall charge reasonable, and not unjustly discriminatory prices for each unit or service provided that Airline is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. In the event of noncompliance with this paragraph, City may terminate Airline's right to use Airport services and facilities.

**12.7 AFFIRMATIVE ACTION PROGRAM**

As a condition of the use of Airport services and facilities, Airline shall undertake an affirmative action program as required by FAA regulations, Title 14, Code of Federal Regulations, Part 152, Subpart E, entitled "Nondiscrimination in Airport Aid Program," or as otherwise approved by the FAA, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, or handicap be excluded from participation in any employment activities covered in such Subpart E. Airline shall not exclude any person on such grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. Airline shall require that its covered suborganizations provide assurances to Airline that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to the same effect.

**12.8 DISADVANTAGED BUSINESS ENTERPRISES**

As a condition of its use of Airport services and facilities, Airline shall comply with the requirements of Title 49 of the Code of Federal Regulations, Part 26, and entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" as this Part may be amended from time to time.

## **12.9 RIGHTS OF FEDERAL GOVERNMENT**

Any use of Airport services and facilities by Airline shall be subject to whatever right the U.S. government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

## **12.10 GOVERNMENTAL RESTRICTIONS**

- a. **Avigation Rights.** City 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 the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, for navigation of, or flight in the said airspace for landing on and taking off from the Airport.
- b. **Height Limitation.** Airline expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Leased Premises to such a height so as to comply with Federal Aviation Regulations, Part 77, as such may be amended or superseded from time to time.
- c. **Governmental Review.** Airline acknowledges that this Agreement is subject to review or inspection by the United States government and the State of Texas and their respective agencies and departments, including, but not limited to, the FAA, to determine satisfactory compliance with state and federal law and/or PFC and grant assurance requirements. Airline agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection; provided, however, that upon such review or inspection the parties agree to modify any of the terms of this Agreement that are determined by the United States government or the State of Texas or any of their respective agencies or departments to be in violation of or inconsistent with any state or federal law and/or PFC or grant assurance requirement.
- d. **Federal Right to Reclaim.** In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Leased Premises are located, for public purposes, then this Agreement shall thereupon terminate

*Draft Agreement dated August 18, 2020*

and City and Airline shall be released and fully discharged from any and all liability hereunder. This Article shall not act or be construed as a waiver of any rights Airline may have against the United States as a result of such taking.

**12.11 SUBORDINATION OF AGREEMENT**

The use of Airport services and facilities by Airline, pursuant to this Agreement, is subordinated to City's existing and future obligations or agreements with or to the federal government including, but not limited to, federal grant assurances.

Nothing contained in this Agreement is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713), of any state or local law or ordinance, or the [Airport] Rules and Regulations.

## **ARTICLE 13. CANCELLATION BY CITY: EVENTS OF DEFAULT BY AIRLINE**

### **13.1 EVENTS OF DEFAULT BY AIRLINE**

Each of the following shall constitute and “Event of Default by Airline:

- a. Airline fails to pay rents, fees, and charges, including Passenger Facility Charges, if applicable, as described in Article 5. , when due, and such default continues for a period of ten (10) days after receipt of written notice from City for such nonpayment.
- b. Airline fails after the receipt of written notice from City to keep, perform or observe any term, covenant or condition of this Agreement (other than as set forth in **Section 12.4** above) and such failure continues for fifteen (15) days after such receipt.
- c. Airline shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.
- d. An Order for Relief shall be entered at the request of Airline or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
- e. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Airline and shall not be dismissed within thirty (30) days after the filing thereof.
- f. By or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency, or officer, receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of

Airline and such possession or control shall continue in effect for a period of fifteen (15) days.

- g. Airline shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.
- h. The rights of Airline hereunder shall be transferred to, pass to, or devolve upon, by operations of law or otherwise, any other person, firm, corporation, or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in paragraphs c through g of this Section 13.1.
- i. Airline shall voluntarily discontinue its operations at the Airport for a period of sixty (60) consecutive days.

### **13.2 REMEDIES FOR AIRLINE'S DEFAULT**

Upon the occurrence of an Event of Default by Airline, Airline shall remain liable to City for all arrearages of rent, fees, and charges payable hereunder and for all preceding breach(es) of any covenant herein contained. City, in addition to the right of termination of the Agreement, and to any other rights or remedies it may have at law or in equity, shall have the right to terminate Airline's right of possession and the right of reentry and may remove all Airline persons and personal property. Upon any such removal, Airline property may be stored in a public warehouse or elsewhere at the cost of, and for the account of Airline. Airline shall pay to City all costs, fees, and expenses incurred by City in the exercise of any remedy upon an Event of Default by Airline.



#### **ARTICLE 14. ASSIGNMENT AND SUBLETTING**

Airline shall not at any time assign this Agreement in whole or in part without the prior written consent of the Director; provided, however, that the foregoing shall not prevent the assignment of this Agreement to any corporation with which Airline may merge or consolidate or which may succeed to the business of Airline and provided further that, in connection with any such requested assignment, Airline may request City to release the assigned portion of said Leased Premises from this Agreement and to relieve Airline of rental obligation therefore. In the event City fails or refuses to approve such request and relief, Airline may then assign all or a portion of the Leased Premises to another Air Transportation company or companies that have executed an Agreement with City.

Airline may sublet all or any part of the Leased Premises only after obtaining the prior written consent of the Director, but if an event of default shall occur and be continuing under this Agreement, City may collect rent from such sublessee or occupant and apply the amount collected to the extent possible to satisfy the obligations of Airline hereunder, but no such collection shall be deemed a waiver by City of the covenants contained herein or the acceptance by City of such sublessee or occupant as a successor to Airline or a release of Airline by City from its obligations hereunder.

All of the terms, provisions, covenants, stipulations, conditions, and consideration in this Agreement shall extend to and bind the legal representatives, successors, sublessees, and assigns of the respective parties hereto.

## **ARTICLE 15. MISCELLANEOUS**

### **15.1 ACKNOWLEDGMENT**

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 hereunder. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against City by reason of the preparation of this Agreement by City.

### **15.2 AUTHORITY OF DIRECTOR**

The Director or his designee may exercise all rights and obligations of City under this Agreement, unless specifically provided otherwise or required by law.

### **15.3 CAPACITY TO EXECUTE**

Each of the parties hereto warrants and represents that the execution and delivery of this Agreement by the undersigned representatives has been duly authorized by all necessary corporate or municipal action, as applicable.

### **15.4 COVENANT AGAINST LIENS**

Airline shall not cause nor permit any lien against the Leased Premises or any improvements thereto to arise out of or accrue from any action or use thereof by Airline; provided, however, that Airline may, in good faith, contest the validity of any alleged lien.

### **15.5 DELIVERY OF NOTICES**

Any notice required in this Agreement shall be in writing and served personally or sent by registered or certified mail, postage prepaid, or by courier service such as DHL, FedEx, or UPS. Any notice mailed pursuant to this paragraph shall be presumed to have been received by the addressee five (5) business days after deposit of it in the mail, unless sent by courier service.

Notices to City shall be addressed to:

CITY OF SAN ANTONIO  
Director of Aviation  
San Antonio International Airport  
9800 Airport Blvd.  
San Antonio, Texas 78216-9990

Notices to Airline shall be addressed to the individual listed in the Preamble of this Agreement.

**15.6 EMPLOYEES OF AIRLINE**

Airline shall require all of its employees and subcontractors or independent contractors hired by Airline working in view of the public and about the Terminal Building to wear clean and neat attire (as appropriate to the job duties performed) and to display appropriate identification. Airline employees shall obtain identification badges from the City. Airline shall be responsible for paying the cost of Transportation Security Administration required employee background checks and badging.

**15.7 ENTIRE AGREEMENT**

This Agreement, including all Exhibits and Attachments hereto, constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by City and Airline. This Agreement supersedes all prior agreements and understandings, written and oral, expressed, or implied, between the City and Airline related hereto. Airline agrees that no representations or grant of rights or privileges shall be binding upon City unless expressed in writing in this Agreement.

**15.8 NONEXCLUSIVE RIGHTS**

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of this Agreement.

**15.9 FAVORED NATIONS**

Airline shall have the same rights and privileges and pay the same City-established fees and charges, not to exceed those established under the provisions of this Agreement as periodically revised under the terms hereof, with respect to the use of the Airport as are granted to or charged any other airline executing a similar agreement with City for use of the Airport. It is understood that rents and fees are set as established in this Agreement and to the extent permitted under applicable federal law therefore may vary among lessees on account of the different premises to be leased.

**15.10 FORCE MAJEURE**

Neither City nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control; provided, however, that these provisions shall not excuse Airline from paying rents, fees, and charges.

**15.11 GENERAL INTERPRETATION**

Insofar as this Agreement grants, permits, or contemplates the use of space or facilities or the doing of any other act or thing at the Airport by Airline, such use or the doing of such act or thing by Airline is to be in connection with the operation of its Air Transportation on scheduled or nonscheduled flights, whether as a common carrier, a contract carrier, a private carrier, or otherwise. Each of the parties, however, has entered into this Agreement solely for its own benefit; and (without limiting the right of either party to maintain suits, actions, or other proceedings because of breaches of this Agreement) the Agreement does not grant to any third person (excepting a successor party to City or Airline) a right to claim damages or bring any suit, action, or other proceeding against either City or Airline because of any breach hereof.

**15.12 GOVERNING LAW**

The laws of the State of Texas shall govern this Agreement and all disputes arising hereunder, with venue in Bexar County, Texas.

**15.13 HEADINGS**

The headings of the Articles and paragraphs of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions of this Agreement or of its interpretation.

**15.14 INCORPORATION OF EXHIBITS**

All exhibits referred to in this Agreement are intended to be and hereby are specifically incorporated and made a part of this Agreement and may not be altered or deleted except by formal written amendment, executed by both parties.

**15.15 INCORPORATION OF REQUIRED PROVISIONS**

The parties incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

**15.16 INDEPENDENT CONTRACTOR**

As respects City, Airline shall be and remain an independent contractor for all intents and purposes.

**15.17 INVALID PROVISIONS**

In the event any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided the invalidity of any such covenant, condition, or provision does not materially prejudice either City or Airline in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this Agreement.

**15.18 NONLIABILITY OF INDIVIDUALS**

No director, officer, agent, elected official, or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

**15.19 NONINTERFERENCE WITH AIRPORT OPERATIONS**

Airline, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not make use of its Leased Premises in any manner that might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, on reasonable notice to Airline and opportunity to cure, City reserves the right to enter the Leased Premises and cause the abatement of such interference at the expense of Airline.

**15.20 NOTICE OR CONSENT**

Any notice or consent required herein to be obtained from or given by City (or the Director) may be given by the Director unless otherwise provided. Consent of City or Airline when required herein shall not be unreasonably withheld, delayed, or conditioned.

**15.21 NON-WAIVER**

The acceptance of rents and fees by City for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline shall not be deemed a waiver of any right on the part of City to terminate this Agreement.

**15.22 OPERATION OF AIRPORT**

City agrees to maintain and operate the Airport in accordance with all applicable standards, rules, and regulations of the Federal Aviation Administration or its successor. City shall exercise its rights hereunder and otherwise operate the Airport with due regard for the operational requirements and long-term interests of the Airline and the interests of the traveling public, in a manner that is consistent with applicable laws, federal aviation regulations, federal grant assurances, and City Bond Ordinances.

**15.23 OTHER LAND AND BUILDINGS EXCLUDED**

It is agreed and understood that it is not intended by this Agreement or any exhibit hereto to lease any building, space, or area or to set any rental rates for any building, space, or area other than what is specifically described herein.

**15.24 PAYMENT OF TAXES**

Airline shall pay all taxes that may be levied upon, assessed, or charged Airline or its property located on the Airport by the State of Texas or any of its political subdivisions or municipal corporations, and shall obtain and pay for all licenses and permits required by law. However, Airline shall have the right to contest, in good faith, the validity or application of any such tax, license, or permit and shall not be considered in default hereunder so long as such contest is in progress. Further, Airline agrees to diligently prosecute such contest.

**15.25 REMEDIES TO BE NONEXCLUSIVE**

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to City or Airline at law or in equity (to the extent not inconsistent with the express provisions hereof), and the exercise of any remedy or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

**15.26 RIGHT TO AUDIT BOOKS AND RECORDS**

Airline agrees to keep books and records on its operations at the Airport, and the Director or any other authorized City representative, upon reasonable advance written notice to Airline, shall have the right to inspect and audit such books and records to ensure compliance with the prevailing municipal bond disclosure requirements and to determine that City has received from Airline all moneys due City under the terms hereof, including, but not limited to, rents, fees, and charges and PFCs (if applicable) payable to City by Airline. Likewise, Airline shall have the right to inspect the books and records of the City relating to the provisions hereof.

**15.27 RIGHT TO LEASE TO UNITED STATES GOVERNMENT**

During time of war or national emergency, City shall have the right to lease the Airport landing area or any part thereof to the United States government for use by the Armed Forces and, if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended; however, such suspension shall not extend the Term of this Agreement. If, as a result of any such lease, the rights or duties of Airline hereunder are materially affected, then Airline shall receive an equitable rental adjustment.

**15.28 RIGHTS RESERVED TO CITY**

Nothing contained herein shall unlawfully impair the right of City to exercise its governmental or legislative functions. This Agreement is made subject to the Constitution and laws of the State of Texas and to the Charter of the City of San Antonio, Texas, and to the provisions of the Airport Improvement Program Grant Agreements applicable to the Airport and its operation, and the provisions of such agreements, insofar as they are applicable to the terms and provisions of this Agreement, shall be considered a part hereof to the same extent as though copied herein at length to the extent, but only to the extent, that the provisions of any such agreements are required generally by the United States at other civil airports receiving federal funds. To the best of City's knowledge, nothing contained in such laws or agreements conflicts with the express provisions of this Agreement.

**15.29 SUCCESSORS AND ASSIGNS**

The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, this provision shall in no way whatsoever alter the restriction herein regarding assignment and subletting by Airline.

**15.30 TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement.

**15.31 AMENDMENT**

This Agreement, together with the authorizing ordinance, constitutes the entire agreement between the parties. 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. The Director is authorized to execute amendments which do not substantially alter the material terms of this Agreement. All other amendments must be authorized in writing by City Council by passage of an ordinance thereto.



*Draft Agreement dated August 18, 2020*

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2020.

ATTEST:

\_\_\_\_\_

City Clerk

CITY OF SAN ANTONIO:

By: \_\_\_\_\_

City Manager

ATTEST:

\_\_\_\_\_

Secretary

\_\_\_\_\_ AIRLINE

By: \_\_\_\_\_

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

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

*Draft Agreement dated August 18, 2020*

**EXHIBIT A**  
**AIRPORT LAYOUT PLAN**

*Draft Agreement dated August 18, 2020*

**EXHIBIT B**  
**TERMINAL LAYOUT PLAN**

*Draft Agreement dated August 18, 2020*

**EXHIBIT C**  
**LEASED PREMISES**

*Draft Agreement dated August 18, 2020*

**EXHIBIT D**  
**RATES AND FEES SCHEDULE**

*Draft Agreement dated August 18, 2020*

**EXHIBIT E**  
**RESPONSIBILITY OF CITY AND AIRLINE**  
**FOR**  
**SERVICES, MAINTENANCE, AND OPERATION**

*Draft Agreement dated August 18, 2020*

**EXHIBIT F**  
**FINANCIAL RESPONSIBILITY FOR AIRLINE AND CITY**  
**JANITORIAL SPACE**

*Draft Agreement dated August 18, 2020*

**EXHIBIT G**  
**JANITORIAL SPECIFICATIONS**



*Draft Agreement dated August 18, 2020*

**EXHIBIT H**  
**MONTHLY ACTIVITY REPORTS**

*Draft Agreement dated August 18, 2020*

**EXHIBIT I**  
**FEDERAL NONDISCRIMINATION REQUIREMENTS**

**A. Title VI Clauses for Compliance with Nondiscrimination Requirements.**

During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** Airline will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities") as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** Airline, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Airline will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Airline for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Airline of Airline's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Airline will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Airline is in the exclusive possession of another who fails or refuses to furnish the information, Airline will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Airline's noncompliance with the non-discrimination provisions of this Agreement, City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to Airline under this Agreement until Airline complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** Airline will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Airline will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Airline becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Airline may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Airline may request the United States to enter into the litigation to protect the interests of the United States.

**B. Title VI List of Pertinent Nondiscrimination Acts and Authorities.**

During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

**C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.**

1. Airline for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline will use the Leased Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate this Agreement and to enter or re-enter and repossess the Leased Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

**D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.**

Airline for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

**E. Airport Concession Disadvantaged Business Enterprises (“ACDBE”).**

This Agreement may be subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. It is the policy of City that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Airline agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Airline agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

**F. General Civil Rights Provision.**

Airline agrees to comply with pertinent and applicable statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Airline transfers its obligation to another, the transferee is obligated in the same manner as Airline. This provision obligates Airline for the period during which the property is owned, used, or possessed by Airline and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.