

**AIRPORT USE AGREEMENT**

**For**

**LUIS MUÑOZ MARÍN INTERNATIONAL AIRPORT**

**By and Among**

**THE PUERTO RICO PORTS AUTHORITY**

**And**

**THE LESSEE**

**And**

**[AIRLINE]**

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## AIRPORT USE AGREEMENT

### LUIS MUÑOZ MARÍN INTERNATIONAL AIRPORT

This **AIRPORT USE AGREEMENT** is made and entered as of \_\_\_\_\_, 2012, by and among the Puerto Rico Ports Authority (the “**Authority**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created pursuant to Act No. 125 of the Legislative Assembly of Puerto Rico enacted on May 7, 1942, as amended; \_\_\_\_\_ (the “**Lessee**”), a \_\_\_\_\_ organized under the laws of \_\_\_\_\_; and \_\_\_\_\_ (“**[AIRLINE]**”)<sup>1</sup>, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_.

### WITNESSETH

**WHEREAS**, the Authority is the owner and operator of the Luis Muñoz Marín International Airport located in the Municipality of Carolina (the “**Airport**”) with the power to lease premises and to grant rights and privileges with respect thereto, all as hereinafter provided;

**WHEREAS**, **[AIRLINE]** is an air carrier duly certificated and authorized by the U.S. Department of Transportation and Federal Aviation Administration to serve the Airport and desires to provide air service at the Airport as a certificated air carrier and to undertake the obligations set forth below;

**WHEREAS**, **[AIRLINE]** and the Authority are parties to those certain agreements set forth in Section 2.2, which are being [terminated / assumed] in accordance with the terms of this Agreement and the Implementation Agreement;

**WHEREAS**, the Authority has entered into that certain Lease Agreement (the “**Lease Agreement**”) with the Lessee for the operation and management of the Airport;

**WHEREAS**, prior to the Bid Date, the Authority has entered into those certain Transaction Implementation Agreements with **[AIRLINE]** and certain other Airlines (the “**Implementation Agreements**”) with respect to certain matters related to the Airport and the Lease Agreement; and

**WHEREAS**, after the Closing, it is anticipated that other Airlines may become a Signatory Airline with respect to an Airport Use Agreement;

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

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<sup>1</sup> In each tailored Airport Use Agreement, “**[AIRLINE]**” will be replaced with an appropriate moniker for each Airline (i.e., “American,” “Jet Blue” etc.).

## ARTICLE 1.

### DEFINITIONS

**Section 1.1. Definitions.** The following words, terms and phrases shall, for purposes of this Agreement, have the following meanings:

“[AIRLINE]” has the meaning ascribed thereto in the Preamble.

“AAA” has the meaning ascribed thereto in Section 11.5.

“AAA Rules” has the meaning ascribed thereto in Section 11.6.

“**Affiliate**,” when used to indicate a relationship with a specified Signatory Airline (including [AIRLINE]), means another Airline that is designated by that specified Signatory Airline to the Lessee as its Affiliate *and* (a) is a parent or subsidiary of the Signatory Airline or an entity, directly or indirectly, controlling, controlled by, or under common control with the Signatory Airline; (b) is operating at the Airport for the benefit of that specified Signatory Airline, under the same or substantially similar livery as that specified Signatory Airline and (i) is owned by that specified Signatory Airline or (ii) is under contract to that specified Signatory Airline in respect of such operation; (c) if operating under its own livery, is not selling any seats on an aircraft in its own name and all seats on such aircraft are being sold in the name of that specified Signatory Airline; (d) is operating at the Airport under a shared International Air Transport Association flight designator code with that specified Signatory Airline; or (e) with respect to a specified Signatory Airline that is a Cargo Carrier, is under contract with that specified Signatory Airline relating to its cargo operations. [AIRLINE] shall notify the Lessee of all of its Affiliates whenever such designation is made or removed.

“**Agent for Service of Process**” has the meaning ascribed thereto in Section 12.8(b).

“**Agreement**” means this Airport Use Agreement, as hereafter amended or supplemented from time to time in accordance with its terms.

“**Air Transportation Business**” means the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of cargo or mail, by aircraft, in commerce, as defined in 49 U.S.C. Subtitle VII, as amended.

“**Airfield Area**” means the land identified as Airfield Area on Schedule B, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon, including the Runways, Taxiways, aprons and facilities at the Airport for the purpose of controlling and assisting arrivals, departures and operations of aircraft using the Airport, such as control towers or other facilities operated and maintained by the FAA or any other Governmental Authority, security fences, service roads, signals, beacons, wind indicators, flood lights, landing lights, boundary lights, construction lights, radio and electronic aids or other aids to operations, navigation or ground control of aircraft whether or not of a type herein mentioned and even though located away from but related to the rest of the Airfield Area.

“**Airfield MII**” means, during any Term Year, any combination of one or more Signatory Airlines that (a) in the aggregate, paid a majority of the Total Airfield Contribution charged to all Signatory Airlines for the prior Term Year and (b) constitutes a numerical majority of all votes cast by such Signatory Airlines within 30 days of the request submitted by the Lessee or one or more Signatory Airlines, as the case may be, for action by the Airfield MII (or such shorter period as may be specified in such request) with respect to the matter or action. Solely for the purpose of determining an Airfield MII, no Airline shall be deemed to be a Signatory Airline (i) so long as an Airline Default with respect to such Airline has occurred and is continuing and the Lessee has provided notice to all the Signatory Airlines or (ii) if a Signatory Airline is no longer operating at the Airport (except if such Signatory Airline’s cessation of operations results from a temporary suspension by the FAA).

“**Airline**” means any Person actively engaged in an Air Transportation Business at the Airport.

“**Airline Default**” has meaning ascribed thereto in Section 10.1.

“**Airline Management Committee**” has the meaning ascribed thereto in Section 3.12(a).

“**Airline MII**” means, during any Term Year, any combination of one or more Signatory Airlines that (a) in the aggregate, paid a majority of the Total Annual Contribution charged to all Signatory Airlines for the prior Term Year and (b) constitutes a numerical majority of all votes cast by such Signatory Airlines within 30 days of the request submitted by the Lessee or one or more Signatory Airlines, as the case may be, for action by the Airline MII (or such shorter period as may be specified in such request) with respect to the matter or action. Solely for the purpose of determining an Airline MII, no Airline shall be deemed to be a Signatory Airline (i) so long as an Airline Default with respect to such Airline has occurred and is continuing and the Lessee has provided notice to all the Signatory Airlines or (ii) if a Signatory Airline is no longer operating at the Airport (except if such Signatory Airline’s cessation of operations results from a temporary suspension by the FAA).

“**Airline Projects**” means the In-Line Baggage System Project and the Concourse B Jet Bridge Replacement Projects.

“**Airline Project Studies**” means the In-Line Baggage System Project Study and the Concourse B Jet Bridge Replacement Study.

“**Airline Provider**” means a Person providing goods or services or both to an Airline. For the avoidance of doubt, Airline Provider includes “feeder aircraft” to Cargo Carriers.

“**Airline Space Improvements Agreement**” means that certain Airline Space Improvements Agreement entered into by the Authority and the Airline, dated [ ], pursuant to which the Authority agreed to undertake certain improvements at its own cost.<sup>2</sup>

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<sup>2</sup> This provision applies only to the Airlines that in fact have such agreements.



“**Airport**” has the meaning ascribed thereto in the Recitals.

“**Airport Operating Certificate**” means an Airport Operating Certificate issued by the FAA pursuant to 14 C.F.R. pt. 139, authorizing the Lessee to operate the Airport.

“**Airport Security Program**” means the Airport Security Plan approved by the TSA for the Airport.

“**Airport Use Agreement**” means this Agreement and any other agreement among the Authority, the Lessee and a Signatory Airline that is substantially similar to this Agreement.

“**Alliance Partner**,” when used to indicate a relationship with a specified Signatory Airline (including [AIRLINE]), means another Airline that has entered into a contract with that specified Signatory Airline with respect to creating or joining a business alliance (including interline, codeshare and marketing relationships, permitted use of a similar name or derivation of the name of a Signatory Airline, and shared reservation systems) among one or more Airlines.

“**Annual Contribution**” means the amount of fees and charges owed by an Airline in any particular Term Year which is computed in accordance with Section 4.2.

“**Annual Payment**” has the meaning ascribed thereto in Section 4.9.

“**Authority**” has the meaning ascribed thereto in the Preamble.

“**Bid Date**” has the meaning ascribed thereto in the Lease Agreement.

“**Capital Project**” means the purchase, capital lease, creation, improvement, or renovation of a Fixed Asset.

“**Cargo Carrier**” means an Airline engaged in the carriage, distribution and delivery of property and/or mail, but not passengers.

“**Change in Control**” has the meaning ascribed thereto in the Lease Agreement.

“**Closing**” has the meaning ascribed thereto in the Lease Agreement.

“**Common Space**” means space at the Airport available for use by the Airlines that is not Exclusive Use Space, Common Use Assigned Gates or leased space or space reserved for future commercial leasing, as depicted on Schedule M.

“**Common Use Assigned Gates**” means those gates and related areas assigned by the Lessee as such in accordance with Schedule F.

“**Common Use Regulations**” means the common use regulations set forth in Schedule O currently in effect at the Airport and as may be modified by the Lessee upon approval by an Airline MII.

**“Commonwealth”** means the Commonwealth of Puerto Rico.

**“Comparable Public Airport”** means an airport in the United States (whether publicly or privately owned) open to the general public that is reasonably comparable in size, enplanements and operations to the Airport with respect to the matter to be determined.

**“Concourse B Jet Bridge Replacement Project”** means the replacement of Concourse B jet bridges in accordance with the Concourse B Jet Bridge Replacement Study as approved by a Terminal MII.

**“Concourse B Jet Bridge Replacement Study”** means a study by a third-party consultant (or with approval of a Pre-Closing MII, by the Lessee or its affiliate or designee) of the physical and operating condition of the Concourse B jet bridges (other than jet bridges that have been replaced in the six months preceding the commencement of the study or that are scheduled and funded to be replaced within six months following the commencement of the study) to determine which jet bridges should be replaced or upgraded so as to include functionality such as PC air, ground power and potable water in accordance with best practices at Comparable Public Airports, including cost estimates to undertake such replacements or upgrades.

**“CPI Factor”** means the amount computed in accordance with Section 4.7(c).

**“CPI Value”** has the meaning ascribed thereto in Section 4.7(a).

**“Delegate”** means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is responsible at law or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Delegate.” Any Affiliate of an Airline and any Airline Provider is a Delegate of the relevant Airline.

**“Deplaned and Enplaned Domestic Passengers”** means all Deplaned Passengers and Enplaned Passengers, excluding (a) Deplaned International Passengers and (b) Deplaned and Enplaned Local Passengers.

**“Deplaned and Enplaned Local Passengers”** means Deplaned Passengers arriving at the Airport on a Local Flight and Enplaned Passengers departing from the Airport on a Local Flight.

**“Deplaned International Passengers”** means Deplaned Passengers arriving from points outside of the United States that are required to use the Federal Inspection Services facility at the Airport.

**“Deplaned Passengers”** means all terminating and all incoming on-line transfer and off-line transfer revenue passengers arriving at the Airport. The term “Deplaned Passengers” does not include through passengers.

**“Designated Person”** means such individual who is designated by notice as such from time to time by each party for the purposes of Article 11.

**“Domestic Terminal Contribution”** means the portion of an Airline’s Annual Contribution determined in accordance with Section 4.6(b).

**“Domestic Terminal Rate”** means the rate computed in accordance with Section 4.6(b)(v).

**“Eligible Security, Safety or Environmental Requirement”** has the meaning ascribed thereto in the definition of Government-Mandated Operating Expenses.

**“Eligible Security, Safety or Environmental Requirement Contract”** has the meaning ascribed thereto in Section 6.3(h).

**“Effective Date”** means (a) with respect to those Signatory Airlines that have executed and delivered the Implementation Agreement prior to the Bid Date, the date of the Closing and (b) with respect to an Airline that executes an Airport Use Agreement after the Closing, the date on which such Airport Use Agreement is executed by that Airline and the Lessee.

**“Eligible Airlines”** has the meaning ascribed thereto in Section 4.9.

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

**“Environmental Laws”** means all applicable Laws relating to environmental matters, including those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery, compensation, liability, losses or injuries resulting from the Release or threatened Release of Hazardous Materials and to the generation, use, storage, transportation, or disposal of Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. § 6901 et seq.), the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), the Clean Air Act (CAA) (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f-§ 300j-11 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.) and the Environmental Policy Act of Puerto Rico, Act No. 16 of September 22, 2004, each as heretofore and hereafter amended or supplemented during the Term.

**“Exclusive Use Rent”** means the portion of an Airline’s Annual Contribution determined in accordance with Section 4.5.

**“Exclusive Use Space”** has the meaning ascribed thereto in Section 3.3(b)(i). For the avoidance of doubt, “Exclusive Use Space” includes both Non-Seasonal Exclusive Space and Seasonal Exclusive Use Space.

“**Executive Committee**” has the meaning ascribed thereto in Section 3.12(b).

“**Federal Aviation Administration**” (sometimes abbreviated as “**FAA**”) means the Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

“**Federal Bankruptcy Code**” means 11 U.S.C. § 101 et seq., or any successor statute thereto.

“**First Partial Term Year**” means, if the Closing occurs on a date other than January 1st, the period commencing on the Closing and ending on December 31st of that year. For the avoidance of doubt, if the Closing occurs on January 1st, then there is no First Partial Term Year.

“**Fixed Asset**” means tangible property used in the operation of the Airport but not expected to be converted into cash in the ordinary course of events, such as plant, machinery and equipment, furniture and fixtures, buildings, land and improvements.

“**Flowage Fee**” means the system rents and/or per gallon fees charged as of the Closing by the Lessee to the fuel farm operator(s) per gallon of gasoline or jet fuel sold, in consideration of allowing the fuel farm operator(s) to deliver fuel to the Airport.

“**Force Majeure Event**” has the meaning ascribed thereto in Section 10.9.

“**Full Term Year**” means any Term Year other than the First Partial Term Year or the Last Partial Term Year.

“**Fund**” has the meaning ascribed thereto in Section 4.9.

“**General Accelerated Upgrades**” has the meaning ascribed thereto in the Lease Agreement.

“**Government-Mandated Capital Project**” means a Capital Project that is required in order to comply with any applicable Law or airport certification requirement; *provided* that the following Capital Projects shall not constitute Government-Mandated Capital Projects to the extent not otherwise required by applicable Law or airport certification requirement: (a) a Capital Project required to comply with the obligations, if any, set forth in the “Competition Plan for Luis Muñoz Marín International Airport” (submitted by the Authority to the FAA in 2004) or in a future competition plan, (b) a Restoration and (c) capital expenditures, if any, related to environmental remediation; and *provided further* that the Initial Capital Projects and the General Accelerated Upgrades shall not constitute Government-Mandated Capital Projects.

“**Government-Mandated Operating Expenses**” means a material increase (after the Closing) in the expense of operating the Airport which is (a) actually and directly related to the Air Transportation Business; (b) incurred as the direct result of compliance with (i) any new federal applicable law of general application that imposes as a new mandatory duty any TSA security requirements, FAA safety requirements or environmental requirements or (ii) any other

federal applicable law of general application that imposes TSA security requirements, FAA safety requirements, or environmental requirements, the incremental costs of which are in excess of a material increase (as defined below), but only if and to the extent such increase is due to a change in the required manner of implementation; and (c) actually incurred and paid by the Lessee (an “**Eligible Security, Safety or Environmental Requirement**”) and only for the duration of such legally mandated requirements; *provided* that Government-Mandated Operating Expenses shall not include (A) except as described in clause (b)(ii) above, incremental increases associated with current security, safety or environmental requirements; (B) incremental expenses that are incidental to discretionary projects or initiatives by the Lessee; (C) overhead, supervisory, management, administrative or equivalent costs, except to the extent that such costs are directly and demonstrably related to an Eligible Security, Safety or Environmental Requirement; or (D) additional insurance if not expressly required by the Eligible Security, Safety or Environmental Requirement. In the event that the Eligible Security, Safety or Environmental Requirement is offset by reductions in expenses relating to the elimination or modification of other security, safety or environmental requirements, Government-Mandated Operating Expenses shall mean the expenses incurred and paid by the Lessee minus such reductions in expenses, if any. For purposes of clause (b)(ii) above, the phrase “material increase” means any annual percentage cost increase in excess of the sum of (x) the Unadjusted CPI Factor for the applicable calendar year and (y) 10%.

“**Governmental Authority**” means any court, federal, state, Commonwealth or local government or other regulatory, administrative, or governmental authority.

“**Hazardous Materials**” means asbestos in any form or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, petroleum products, or crude oil or any fractions or derivatives thereof, natural gas, source material, radioactive materials or wastes, special nuclear material and byproduct materials regulated under the Atomic Energy Act (42 U.S.C. § 2011, et seq.), pesticides regulated under the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. § 136, et seq.), and any hazardous substance or waste, toxic or dangerous substance, including any material defined or treated as a “hazardous substance,” “hazardous waste,” “toxic substance” or “contaminant” (or comparable term) under any Environmental Laws.

“**Implementation Agreement**” has the meaning ascribed thereto in the Recitals.

“**Independent Engineer**” means the licensed professional consulting engineering firm appointed by the Lessee pursuant to the Operating Standards and approved by an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII).

“**Initial Capital Project**” has the meaning ascribed thereto in Section 6.1(a).

“**In-line Baggage System Project**” means the installation and construction of in-line baggage systems in Terminals B and D in accordance with the In-line Baggage System Project Study and Schedule J, as approved by a Terminal MII.

“**In-line Baggage System Project Study**” means a study by a third-party consultant (or with approval of a Pre-Closing MII, by the Lessee or its affiliate or designee) of

two or more alternatives for in-line baggage systems for Terminals B and D, in accordance with Schedule J, of functionality and quality equivalent to in-line baggage systems of similar scale installed at Comparable Public Airports during the four years prior to the Closing, including cost estimates.

**“Institutional Lender”** means (a) the United States of America, any state or commonwealth thereof, the Commonwealth or any agency or instrumentality of any of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (b) any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America, any state or commonwealth thereof or the Commonwealth, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States (if such qualification is necessary), (iii) pension fund, foundation or university or college or other endowment fund or (iv) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (c) any “qualified institutional buyer” under Rule 144(A) under the United States Securities Act of 1933, as amended, or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms, (d) a Governmental Authority acting (directly or through a trust or other single purpose vehicle controlled by it) as a conduit for the purpose of issuing private activity bonds authorized by Law for the benefit of the Lessee or (e) any other financial institution or entity designated by the Lessee and approved by the Authority in accordance with the Lease Agreement; *provided, however*, that each such entity or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$1 billion.

**“Interim Adjustment”** has the meaning ascribed thereto in Section 5.3.

**“International Terminal Contribution”** means the portion of an Airline’s Annual Contribution determined in accordance with Section 4.6(c).

**“International Terminal Rate”** means the rate computed in accordance with Section 4.6(c)(v).

**“Landing Contribution”** means the portion of an Airline’s Annual Contribution determined in accordance with Section 4.3.

**“Landing Rate”** means the rate computed in accordance with Section 4.3(e).

**“Last Partial Term Year”** means, if this Agreement expires or terminates on a date other than December 31st, the period commencing on January 1st of the year in which this Agreement expires or terminates and ending on the date on which this Agreement expires or terminates. For the avoidance of doubt, if this Agreement expires or terminates on December 31st, then there is no Last Partial Term Year.

**“Late Payment Interest Rate”** means a rate equal to 300 basis points higher than either (a) the rate of interest announced by the *Wall Street Journal* or its successors as the so-

called “Prime Rate,” or (b) if at any time a “Prime Rate” is not announced, the rate of interest charged by banks to their most credit-worthy customers.

“**Law**” means any order, writ, injunction, decree, judgment, law, ordinance, decision, ruling, statute, code, rule or regulation of any Governmental Authority.

“**Lease Agreement**” has the meaning ascribed thereto in the Recitals.

“**Leasehold Mortgage**” means any lease, indenture, pledge, mortgage, deed of trust or other security agreement or arrangement, including a securitization transaction with respect to revenues of the Lessee generated at the Airport, encumbering (a) any or all of the Lessee’s interest in the Airport created by the Lease Agreement or (b) the rights, benefits and obligations of the Lessee under the Lease Agreement.

“**Leasehold Mortgagee**” means the holder or beneficiary of a Leasehold Mortgage, including an agent, trustee or other representative or designee of such holder or beneficiary.

“**Lessee**” means the Person other than the Authority or the FAA that is party to the Lease Agreement or a New Agreement in accordance with the provisions of this Agreement, except that “Lessee” shall mean the Authority if the Reversion Date occurs during the Term or with respect to Section 12.14 at any time after the Reversion Date.

“**Lessee Affiliate**” means an “Affiliate,” as such term is defined in the Lease Agreement, of the Lessee.

“**Lessee Default**” has the meaning ascribed thereto in Section 10.3.

“**Local Flight**” means any flight by a Passenger Carrier that (a) involves the carriage of Deplaned Passengers arriving from and Enplaned Passengers departing to points within the Commonwealth and the United States Virgin Islands and (b) utilizes an aircraft with a passenger capacity not in excess of 12 persons.

“**Local Terminal Contribution**” means the portion of an Airline’s Annual Contribution determined in accordance with Section 4.6(d).

“**Local Terminal Rate**” means the rate computed in accordance with Section 4.6(d)(v).

“**Loss**” means, with respect to any Person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual.

“**MAGTOW**” means, with respect to an aircraft type, the maximum allowable gross take off weight, in 1,000-pound units (rounded to the near 1,000-pound unit), at which that aircraft type may take off from an airport, as certificated by the FAA and recited in flight manuals governing that aircraft type.

“**Major Capital Project Contract**” has the meaning ascribed thereto in Section 6.3(h).

“**Maximum Annual Lessee Compensation**” means, for any Term Year, the sum of the following fees and charges that may be charged to the Airlines: (a) the Total Annual Contribution for that Term Year (which, for the avoidance of doubt, takes into account adjustments for inflation and any adjustments for capital costs in accordance with Section 6.3), *plus* (b) fees payable under Section 5.10, if any, *plus* (c) payments required under Section 7.1 or Section 10.2, if any, *plus* (d) any concession fees allowed to be charged to the Airlines in accordance with Section 3.1(m) and Section 3.7.

“**Modification**” has the meaning ascribed thereto in the Lease Agreement.

“**Monthly Payment**” has the meaning ascribed thereto in Section 5.4.

“**Monthly Report**” has the meaning ascribed thereto in Section 5.1(b).

“**Named Windstorm**” is a storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or similar body until sustained wind speeds drop below the parameter for naming storms.

“**New Agreement**” means a Lease Agreement for the Airport entered into between the Authority and the Leasehold Mortgagee (or the designee or nominee of the Leasehold Mortgagee) in the event of certain terminations of the Lease Agreement pursuant to the rights afforded to the Leasehold Mortgagee under the Lease Agreement.

“**Non-Seasonal Exclusive Use Rate**” means the rate computed in accordance with Section 4.5(c).

“**Non-Seasonal Exclusive Use Rent**” means the portion of an Airline’s Exclusive Use Rent determined in accordance with Section 4.5(b).

“**Non-Seasonal Exclusive Use Space**” means Exclusive Use Space that is not Seasonal Exclusive Use Space.

“**Non-Signatory Airline**” means any Airline using the Airport which is not a Signatory Airline.

“**Operating Standards**” has the meaning ascribed thereto in Section 3.4.

“**Ordinary Storm**” means a storm that is comparable to any storm in length or severity of its effect on the Airport that has occurred on or around the Airport within 10 years prior to the Bid Date; *provided* that in no event shall a Named Windstorm or tornado be deemed an Ordinary Storm.

“**Overpayment**” has the meaning ascribed thereto in Section 5.5(b).



“**Parking Fees**” means the portion of an Airline’s Annual Contribution determined in accordance with Section 4.4.

“**Parking Rates**” means the rates computed in accordance with Section 4.4(b).

“**Parties**” means any Person party to this Agreement.

“**Passenger Carrier**” means an Airline primarily engaged in the carriage of passengers.

“**Passenger Facility Charge**” (sometimes abbreviated as “**PFC**”) means the passenger facility charge as authorized under 49 U.S.C. § 40117, or any predecessor or successor Law, and as approved by the FAA from time to time with respect to the Airport.

“**Person**” means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority and their respective permitted successors and assigns.

“**PFC Regulations**” has the meaning ascribed thereto in Section 6.2(a).

“**Pre-Closing MII**” means any combination of one or more Signatory Airlines that (a) in the aggregate, paid a majority of the fees charged to all Signatory Airlines in the prior year and (b) constitutes a numerical majority of all votes cast by such Signatory Airlines within 30 days of the request by the Lessee or one or more Signatory Airlines, as the case may be, for action by the Pre-Closing MII (or such shorter period as may be specified in such request) with respect to the matter or action. For the purpose of this definition of “Pre-Closing MII” only, “Signatory Airline” means any Airline that, as of the date on which request for action by the Pre-Closing MII is made, has executed an Implementation Agreement.

“**Plan for the Reconfiguration of Terminal Space**” means a plan proposed by the Lessee for the reconfiguration of the Terminal that may include any one or more of the following: (a) reassignment of Common Use Assigned Gates among the Signatory Airlines; (b) reassignment of Exclusive Use Space for ticket counters associated with reassigned Common Use Assigned Gates; (c) the closing of one or more individual terminals that will no longer be used following such reassignment; (d) Modifications to the facility designed to accommodate such changes and improve the operations of the Airport; and (e) such other proposed changes in facilities and operations as are set forth in the plan. The proposed plan shall be set forth in a written document that includes a narrative description of the specific changes to be made, the manner in which any necessary construction activity will be carried out, a capital improvements plan, a financing plan, including funding sources, any required arrangements for interim accommodations or transition while new facilities are being completed, the time when each element of the plan will take effect, proposed changes to this Agreement, including drafts of proposed revised Schedules F and G and other Schedules, and of the Operating Standards, and such other aspects of the plan as the Signatory Airlines may reasonably request in order to consider whether to grant approval for the Plan. If a Plan for the Reconfiguration of Terminal Space is approved in accordance with Section 8.13, then (i) the Lessee may operate the Terminal

in accordance with the terms and conditions, if any, of the approval by the Signatory Airlines, (ii) the allocation of Common Use Assigned Gates and Exclusive Use Space under Section 3.3 of this Agreement, Schedule F and Schedule G shall be deemed modified in accordance with the revised versions of such schedules approved by the Airlines and (iii) any changes to this Agreement, its Schedules, or the Operating Standards, or the Modifications set forth in the plan shall be deemed to be approved without further action by the Signatory Airlines.

“**Release**” means any unlawful spilling, leaking, emitting, discharging, disposing, depositing, leaching, escaping, dumping, pumping, emptying, injecting, pouring, or migration into or through the environment.

“**Restoration**” has the meaning ascribed thereto in the Lease Agreement.

“**Restoration Funds**” has the meaning ascribed thereto in the Lease Agreement.

“**Revenue Landing**” means any landing at the Airport of an aircraft except (a) an aircraft which (without being scheduled to do so) lands at the Airport because of meteorological conditions, mechanical or operating causes, or any emergency or precautionary reason, or (b) an aircraft which is owned by and used exclusively in the service of the United States of America or the government of any state, Commonwealth, territory or possession thereof or therein.

“**Reversion Date**” has the meaning ascribed thereto in the Lease Agreement.

“**Runways**” means runways at the Airport for the landing and taking-off of aircraft.

“**Seasonal Exclusive Use Daily Rate**” means the rate computed in accordance with Section 4.5(e).

“**Seasonal Exclusive Use Rent**” means the portion of an Airline’s Exclusive Use Rent determined in accordance with Section 4.5(d).

“**Seasonal Exclusive Use Space**” has the meaning ascribed thereto in Section 3.3(b)(iv).

“**Security Deposit**” has the meaning ascribed thereto in Section 5.8(b).

“**Signatory Airline**” means, at any time, any Airline actively engaged in an Air Transportation Business at the Airport who then is a Party to an Airport Use Agreement, including [AIRLINE].

“**Small Capital Project**” means a Capital Project for which the total expected cost is reasonably estimated to be less than \$100,000 (which amount shall be adjusted in every Term Year after the first Term Year by multiplying the CPI Factor for such Term Year by such amount applicable in the prior Term Year).

“**Statement of Actual Annual Contribution**” means the statement of the same name prepared by the Lessee pursuant to Section 5.5.

“**Statement of Estimated Annual Contribution**” means the statement of the same name prepared by the Lessee pursuant to Section 5.2.

“**Taxiways**” means taxiways and taxi lanes at the Airport for the ground movement of aircraft to, from and between the Runways, Terminal Ramp Area and other portions of the Airport.

“**Term**” has the meaning ascribed thereto in Section 2.1.

“**Term Year**” means any full or partial calendar year during the Term, including the First Partial Term Year, every Full Term Year and the Last Partial Term Year.

“**Terminal**” means the airline passenger terminal and related facilities identified as the Terminal in Schedule B.

“**Terminal Area**” means the land and Terminal portion identified as the Terminal Area in Schedule B, and, except as otherwise provided in this Agreement, all facilities, equipment and improvements now or hereafter located thereon, including all passenger terminal buildings, connecting structures, passenger walkways and tunnels, concourses, hold room areas, passenger loading bridges and control towers maintained by the Lessee or an Airline.

“**Terminal MII**” means, during any Term Year, any combination of one or more Signatory Airlines that (a) in the aggregate, paid a majority of the sum of the Total Terminal Contribution and Total Exclusive Use Rent charged to all Signatory Airlines for the prior Term Year and (b) constitutes a numerical majority of all votes cast by such Signatory Airlines within 30 days of the request by the Lessee or one or more Signatory Airlines, as the case may be, for action by the Terminal MII (or such shorter period as may be specified in such request) with respect to the matter or action. Solely for the purpose of determining a Terminal MII, no Airline shall be deemed to be a Signatory Airline (i) so long as an Airline Default with respect to such Airline has occurred and is continuing and the Lessee has provided notice to all the Signatory Airlines or (ii) if a Signatory Airline is no longer operating at the Airport (except if such Signatory Airline’s cessation of operations results from a temporary suspension by the FAA).

“**Total Airfield Contribution**” means, for any Term Year, the sum of the Total Landing Contribution for that year plus the Total Parking Fees for that year.

“**Total Annual Contribution**” means, for any Term Year, the amount computed in accordance with Section 4.1, which is the sum of all Airlines’ Annual Contributions for that year.

“**Total Domestic Terminal Contribution**” means, for any Term Year, the amount computed in accordance with Section 4.6(b), which is the sum of all Airlines’ Domestic Terminal Contributions for that year.

“**Total Exclusive Use Rent**” means, for any Term Year, the amount computed in accordance with Section 4.5, which is the sum of all Airlines’ Exclusive Use Rents for that year.

**“Total International Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(c), which is the sum of all Airlines’ International Terminal Contributions for that year.

**“Total Landing Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.3, which is the sum of all Airlines’ Landing Contributions for that year.

**“Total Local Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(d), which is the sum of all Airlines’ Local Terminal Contributions for that year.

**“Total Non-Signatory Domestic Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(b)(ii), which is the sum of all Non-Signatory Airlines’ Domestic Terminal Contributions for that year.

**“Total Non-Signatory International Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(c)(ii), which is the sum of all Non-Signatory Airlines’ International Terminal Contributions for that year.

**“Total Non-Signatory Landing Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.3(b), which is the sum of all Non-Signatory Airlines’ Landing Contributions for that year.

**“Total Non-Signatory Local Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(d)(ii), which is the sum of all Non-Signatory Airlines’ Local Terminal Contributions for that year.

**“Total Parking Fees”** means, for any Term Year, the amount computed in accordance with Section 4.4, which is the sum of all Airlines’ Parking Fees for that year.

**“Total Signatory Domestic Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(b)(iii), which is the sum of all Signatory Airlines’ Domestic Terminal Contributions for that year.

**“Total Signatory International Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(c)(iii), which is the sum of all Signatory Airlines’ International Terminal Contributions for that year.

**“Total Signatory Landing Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.3(c), which is the sum of all Signatory Airlines’ Landing Contributions for that year.

**“Total Signatory Local Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(d)(iii), which is the sum of all Signatory Airlines’ Local Terminal Contributions for that year.

**“Total Terminal Contribution”** means, for any Term Year, the amount computed in accordance with Section 4.6(a), which is the sum of the Total Domestic Terminal Contribution, the Total International Terminal Contribution and the Total Local Terminal Contribution for that year.

**“Transfer”** means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose of.

**“Transition Plan”** has the meaning ascribed thereto in Section 2.6.

**“Transportation Security Administration”** (sometimes abbreviated as **“TSA”**) means the Transportation Security Administration created under the Aviation and Transportation Security Act, 49 U.S.C. § 40101 et seq., as amended, or any successor agency thereto.

**“Unadjusted CPI Factor”** has the meaning ascribed thereto in Section 4.7(b).

**“Underpayment”** has the meaning ascribed thereto in Section 5.5(b).

## **Section 1.2. Interpretation.**

(a) The terms “hereby,” “herein,” “hereof,” “hereunder” and any similar terms used in this Agreement refer to this Agreement.

(b) The term “including” means “including, without limitation.”

(c) The term “notice” means “written notice” unless specified otherwise.

(d) The term “discretion” means “sole and absolute discretion” unless specified otherwise.

(e) The term “incidental” or “necessary” as it relates to the Air Transportation Business shall be interpreted flexibly to include developments that have been generally accepted to have become part of the Air Transportation Business at Comparable Public Airports.

(f) All references in this Agreement to Articles, Sections, subsections or Schedules, unless otherwise expressed or indicated, are to Articles, Sections, subsections or Schedules of this Agreement.

(g) Any headings preceding the text of Articles, Sections and subsections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

(h) Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

(i) All references to a number of days shall mean calendar days, unless otherwise expressly indicated.

(j) Whenever in this Agreement the approval or consent of the Lessee, [AIRLINE] or any other Signatory Airline, as applicable, is required (including a decision to be made by [AIRLINE] or another Signatory Airline whether to participate in or as part of an Airfield MII, Airline MII, Pre-Closing MII or Terminal MII), such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless the applicable provision of this Agreement requiring such approval or consent provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or given in the discretion of the Lessee, [AIRLINE] or any other Signatory Airline, as applicable). For the avoidance of doubt, [AIRLINE] shall not be responsible or incur any liability, including joint and several liability, for any action of another Airline in connection with approvals or consents required under this Agreement. Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the Lessee, [AIRLINE] or any other Signatory Airline, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

### **Section 1.3. Incorporation of Schedules; Revisions to Schedules.**

(a) *List of Schedules.* The following Schedules attached hereto are hereby made a part of this Agreement:

- Schedule A Operating Standards
- Schedule B Plat of Airport
- Schedule C List of Existing Agreements Assumed by the Lessee
- Schedule D List of Terminated Agreements
- Schedule E Form of Statement of Estimated Annual Contribution for the First Term Year
- Schedule F Terminal Facility Utilization
- Schedule G Initial Allocation of Exclusive Use Space
- Schedule H Maintenance and Repair Responsibilities
- Schedule I Form of Letter of Credit
- Schedule J Initial Capital Projects
- Schedule K PFC Commitments
- Schedule L Form of Capital Project Proposal
- Schedule M Common Space

Schedule N	Form of Assignment and Assumption Agreement
Schedule O	Common Use Regulations
Schedule P	Airline Certification
Schedule Q	Sworn Statement
Schedule R	Non-Discrimination and Affirmative Action
Schedule S	Form of Opinion of Counsel

(b) *Revisions to Schedules.* With respect to the Exclusive Use Space or to any other Airport facilities depicted in any of the Schedules to this Agreement, any changes which occur pursuant to the terms of this Agreement from time to time shall be reflected in revised Schedules provided by the Lessee to [AIRLINE]. Such revisions shall be deemed effective without requiring a formal amendment to this Agreement; it being understood that no such revisions shall result in an alteration of the relative rights and obligations of the Lessee or the Airlines unless such Parties have provided their consent in accordance with this Agreement.

## ARTICLE 2.

### TERM; REPRESENTATIONS; TRANSITION

**Section 2.1. Term of Agreement.** The term of this Agreement (the “**Term**”) shall commence on the Effective Date and expire on the 15th anniversary of the Closing, except as the Term may be extended or earlier terminated in accordance with the terms hereof. For the avoidance of doubt, if the Closing does not occur, this Agreement shall be null and void. [AIRLINE] shall not have any obligation whatsoever under this Agreement until the Effective Date.

**Section 2.2. Representations and Warranties.**

(a) *Representations and Warranties of the Authority.* The Authority makes the following representations and warranties to the Lessee and [AIRLINE], and the Authority acknowledges that the Lessee and [AIRLINE] are relying upon such representations and warranties in entering into this Agreement:

(i) *Organization.* The Authority is an instrumentality of the Commonwealth.

(ii) *Power and Authority.* The Authority has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(iii) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with the terms hereof, subject only to (A) the effect of bankruptcy, insolvency, reorganization, moratorium or other similar requirements of

Law and judicial decisions now or hereafter in effect generally affecting the enforcement of creditors' rights and remedies; (B) the effect of requirements of Law governing equitable remedies and defenses and the discretion of any court of competent jurisdiction in awarding equitable remedies, including the doctrine of sovereign immunity (except to the extent waived by the Act No. 29 of the Legislative Assembly of Puerto Rico enacted on June 8, 2009 and other applicable Law); and (C) the effect of requirements of Law governing enforcement and collection of damages against the Authority; *provided, however*, that the enforcement of any claims presented in accordance with this Agreement shall be resolved as provided herein.

(iv) *No Conflicts.* The execution and delivery of this Agreement by the Authority, the consummation of the transactions contemplated hereby and the performance by the Authority of the terms, conditions and provisions hereof do not and/or will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Authority or give rise to a right of termination, cancellation or augmentation of any obligation or loss of a material benefit under or result in the creation of any material Encumbrance (as such term is defined in the Lease Agreement) other than an Authority Permitted Encumbrance (as such term is defined in the Lease Agreement) under (A) any applicable Law or (B) any agreement, instrument or document to which the Authority is a party or by which the Authority is bound.

(v) *Consents.* No consent is required to be obtained by the Authority from, and no notice or filing is required to be given by the Authority to or made by the Authority with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the Authority of this Agreement or the consummation of the transactions contemplated hereby.

(vi) *Lease Agreement.* The copy of the executed Lease Agreement delivered to [AIRLINE] by the Authority, whether directly or through an escrow agent, is a true, complete and correct copy of the Lease Agreement. There are no other side letters or similar agreements between the Lessee or a Lessee Affiliate and the Authority other than the Lease Agreement.

(b) *Representations and Warranties of the Lessee.* The Lessee makes the following representations and warranties to the Authority and [AIRLINE], and the Lessee acknowledges that the Authority and [AIRLINE] are relying upon such representations and warranties in entering into this Agreement:

(i) *Organization.* The Lessee is duly organized, validly existing and in good standing under the laws of the place of its organization and is duly qualified to conduct business in the Commonwealth. Except as disclosed in the written certification that the Lessee delivered to the Authority and the Signatory Airlines prior to the Bid Date (or, to the extent changes in ownership of the Lessee are made prior to Closing that would be permitted under the Lease Agreement and this Agreement, the Closing Date), no Person owns, directly or indirectly, 10% or more of the capital stock, units, partnership or membership interests and other equity interests or securities of the Lessee (including options, warrants and other rights to acquire any such equity interests).



(ii) *Power and Authority.* The Lessee has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(iii) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Lessee and constitutes a valid and legally binding obligation of the Lessee, enforceable against it in accordance with the terms hereof, subject only to (A) the effect of bankruptcy, insolvency, reorganization, moratorium or other similar requirements of Law and judicial decisions now or hereafter in effect generally affecting the enforcement of creditors' rights and remedies and (B) the effect of requirements of Law governing equitable remedies and defenses and the discretion of any court of competent jurisdiction in awarding equitable remedies.

(iv) *No Conflicts.* The execution and delivery of this Agreement by the Lessee, the consummation of the transactions contemplated hereby and the performance by the Lessee of the terms, conditions and provisions hereof do not and/or will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Lessee under (A) any applicable Law, (B) any material agreement, instrument or document to which the Lessee or any Equity Participant (as such term is defined in the Lease Agreement) is a party or by which it is bound or (C) the articles, bylaws or governing documents of the Lessee and each of such Equity Participants.

(c) *Representations and Warranties of [AIRLINE].* [AIRLINE] makes the following representations and warranties to the Authority and the Lessee, and [AIRLINE] acknowledges that the Authority and the Lessee are relying upon such representations and warranties in entering into this Agreement:

(i) *Organization.* [AIRLINE] is duly organized, validly existing and in good standing under the laws of the place of its organization and is duly qualified to conduct business in the Commonwealth.

(ii) *Power and Authority.* [AIRLINE] has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof, and this Agreement shall have been authorized to be executed and delivered by [AIRLINE] in accordance with all applicable Law, including with respect to any applicable bankruptcy, reorganization, insolvency, liquidation, or dissolution proceeding.

(iii) *Enforceability.* This Agreement has been duly authorized, executed and delivered by [AIRLINE] and constitutes a valid and legally binding obligation of [AIRLINE], enforceable against it in accordance with the terms hereof, subject only to (A) the effect of bankruptcy, insolvency, reorganization, moratorium or other similar requirements of Law and judicial decisions now or hereafter in effect generally affecting the enforcement of creditors' rights and remedies and (B) the effect of requirements of Law governing equitable remedies and defenses and the discretion of any court of competent jurisdiction in awarding equitable remedies.

(iv) *No Conflicts.* The execution and delivery of this Agreement by [AIRLINE], the consummation of the transactions contemplated hereby and the performance by [AIRLINE] of the terms, conditions and provisions hereof do not and/or will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of [AIRLINE] under (A) any applicable Law, (B) any material agreement, instrument or document to which [AIRLINE] is a party or by which it is bound or (C) the articles, bylaws or governing documents of [AIRLINE].

**Section 2.3. Closing; Conditions to the Effective Date.** The Effective Date of this Agreement and any other Airport Use Agreements with respect to those Signatory Airlines (including [AIRLINE]) that have executed and delivered the Implementation Agreement prior to the Bid Date shall be conditioned upon each of the following having been satisfied in full as of the Closing:

(a) the representations and warranties of the Authority in Section 2.2(a) shall be true and correct on and as of the date of this Agreement at and as of the date of the Closing with the same force and effect as if made at and as of such time and date except for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on the ability of the Authority to consummate the transactions contemplated hereby or perform its obligations hereunder (it being understood that, for purposes of determining whether such failures have not had and are not reasonably likely to have a material adverse effect on the ability of the Authority to consummate the transactions contemplated hereby or perform its obligations hereunder, all materiality qualifications and references to a material adverse effect contained in such representations and warranties shall be disregarded);

(b) the representations and warranties of the Lessee in Section 2.2(b) shall be true and correct on and as of the date of this Agreement at and as of the date of the Closing with the same force and effect as if made at and as of such time and date except for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on the ability of the Lessee to consummate the transactions contemplated hereby or perform its obligations hereunder (it being understood that, for purposes of determining whether such failures have not had and are not reasonably likely to have a material adverse effect on the ability of the Lessee to consummate the transactions contemplated hereby or perform its obligations hereunder, all materiality qualifications and references to a material adverse effect contained in such representations and warranties shall be disregarded);

(c) a Pre-Closing MII, acting reasonably, shall not have determined that a material adverse change to the business or financial condition of the Lessee that would adversely affect the Lessee's ability to finance, operate or manage the Airport or to comply with the Lessee's obligations under this Agreement has occurred since the Lessee was found qualified by the Authority;

(d) the Lessee shall have assumed those agreements required to be assumed in accordance with Section 2.2(a) of this Agreement;

- (e) a Pre-Closing MII shall have approved the Transition Plan;
- (f) the Authority shall have satisfied the conditions precedent in Section 2.4(a)(iii) of the Lease Agreement relating to the deposit of funds sufficient to provide for the payment, in full, of all obligations of the Authority payable from or secured in whole or in part by the Airport or operations or assets thereat or revenues generated thereat and outstanding at the date and time of Closing in such a manner that such obligations shall be legally retired as of the date of Closing and no longer treated as outstanding under the documents under which such obligations were issued and are secured; and at the Closing, the Authority shall deliver to [AIRLINE] a certificate duly executed by the Executive Director of the Authority certifying that this condition will be satisfied and the payment amount to be made;
- (g) the Signatory Airlines shall have received and be entitled to rely upon the legal opinion of counsel to the Authority issued substantially in form set forth as Schedule S;
- (h) the Lessee shall have delivered to [AIRLINE] evidence of the insurance policies required to be delivered in accordance with the last sentence of Section 2.5(e) of the Lease Agreement;
- (i) the Authority shall have received from [AIRLINE] the certifications described in Schedule P to this Agreement and a sworn statement substantially in the form attached hereto as Schedule Q;
- (j) the Authority shall not have imposed any additional fees, rates, charges or expenses since the date of execution of this Agreement;
- (k) the proposed Closing is no later than the Outside Closing Date (as such term is defined in the Lease Agreement);
- (l) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority or other legal restraint or prohibition enjoining or preventing the transactions contemplated by this Agreement and the Lease Agreement;
- (m) there shall be no action taken (including the pendency of any review or proceeding), or any Law enacted, entered, enforced or deemed applicable to the transactions contemplated by this Agreement and the Lease Agreement by any Governmental Authority that, in any case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority conditioning or restricting the consummation of the transactions contemplated by this Agreement and the Lease Agreement in a manner that would impose a material impairment on such transactions or make the consummation of such transactions illegal;
- (n) all necessary material approvals and certifications with respect to this Agreement and the Lease Agreement and the transactions contemplated by this Agreement and the Lease Agreement shall have been obtained from all relevant Governmental Authorities;

(o) the Lessee shall have delivered to [AIRLINE] a certificate duly executed by an officer of the Lessee certifying that, as of the Closing, the Lessee has a capitalization that includes equity that is equal to at least 20% of the total upfront payments by the Lessee to the Authority under the Lease Agreement;

(p) there shall have been no change to the Lease Agreement (other than insertion of the name, notice information, Leasehold Fee and similar information specific to the Lessee), as provided in unexecuted form to the Airlines and identified as the "Binding Bid, Execution Copy" prior to the execution of this Agreement, without the approval of a Pre-Closing MII;

(q) the Authority shall have remitted a copy of this Agreement to the Office of the Comptroller, pursuant to Act No. 18 of the Legislative Assembly of Puerto Rico, enacted on October 30, 1975, as amended; and

(r) evidence reasonably satisfactory to a Pre-Closing MII that the Lessee shall have deposited \$6,000,000 into a separate escrow account to be called the Puerto Rico Air Travel Promotion and Support Fund as provided for in Section 4.9.

#### **Section 2.4. Assumed and Terminated Agreements.**

(a) *Assumed Agreements.* As of the Closing, the agreements and leases listed in Schedule C shall be assumed by the Lessee and in full force and effect as to the Lessee in accordance with an Assignment and Assumption Agreement entered into pursuant to the Lease Agreement, substantially in the form of the Assignment and Assumption Agreement in Schedule N. [Specifically, with respect to [AIRLINE], the Lessee shall assume that certain \_\_\_\_\_ agreement between [AIRLINE] and the Authority, dated as of \_\_\_\_\_.]

(b) *Expiration of Assumed Agreements.* Upon the expiration of any lease or agreement under which space is leased or subleased by a Signatory Airline that is assumed by the Lessee in accordance with Section 2.4(a), the Lessee shall offer to enter into a new lease or agreement, as the case may be, with the Signatory Airline for the same or, at the Signatory Airline's discretion, a portion thereof; *provided, however*, that such Signatory Airline shall not have the right to elect to enter into a new lease for a portion of the space such Signatory Airline formerly leased if the proposed new lease renders the remaining portion of such space less marketable or less suitable for its intended purpose. The rental rate for such space in a new lease or agreement shall not exceed the product of (i) the rental rate in effect as of the Closing (prorated in the case of only a portion of space) *multiplied by* (ii) the fraction equal to (A) the CPI Value for the calendar year prior to the effectiveness of such new agreement *divided by* (B) the CPI Value for the calendar year prior to the calendar year in which the Closing occurs. The new lease or agreement shall not contain terms and conditions that are more onerous than the current lease or agreement, unless otherwise agreed by the parties to such agreement.

(c) *Fuel Farm.* Upon the expiration or termination of the agreement with Total Petroleum of Puerto Rico Corp. and BP Products North America, Inc. for the operation of the fuel farm at the Airport in effect as of the Closing, the Lessee shall ensure the continuity of the operation of the fuel farm by entering into a new agreement with Total Petroleum of Puerto Rico Corp. and/or BP Products North America, Inc. or another experienced fuel farm operator or

operating the fuel farm directly. In either case, the amount of a Flowage Fee charged to the fuel farm operator(s), or if operated by the Lessee, which would have been charged to a third party operator of the fuel farm, may not exceed (i) the amount charged under the agreement with Total Petroleum of Puerto Rico Corp. and BP Products North America, Inc. in effect as of the Closing *multiplied by* (ii) the fraction equal to (A) the CPI Value for the calendar year prior to the effectiveness of such new agreement *divided by* (B) the CPI Value for the calendar year prior to the calendar year in which the Closing occurs. For the avoidance of doubt, neither a third-party operator nor the Lessee (as a self-operator or otherwise) may impose charges on the Signatory Airlines related to the fuel farm other than the Flowage Fee contemplated under this Section 2.4(c); *provided, however*, that to the extent that the portion of the amount of any Flowage Fee that is imposed by the Authority pursuant to statutory authorization for the imposition of a tax or a fee in lieu of a tax is increased as a result of a change in Law, then the amount permitted to be charged hereunder shall be automatically increased by such amount. For the avoidance of doubt, the Lessee may continue to impose and receive from the fuel farm operator the concession and rental fees that are currently charged to the fuel farm operator.

(d) *Airline Space Improvements Agreement.* In the event that the Authority has not completed the improvements required under the Airline Space Improvements Agreement prior to Closing, the Lessee shall grant the Authority and its contractors rights of ingress and egress and such other rights as reasonably necessary to enable the Authority and its contractors to complete such improvements.

(e) It is understood and agreed that, except as specifically set forth in Section 2.4(b) and Section 2.4(c) above, this Section 2.4 shall not affect any agreement assigned to and assumed by the Lessee under the Lease Agreement.

**Section 2.5. New Use Agreement; Extension.** Subject to Section 12.14, if, at the end of the Term, a new airport use agreement has not been approved by the Lessee and by an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII), this Agreement shall continue in effect until such time as a new airport use agreement has been approved by the Lessee and by an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII). The Parties shall use their best efforts to reach such an agreement. Any new use agreement shall contain, unless Airlines constituting an Airline MII shall consent otherwise, the same rights afforded to the Airlines with respect to the Lease Agreement as are afforded to the Airlines under this Agreement, including those set forth in Article 8.

**Section 2.6. Transition.** The Lessee, the Authority and the Airlines acting by determination of a Pre-Closing MII shall have agreed in writing 30 days prior to the Effective Date (or such other time as agreed to by the Parties) to a transition plan to ensure the orderly transition of control, custody, operation, management, maintenance and rehabilitation of the Airport (the “**Transition Plan**”).

**Section 2.7. Changes in Fees.** The Parties acknowledge that upon the Closing, the fees and charges then in effect for the Airlines’ use of the Airport will be reset and adjusted, so that such fees and charges are exclusively calculated in accordance with the provisions of this Agreement from the Closing forward. No retroactive adjustment will be made under this Agreement with

respect to amounts, if any, that may be due to or from [AIRLINE] pursuant to an agreement between the Authority and [AIRLINE] for use of the Airport in effect prior to the effectiveness of this Agreement. The Statement of Estimated Annual Contribution for [AIRLINE] for the first Term Year (which, for the avoidance of doubt, is the First Partial Term Year if the Closing occurs on a date other than January 1st) in the form of Schedule E shall be provided by the Lessee to [AIRLINE] not later than 30 days before the Effective Date, which shall be used for purposes of determining payments due to the Lessee by each Airline during the first Term Year, all subject to adjustments that may be made by the Lessee pursuant to Section 5.3 and to the reconciling adjustments required by Section 5.5.

### **ARTICLE 3.**

#### **USES, RIGHTS AND PRIVILEGES**

**Section 3.1. Use of Facilities.** Except as otherwise provided in this Agreement with respect to Exclusive Use Space and Common Use Assigned Gates and subject to the terms of this Agreement, the Airport Operating Certificate, the Airport Security Program, all applicable Laws, and the rights of the Lessee under this Agreement to monitor the Airlines' compliance with this Agreement, [AIRLINE] shall have the right, in common with other Airlines, to conduct an Air Transportation Business at the Airport and to perform those operations and functions as are incidental or reasonably necessary to the conduct of [AIRLINE]'s Air Transportation Business, including the use of all facilities, improvements, equipment and services that have been or may hereafter be designated for common use at or in connection with the Airport. Without limiting the generality of the foregoing, [AIRLINE] shall have the right:

(a) to land, take off, fly, taxi, tow, park, load and unload the aircraft and other equipment used by [AIRLINE] in the operation of scheduled, non-scheduled, shuttle, courtesy, test, training, inspection, emergency, special, charter, sightseeing and other flights;

(b) to transport, load and unload Airline crews and other personnel, passengers, cargo, baggage, property and mail to, from and at the Airport by such loading and unloading devices, automobiles, buses, trucks and such other means of conveyance as [AIRLINE] may choose or require in connection with its Air Transportation Business at the Airport and at such locations as the Lessee may designate;

(c) to the extent necessary, to repair, maintain, condition, service, tow, test, park and store aircraft and other equipment of [AIRLINE] in areas designated for such purposes by the Lessee and on reasonable non-monetary conditions and terms designated by the Lessee and developed in consultation with the Signatory Airlines, consistent with any directives issued by the FAA, the National Transportation Safety Board, the TSA or any other Governmental Authority with jurisdiction;

(d) to maintain and operate within its Exclusive Use Space office facilities for general, administrative, operations and other functions associated with [AIRLINE]'s Air Transportation Business;

(e) to enplane and deplane passengers, handle reservations, ticketing, billing and manifesting of passengers, and, subject to Section 3.7, handle baggage, express mail and shipments, cargo, property and mail;

(f) of ingress to and egress from the Airport for [AIRLINE]'s Delegates, passengers, guests, patrons, invitees and Airline Providers and their equipment, vehicles, machinery and other property; *provided* that the foregoing does not preclude the Lessee from (i) subjecting such Persons to any rules and regulations generally applicable to the Airport, including those pertaining to airport security, (ii) requiring such Persons to enter into an agreement with the Lessee on customary and reasonable terms prevalent in the United States airport industry (*provided* that, with respect to Airline Providers, no fees shall be imposed upon the Airline Providers other than in accordance with Section 5.10), or (iii) subject to Section 5.10, imposing any tax, charge, or permit or license fee with respect to such Persons, other than Airline Providers;

(g) to install, subject to the prior approval of the Lessee (for which the Lessee may require that the proposed work be performed in conformity with industry standards in effect at Comparable Public Airports) and to maintain and operate, alone or in conjunction with any other air transportation company or companies, or through a nominee, such radio, communications, flight information display systems, meteorological and aerial navigation equipment, facilities and associated wiring, as may be necessary or convenient for [AIRLINE]'s Air Transportation Business at the Airport,

(h) to use, in common with others so authorized, the public address system serving the Terminal Area and the aircraft parking positions;

(i) to use water and electric power, telephone and preconditioned air systems supplied by the Lessee in Common Space, [AIRLINE]'s Common Use Assigned Gates and [AIRLINE]'s Exclusive Use Space, and to use, at [AIRLINE]'s aircraft parking positions, loading bridges and mobile stair devices for the loading, unloading and general servicing of [AIRLINE]'s aircraft, 400 Hertz auxiliary power systems, air start systems and other miscellaneous aircraft and aircraft-related support equipment and facilities;

(j) to purchase or otherwise obtain services and personal property of any nature (other than food and beverage), including aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, propellants, passenger supplies and other materials, equipment, supplies, articles and goods, used or acquired by [AIRLINE] in connection with or incidental to [AIRLINE]'s Air Transportation Business at the Airport;

(k) to station its Delegates in areas of the Airport approved by the Lessee to provide baggage check-in or skycap services, subject to any rules and regulations generally applicable to the Airport, including those pertaining to airport security;

(l) to install, maintain and use flight information display screens, identifying signs and [AIRLINE]'s logo in [AIRLINE]'s Exclusive Use Space; *provided* that posters, displays and other materials that advertise the services offered by [AIRLINE] to the traveling public are allowed in [AIRLINE]'s Exclusive Use Space so long as [AIRLINE] has given the Lessee five

days' prior notice of its intent to place such materials together with a copy of the materials proposed to be used. The Lessee reserves the right to place advertising displays or media in all areas of the Airport that are visible to or accessible by the public, excluding [AIRLINE]'s Exclusive Use Space. For the avoidance of doubt, no advertisement of one Airline shall be placed in a jet bridge primarily used by another Airline, and no advertisement that is considered offensive in the reasonable judgment of the primary user of the jet bridge shall be placed in such jet bridge by the Lessee or any advertising vendor of the Lessee.

(m) to operate and maintain in [AIRLINE]'s Exclusive Use Space, passenger clubs sponsored by [AIRLINE] where [AIRLINE] may serve alcoholic or other beverages and food to members of such clubs and the immediate families members and eligible guests of such members that are passengers of [AIRLINE], an Affiliate of [AIRLINE] or an Alliance Partner of [AIRLINE]; *provided* that, for providing food, the Lessee may require [AIRLINE] (i) to compensate or acquire food from a third party food service provider consistent with a food service concession agreement at the Airport, (ii) to enter into a food service concession agreement with the Lessee pursuant to which [AIRLINE], for providing food service, is required to pay a concession fee of an amount mutually agreed upon by the Lessee and [AIRLINE] (but not to exceed 5% of the food service revenue (or if provided without charge, food service cost) to [AIRLINE]) or (iii) to enter into a food service arrangement with an Airline Provider of its choosing, so long as such Airline Provider enters into a food service agreement with the Lessee pursuant to which such Airline Provider, for providing food service, is required to pay a concession fee of an amount mutually agreed upon by the Lessee and [AIRLINE] (but not to exceed 5% of the amount paid to such Airline Provider);

(n) to serve in [AIRLINE]'s holdroom areas non-alcoholic beverages and, with the consent of the Lessee (which shall not be required when the Airline is experiencing significant schedule delays), food to its passengers without charge;

(o) to install, maintain and operate, in [AIRLINE]'s Exclusive Use Space, customer relations, security and waiting room facilities and equipment; reservations offices; administrative offices; crew base facilities; operations offices; lockers, restrooms and related facilities for its employees; baggage, cargo and mail handling and storage facilities and equipment;

(p) to train personnel in the employ of [AIRLINE] at the Airport;

(q) to assess fees on [AIRLINE]'s ticketed passengers for services provided by [AIRLINE] that are necessary, incidental or convenient to [AIRLINE]'s Air Transportation Business, including baggage fees, fees for unaccompanied minors or other fees related to the actual carriage of passengers by [AIRLINE], and the Lessee is prohibited from seeking or collecting any portion of such fees; and

(r) to have access by its employees to sufficient parking at reasonable distances from the Airport and, as may be reasonably necessary considering the distance of such parking from the Airport, reasonable shuttle or similar transportation service between such parking and the Airport. Without limiting the foregoing, the Lessee shall consult with the affected Airlines prior to making any changes in the Airlines' employee parking arrangements and before attempting to impose any such fee pursuant to Section 5.10(b); *provided* that the Lessee shall not be permitted



to make any changes regarding the current parking arrangements relating to the Cargo Carriers, including parking arrangements for employees, customers or suppliers, without the consent of the affected Cargo Carriers.

For the avoidance of doubt, with respect to Cargo Carriers the foregoing is intended and shall be interpreted as including the right to conduct ground transportation of cargo, both directly and through contracted ground transportation carriers, from off-Airport locations to on-Airport facilities and aircraft and from off on-Airport facilities and aircraft to off-Airport locations and to provide on-site customer service.

All cabling installed directly or indirectly by [AIRLINE] shall become the property of the Lessee (subject to the Lease Agreement) should [AIRLINE] vacate the Airport or any relevant portion thereof.

Nothing herein shall be construed to preclude the Lessee and [AIRLINE] from contracting for the provision of additional goods, space or services to [AIRLINE], separate and apart from the goods, space and services to be provided to [AIRLINE] under this Agreement.

**Section 3.2. Restrictions.** All rights of [AIRLINE] hereunder are subject to the following specific restrictions:

(a) The grant of such rights does not authorize [AIRLINE] to conduct a separate business at the Airport, but permits [AIRLINE] to conduct such activities only insofar as they are necessary or incidental to the conduct of [AIRLINE]'s Air Transportation Business at the Airport and to the conduct of handling arrangements approved pursuant to Section 3.7. It is understood that the loading, unloading, distribution and delivery of cargo, mail or other property to, from and at the Airport is incidental to the Air Transportation Business of an Airline.

(b) Other than for the provision of air transportation services and except as specifically authorized in other sections of this Agreement, (i) [AIRLINE] shall not use or permit the use of any portion of any Exclusive Use Space or other Airport facility space for the purpose of selling, offering for sale, dispensing or providing any merchandise, products or services except to their ticketed passengers and the ticketed passengers of the Affiliates and Alliance Partners of [AIRLINE] as a service incidental to their respective Air Transportation Businesses or to their respective employees, and any other additional activities as may be approved by the Lessee as provided below (it being understood that this Section 3.2(b)(i) does not prohibit [AIRLINE] from loading, unloading, distributing or delivering cargo, mail or other property to, from and at the Airport in the course of its cargo carriage business), and (ii) nothing contained herein is intended to or shall be construed to authorize or permit [AIRLINE] to conduct any activity or to operate any direct or indirect business operation which competes with any revenue generating activity of the Lessee without the approval of the Lessee. The approval of the Lessee will not be withheld unless the proposed additional activities of [AIRLINE] are unlawful, would give rise to a breach by the Lessee of the Lease Agreement, the Airport Operating Certificate, the Airport Security Program, or any assurance to a Governmental Authority or a condition of a Governmental Authority for the operation of the Airport by which the Lessee is governed, or would reasonably be expected to have a measurable adverse effect on the concession revenues of the Lessee. Lessee approval is not required with respect to those activities of [AIRLINE]

conducted as of the Effective Date that would fall within the purview of this Section 3.2(b). For the avoidance of doubt, nothing in this Section 3.2(b) shall be construed to authorize [AIRLINE] to sell food or beverages to any person other than as set forth in Section 3.1(m).

(c) Subject to Section 10.7, the Lessee may, from time to time, and in accordance with the Operating Standards, temporarily or permanently close roadways, doorways and, subject to the following sentence, any other area at the Airport; *provided* that (i) except as set forth in Section 3.3(a) or Schedule F, such closings shall not be permanent with respect to Exclusive Use Space, Common Use Assigned Gates or any other gates or associated ramp areas, and temporary closings of such space shall be preceded by as much prior notice as practicable and in no case with less than 60 days' prior notice to the Signatory Airlines and (ii) if time permits with respect to other closings, the Signatory Airlines shall be consulted with regard to such closings in order to minimize the disruption of services being provided. In addition, upon not less than 90 days' prior notice to the Signatory Airlines, the Lessee may, from time to time, temporarily close Taxiways and Runways at the Airport; *provided* that in an emergency situation, no such prior notice of closure shall be required. Except in an emergency situation, not less than 14 days prior to the closure of any Taxiway, Runway or ramp area at the Airport, the Lessee shall confirm to the Signatory Airlines in writing the dates of such closure.

(d) The Lessee may prohibit the use of any portion of the Airfield Area by any aircraft operated or controlled by [AIRLINE] that exceeds the design strength of the paving of the runways and taxiways at the Airport, or any other standard design criteria.

(e) [AIRLINE] shall not do or authorize to be done anything that may interfere with the effectiveness of the drainage and sewage system, water system or any other part of the utility, electrical or other systems installed or located from time to time at the Airport. In addition, [AIRLINE] shall not allow any Hazardous Materials to enter the drainage or sewage system, water system, or any other part of the utility systems, other than in accordance with the terms and limits of all applicable Laws, including Environmental Laws.

(f) [AIRLINE] shall not do or authorize to be done anything at the Airport (i) which may knowingly constitute a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement or (ii) which will invalidate or conflict with any insurance policies covering the Airport; *provided* that (A) the restrictions contained in such insurance policies are of a type customarily found in insurance policies for Comparable Public Airports or (B) the Lessee has provided notice of such restrictions to [AIRLINE]. If, by reason of any failure on the part of [AIRLINE] to comply with the provisions of this Agreement, the cost of any such insurance or extended coverage is at any time higher than it otherwise would be, then [AIRLINE] shall pay the Lessee that part of all premiums paid by the Lessee which are charged because of such violation or failure by [AIRLINE]. Hazardous conditions include any threat of danger or damage to human health or the environment.

(g) [AIRLINE] shall limit its training flights into and out of the Airport to necessary FAA-qualification flights, and shall coordinate such training and other nonscheduled flight activities with representatives of the Lessee. If requested by the Lessee, [AIRLINE] shall restrict all such activities to certain hours so as not to interfere with scheduled flight activities of other aircraft operators using the Airport or noise-sensitive times.

(h) As soon as possible, after obtaining any necessary approval from appropriate Governmental Authorities, [AIRLINE] shall remove any of its disabled aircraft from the Airfield Area upon the request of the Lessee. [AIRLINE] shall place and/or store any such disabled aircraft only in such hangar facilities that [AIRLINE] has a right to use (whether through ownership, lease or license) at the Airport and/or in such storage areas as may be designated by the Lessee, in which latter event such storage shall be only upon such terms and conditions as at that time may be established by the Lessee, consistent with any directives of the FAA and the National Transportation Safety Board. In the event [AIRLINE] fails to remove any of its disabled aircraft as expeditiously as possible, the Lessee may, but shall not be obligated to, cause the removal of such disabled aircraft by any reasonable means without any liability of the Lessee for any injury or damage to such disabled aircraft (except to the extent such injury or damage is determined in a non-appealable decision to be due to or caused by the negligence or willful misconduct of the Lessee); *provided* that the Lessee shall, to the extent practicable, give [AIRLINE] reasonable prior notice of its intent to do so. If the Lessee removes, or causes another to remove [AIRLINE]'s disabled aircraft, [AIRLINE] shall pay to the Lessee, upon receipt of an invoice, the actual costs incurred for such removal, including the cost of labor.

(i) [AIRLINE] may not load or unload an all-cargo aircraft on the terminal ramp area.

(j) [AIRLINE] shall not use, store, transport, or dispose of any fuels, oil, grease, lubricants, or other Hazardous Materials to, from, within, or upon the Airport in a manner that violates any applicable Law, including applicable Environmental Laws.

### **Section 3.3. Allocation and Use of Space.**

(a) *Common Space.* The Lessee shall maintain a policy of providing open access to the Airport and achieving a balanced utilization of Airport facilities. To achieve that goal, the Lessee shall retain under its exclusive possession and control all Airport facilities, except space under lease or included as Exclusive Use Space under this Agreement, for common use by the Airlines in accordance with this Agreement, including the requirements set forth in Schedule F. The Lessee agrees not to materially decrease the amount of Common Space or the proportion of Common Space to Exclusive Use Space and Common Use Assigned Gates, in each case as of the date of this Agreement, without approval by a Terminal MII, except (i) as contemplated by and in accordance with the procedures set forth in Schedule F, (ii) to the extent that additional Exclusive Use Space is allocated to an Airline that was not a Signatory Airline as of the date of this Agreement upon commencement of its Air Transportation Business at the Airport or is reasonably necessary to accommodate an increase in the number of passengers or amount of cargo served by the Airport, (iii) with respect to a change to such proportion due to the temporary closure of certain space for improvements or other work or (iv) as contemplated in a Plan for the Reconfiguration of Terminal Space that is approved in accordance with Section 8.13. Space at the Airport that has been temporarily or permanently closed shall not be considered "Common Space" or considered for any purpose of this Agreement, including Schedule F, until the Lessee reopens such space for use by the Airlines.

(b) *Exclusive Use Space.*

(i) *General.* The Lessee shall allocate certain terminal space at the Airport (in accordance with this Section 3.3(b) and Schedule G, and subject to modifications in accordance with Schedule F) for exclusive use by [AIRLINE] for ticket counters, offices, clubs and other operations and functions as are incidental or reasonably necessary to the conduct of [AIRLINE]'s Air Transportation Business and for such other purposes as the Lessee shall approve. Such space allocated to [AIRLINE] and other Airlines or reserved by the Lessee for future allocation is "**Exclusive Use Space.**" The allocation of Exclusive Use Space is not a lease and does not convey any interest in any real or personal property whatsoever. [AIRLINE] shall not be permitted to sublease or otherwise grant any rights to any other Person to use its Exclusive Use Space other than as provided in Section 12.12 or with the Lessee's consent; *provided, however,* that [AIRLINE] shall have the right to grant any rights to use its Exclusive Use Space (which, for the avoidance of doubt, does not include gates) to its Alliance Partners and Airline Providers without the Lessee's consent. Any Exclusive Use Space may be relocated, reallocated or terminated in accordance with the terms set forth in Schedule F. [AIRLINE] shall use, keep and maintain its Exclusive Use Space in good repair. Any personal property of [AIRLINE] in its Exclusive Use Space shall remain the property of [AIRLINE], subject to and in accordance with Section 3.6(a). Upon termination or cessation of [AIRLINE]'s use of its Exclusive Use Space, [AIRLINE] is responsible, at its sole cost and expense, subject to Schedule F, for promptly vacating and returning its Exclusive Use Space to the Lessee in a condition at least as good as the condition of such space when first made available to [AIRLINE] under this Agreement, except for normal wear and tear.

(ii) *Improvements and Fixtures.* [AIRLINE] shall have the right to install equipment, systems, and fixtures; to construct additional, non-structural improvements on its Exclusive Use Space as are incidental or reasonably necessary to the conduct of [AIRLINE]'s Air Transportation Business; and to alter, change or make other improvements to its Exclusive Use Space. All such alterations, installations, or improvements shall be commenced only after plans and specifications therefor have been submitted, for informational purposes only, to the Lessee, and that any such alterations, installations or improvements shall be without cost to the Lessee; *provided* that the Lessee shall have the right to consent (which consent shall not be unreasonably withheld, conditioned or delayed) to any alterations, installations or improvements that would materially interfere with Common Space or another Airline's Exclusive Use Space; and *provided further* that the Lessee shall have no liability to any Airline in connection with any alteration, installation or improvement or its consent related thereto. [AIRLINE] shall have the right to enter into agreements with qualified independent contractors of its choosing, on terms and conditions determined solely by [AIRLINE], to perform such alteration, installation or improvement.

(iii) *Allocation of Non-Seasonal Exclusive Use Space.* The initial allocation of Non-Seasonal Exclusive Use Space for each Signatory Airline, including [AIRLINE], as of the Closing and for the first Term Year (which, for the avoidance of doubt, is the First Partial Term Year if the Closing occurs on a date other than January 1st) is shown on Schedule G. For each subsequent Term Year, not later than 90 days prior to the start of that Term Year (in accordance with Section 5.1(a)), [AIRLINE] shall advise the Lessee of any changes in its need for and use of Non-Seasonal Exclusive Use Space during that upcoming Term Year, including increases and

decreases in the amount of space or changes in the location of space. The Lessee shall reduce [AIRLINE]'s Non-Seasonal Exclusive Use Space, as requested by [AIRLINE], effective January 1st of that upcoming Term Year so long as the request is timely received in accordance with the foregoing. (For the avoidance of doubt and except in accordance with Schedule F, any reduction in space shall not be subject to reinstatement by the Lessee, and no modification of the remaining space shall be made by the Lessee without [AIRLINE]'s consent.) For all other requested changes, including increases in the amount of space or changes in the location of space, the Lessee shall use its commercially reasonable efforts to accommodate the requests and needs of all Airlines. Schedule G shall be updated for each Term Year in accordance with adjustments made by the Lessee.

(iv) *Allocation of Seasonal Exclusive Use Space.* The Lessee may allocate certain terminal space at the Airport for use by [AIRLINE] as Exclusive Use Space on a seasonal basis (“**Seasonal Exclusive Use Space**”) in accordance with Schedule F. Seasonal Exclusive Use Space may not be allocated for less than 30 consecutive days or for more than 120 consecutive days. [AIRLINE] shall advise the Lessee from time to time of any need for Seasonal Exclusive Use Space. When allocating Seasonal Exclusive Use Space, the Lessee shall determine the duration of time for which [AIRLINE] may use its Seasonal Exclusive Use Space.

(v) *Untenantable Space.* If any of [AIRLINE]'s Exclusive Use Space is damaged or destroyed and thereby rendered untenable, then, unless the Lessee provides [AIRLINE] with reasonably acceptable alternative space, (A) [AIRLINE] shall not be obligated to pay [AIRLINE]'s Exclusive Use Rent for such untenable portion during such time as it remains untenable, and (B) if such untenable portion remains untenable for more than one year, [AIRLINE] shall be entitled, upon 45 days' prior notice to the Lessee, to delete such untenable portion from its Exclusive Use Space; *provided* that there shall be no abatement or reduction where the untenable condition is caused by the willful or negligent act or omission of [AIRLINE], its Delegates, passengers, guests or invitees (in which case, [AIRLINE] is obligated to restore such space to a tenantable condition at its sole cost and expense); and *provided further* that if the Lessee provides [AIRLINE] with reasonably acceptable alternative Common Space, the abatement shall be limited to the amount by which the [AIRLINE]'s Exclusive Use Rent for such untenable portion exceeds the then-applicable Exclusive Use Rent for such alternative space. The lost revenue to the Lessee by any such abatement shall not be allocated to the other Signatory Airlines.

(c) *Gates and Other Terminal Space.* All gates and hold rooms, passenger circulation areas, baggage makeup areas and baggage claim areas at the Airport shall be operated on a common use basis; *provided, however*, that, subject to the provisions and conditions set forth in Schedule F, certain gates may be Common Use Assigned Gates. The allocation and usage of gates (including the designation of gates as Common Use Assigned Gates) shall be governed by provisions set forth in Schedule F. [AIRLINE] shall use, keep and maintain such space in accordance with this Agreement, including the requirements set forth in Schedule F.

### **Section 3.4. Operating Standards.**

(a) The Lessee shall operate the Airport in accordance with all requirements of applicable Law, including the Airport Operating Certificate, Airport Certification Manual and

Airport Security Program, and with the standards of operation set forth in Schedule A and as may be modified from time to time in accordance with Section 3.4(d) and by the Authority in accordance with the Lease Agreement and Section 8.9 (the “**Operating Standards**”); shall maintain the Airport in good operating condition and repair; and shall use commercially reasonable efforts to preserve the goodwill of the Airport and to maintain good business relationships with the Airlines and others having business dealings with the Airport. The Lessee shall develop an Operations Plan in accordance with the Operating Standards and, within 180 days after the Closing, shall submit such Operations Plan to the Authority and the Signatory Airlines for approval by the Authority and an Airline MII. The Lessee shall have a reasonable period of time (a) following the Effective Date to carry out changes to the operations of the Airport in order to cause the Airport to comply with the Operating Standards in effect as of the Effective Date, to the extent the Airport is not in compliance therewith as of the Effective Date (which period of time shall not exceed 180 days) and (b) from time to time to comply with the introduction of changes or modifications to the Operating Standards that are made in accordance with the terms of the Lease Agreement and this Agreement (which period of time shall not exceed 90 days, except as otherwise may be provided in the revised Operating Standards).

(b) The Operating Standards shall include requirements of safety, security, airfield operations, maintenance, ground access and other matters necessary and appropriate to assure that all aspects of the Airport are operated in accordance with the standards in effect at Comparable Public Airports. The Parties acknowledge and agree that the Operating Standards and the Operations Plan shall be construed flexibly in light of their objectives. The Operating Standards shall require the Lessee to exercise any rights that it has under agreements with Cargo Carriers in such manner as to protect Cargo Carriers’ interest in continued access to all facilities necessary to conduct cargo operations at the Airport. The Lessee shall have in place procedures that are reasonably designed to achieve compliance with the Operating Standards.

(c) In the event that the Lessee enters into leases, subleases, use agreements or other similar agreements regarding the Airport facilities (other than Exclusive Use Space), (i) the Lessee shall continue to be responsible for complying with the Operating Standards in respect of such Airport facilities and (ii) the Signatory Airlines shall continue to have all rights and remedies for any failure of the Lessee to comply with the Operating Standards in respect of such Airport facilities, as contemplated by and subject to the terms hereof.

(d) If the Lessee, at its cost and expense, wishes to modify the Operating Standards, the Lessee must obtain the approval of the Authority and the Signatory Airlines in accordance with the following:

(i) The Lessee shall submit the proposed modifications to the Authority for approval and to the Signatory Airlines for approval by an Airline MII, together with an explanation of the Lessee’s rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Lessee’s proposed modifications are reasonably designed to achieve the objectives of the applicable Operating Standards. The Authority or a Signatory Airline may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required to determine if the Lessee’s proposed modifications are reasonably designed to achieve the objectives of the applicable Operating Standards.

(ii) Approval of the Lessee's proposed modifications may be withheld, delayed or conditioned only if there is a reasonable basis to determine that the Lessee's proposed operating standards are not reasonably designed to achieve the objectives of the applicable Operating Standards. Until the modifications are approved by the Authority and an Airline MII, the Lessee shall not implement the proposed modifications. The Lessee's proposed modifications shall be deemed incorporated into the Operating Standards upon approval by the Authority and an Airline MII in accordance with the terms hereof. If the Authority or an Airline MII refuses to approve any proposed modifications and the Lessee disagrees with such refusal, the Lessee may submit the matter to dispute resolution under the provisions of Article 11.

(iii) Notwithstanding anything to the contrary, neither the Authority nor a Signatory Airline, including [AIRLINE], may withhold, delay or condition the approval of any proposed modification to the Operating Standards (or its participation in an Airline MII to approve the same) if the Lessee reasonably believes that such proposed modification is necessary to comply with the Part 139 Airport Operating Certificate, the TSA-approved Airport Security Program, any promulgated FAA or TSA rule, directive or requirement that is legally binding on the Lessee, or any other requirements of Law; *provided* that the Authority and [AIRLINE] each reserves the right to contest any such proposed modification, including by seeking FAA or TSA guidance, exemption or interpretation to the extent that the Authority or [AIRLINE] reasonably believes that such proposed modification is not reasonably designed to achieve the objective of compliance with either the Part 139 Airport Operating Certificate, the TSA-approved Airport Security Program, FAA or TSA rule, directive or requirements or other requirement of Law. Any such contest shall be asserted by the Authority or [AIRLINE], as appropriate, by giving the Lessee notice within three days of [AIRLINE]'s or Authority's receipt of the proposed modification or such longer period of time as reasonable under the circumstances. Following the receipt by the Lessee of such notice, the Lessee and the Authority or [AIRLINE], as appropriate, shall work together in good faith to resolve such contest, including by working with the FAA or the TSA, as appropriate. If the Lessee and the Authority or [AIRLINE], as appropriate, are unable to resolve such contest, the matter may be submitted to dispute resolution under the provisions of Article 11. The Lessee may implement (and continue to implement) any proposed modification to the Operating Standards that it reasonably believes is necessary to comply with the Part 139 Airport Operating Certificate, the TSA-approved Airport Security Program, any FAA or TSA rule, directive or requirement or any other requirement of Law while it works in good faith with the Authority or [AIRLINE], as appropriate, to resolve any contest regarding the implementation of such modification. For the avoidance of doubt, any proposed or actual modification to the Operating Standards under this Section 3.4 shall not result in an increase in the Total Annual Contribution or other charges to the Signatory Airlines, except to the extent that such modification is caused by an Eligible Security, Safety or Environmental Requirement that results in Government-Mandated Operating Expenses in accordance with Section 6.3(d)(iii).

(e) The Lessee shall deliver to the Signatory Airlines within 60 days after the end of each Term Year a copy of each report required by the Operating Standards. The information set forth in each such report will be true, complete and correct, in all material respects as of the date thereof.

### **Section 3.5. Operation, Maintenance, Replacement and Repair.**

(a) The Lessee shall operate, maintain and keep in good repair and in accordance with generally adopted best practices of Comparable Public Airports, expending such amounts as may be reasonably necessary therefor, all of the areas and facilities of the Airport as required by this Agreement (including the responsibilities set forth in Schedule H) and the Operating Standards.

(b) [AIRLINE] shall, in accordance with this Agreement (including the responsibilities set forth in Schedule H), be responsible for and shall perform or cause to be performed, maintenance and repair of its Exclusive Use Space. [AIRLINE] shall, at all times (i) keep all fixtures, equipment and personal property in a clean, safe, sanitary and orderly condition and appearance; (ii) maintain the same in good operating condition and repair (reasonable wear and tear and conditions existing prior to [AIRLINE]'s occupancy of the Exclusive Use Space excepted) and perform all ordinary repairs, replacements and inside painting, such repairs, replacements and painting by the Airline to be of a quality and class not inferior to the original material and workmanship; and (iii) either directly or through an independent contractor (which independent contractor shall obtain an operator permit), properly dispose of its garbage, debris and other waste materials. If the performance of any of the foregoing maintenance, repair, replacement or painting obligations of [AIRLINE] requires work to be performed near an active taxiway or runway or where safety of Airport operations might be involved, [AIRLINE] shall (A) obtain the Lessee's prior consent before performing such work, which work shall be performed in accordance with the industry standards in effect at Comparable Public Airports, applicable Law and applicable FAA guidelines and (B) post guards or erect barriers or other safeguards as required and approved by the Lessee and the FAA or TSA or other Governmental Authority, at such locations. Compliance with such requirements shall not relieve [AIRLINE] from its liability for the safe performance of its obligations under this Agreement. The Lessee may inspect [AIRLINE]'s Exclusive Use Space at reasonable times and upon prior notice to [AIRLINE] to ensure that such space is being maintained in a suitable condition and, if the Lessee observes unsuitable conditions, may require [AIRLINE] to promptly take necessary remedial action to bring the space into compliance with applicable standards.

(c) Notwithstanding [AIRLINE]'s responsibility and obligation to maintain and operate the Exclusive Use Space, the Lessee agrees to pay all costs related to the capital requirements of the basic systems within the Airport, including the Exclusive Use Space. Such costs shall include, by way of example only, replacements of the following systems: heating, ventilation and cooling systems; elevators, escalators and pedestrian mall moving sidewalks; mechanical systems; electrical systems; and vaults; *provided* that the Lessee may, but is not obligated to, require [AIRLINE] to (i) install such devices or make such alterations to its Exclusive Use Space, at the expense of the Lessee, as the Lessee may reasonably require to reduce the cost or burden to the Lessee of providing such basic systems and (ii) perform any work contemplated by this Section 3.5(c) in accordance with the industry standards as in effect at Comparable Public Airports. The Lessee shall also assume the responsibility and obligation for all basic roof and structural maintenance and repair. The Lessee shall not be responsible for the cost of repair, maintenance or replacement of systems installed by [AIRLINE] in its Exclusive Use Space.

### **Section 3.6. Removal of Airline Property.**



(a) The property owned and placed or installed by [AIRLINE] at the Airport shall remain the property of [AIRLINE] and must be removed on or before the expiration of the Term or the expiration of any extension or renewal of the Term at [AIRLINE]'s sole risk and expense. The cost of restoring the Airport, the structure or any fixtures located therein resulting from damage relating to such removal shall be paid for by [AIRLINE]. In the event of the termination of this Agreement, [AIRLINE] shall have 30 days after such termination during which to remove such property; *provided* that the Lessee shall have the right to assert such lien or liens against the property as the Lessee may by law be permitted, other than liens on aircraft or ground service equipment. After [AIRLINE] has removed all such property or the 30-day period described in the preceding sentence expires, the Lessee and [AIRLINE] shall conduct a walk-through inspection to evaluate the removal of property and the condition of the premises. So long as any such property remains at the Airport, [AIRLINE]'s obligation to pay its Exclusive Use Rent shall continue.

(b) If [AIRLINE]'s property is not removed as herein provided, the Lessee may, at its option, deem such property abandoned and keep such property or, after notice to [AIRLINE] and at [AIRLINE]'s sole risk and expense, remove such property to a public warehouse for deposit, or retain the same in the Lessee's possession and after the expiration of 30 days sell the same, with notice and in accordance with applicable Law, the proceeds of which shall be applied first to the expenses of such removal and sale, second to any sum owed by [AIRLINE] to the Lessee, and any balance remaining shall be paid to [AIRLINE].

### **Section 3.7. Ground-Handling Services.**

(a) To the extent permitted by applicable Law, each Passenger Carrier may use its personnel to provide ground-handling services for itself and any other Passenger Carrier that is an Affiliate or Alliance Partner of such Passenger Carrier. If a Passenger Carrier does not self-handle and does not obtain ground-handling services from an Affiliate or an Alliance Partner, then the Passenger Carrier shall obtain any necessary ground-handling services for a fee from (i) a company authorized by the Lessee to provide ground-handling services at the Airport or (ii) another Signatory Airline with the approval of the Lessee, which approval may be conditioned on, among other matters, the receipt of a concession fee (not to exceed 5% of the amount paid in consideration of such ground-handling services) by the Lessee from the Signatory Airline providing such ground-handling services.

(b) To the extent permitted by applicable Law, each Cargo Carrier may use its personnel to provide ground-handling services for itself and any other Cargo Carrier of which it is an Affiliate (which services may include marshaling, unloading, loading, towing, and weight and balance). A Cargo Carrier may use its personnel to provide ground-handling services to another Cargo Carrier so long as all of the following conditions are met at the time such ground-handling services are provided: (i) the ground-handling services are provided pursuant to a subcontract between the Cargo Carriers; (ii) the Cargo Carrier receiving the service is involved, at the time the service is provided, in the carriage of property to or from the Airport; (iii) the Cargo Carrier providing the service has uninterrupted custodial control over all of the property being delivered to or from the Airport by the Cargo Carrier receiving the service, from its entry to or arrival at the Airport until the departure of the property from the Airport or its delivery; (iv) the service is provided free of charge and no revenue is derived therefrom; (v) the Cargo Carrier

providing the service separately reports the activity resulting from service under each such subcontract to the Lessee its monthly operations reports described in Section 5.1(b); and (vi) the Cargo Carrier providing the service shall be responsible for paying all fees, rates and charges owed to the Lessee by the Cargo Carrier receiving the service for its use of the Airport in connection with its subcontract with the Cargo Carrier providing the service if the Cargo Carrier receiving the service fails to pay such fees, rates and charges when they are due. In addition, a Cargo Carrier may provide ground-handling services to another Cargo Carrier with the approval of the Lessee, which approval may be conditioned on, among other matters, the receipt of a concession fee (not to exceed 5% of the amount paid in consideration of such ground-handling services) by the Lessee from the Cargo Carrier providing such ground-handling services.

### **Section 3.8. Taxes, Licenses and Permits.**

(a) [AIRLINE] shall pay or cause to be paid any and all taxes required to be paid by [AIRLINE] and shall obtain or cause to be obtained any and all licenses, permits, certificates and other authorizations required by any Governmental Authority in connection with the operations or activities performed by [AIRLINE] hereunder, including all licenses, permits, certificates and other authorizations required under Environmental Laws.

(b) Any taxes associated with or assessed on any personal property of [AIRLINE] located on such premises shall be the obligation of [AIRLINE] and, as such, shall be paid by [AIRLINE] and not by the Lessee.

(c) Any taxes imposed on the Lessee resulting from the Lessee's interest in the Airport, this Agreement or the Lease Agreement or from revenues derived by the Lessee from the Airport shall be borne by the Lessee.

**Section 3.9. Performance by the Lessee upon Failure of the Airline.** If [AIRLINE] fails to perform, for a period of 30 days after notice from the Lessee, or fails to commence performance within 30 days after such notice if complete performance is not reasonably possible within 30 days, any obligation required by this Agreement, the Lessee may perform such obligation of [AIRLINE], and charge [AIRLINE] for the reasonable cost to the Lessee of such performance; *provided* that if [AIRLINE]'s failure to perform any such obligation endangers the health or safety of Persons or the safety of operations at the Airport and the Lessee so states in its notice to [AIRLINE], the Lessee may perform such obligation of [AIRLINE] at any time after the giving of such notice and charge [AIRLINE] for its reasonable and documented costs of such performance.

**Section 3.10. Utilities.** The Lessee shall be responsible for providing the Signatory Airlines and their respective Delegates access to all utilities at the Terminal without any cost to the Airlines; *provided*, however, that the Lessee may charge [AIRLINE] for the cost of electricity that [AIRLINE] directly uses in its Exclusive Use Space (excluding any pro rations or allocations of electricity consumed by the Lessee in providing any services to such space), at a rate equal to the actual unit cost paid by the Lessee to the utility provider for electricity, without any mark-up or administrative charge. Such a charge shall become effective only from and after such time as the Lessee has installed, at its own cost, separate meters at every Signatory Airline's Exclusive Use Space and charges every such Signatory Airline for electricity provided on the basis set forth

in this Section 3.10; *provided* that such charges shall not include any costs of utility infrastructure, administration or delivery. The Lessee shall provide [AIRLINE] copies of the monthly bills from the utility provider for its space if there is a separate meter installed by the utility provider or, if the Lessee installs a sub-meter, monthly invoices showing actual meter reading accompanied by copies of invoices from the utility provider showing the actual unit costs of electricity paid by the Lessee, in each case subject to reasonable verification by [AIRLINE].

**Section 3.11. Rights Pertaining to Cargo Carriers.** The Lessee shall apply the provisions of this Agreement, as between Cargo Carriers and Passenger Carriers, on a non-discriminatory basis and shall not favor one over the other. The Lessee shall assume all existing leases of space for cargo operations or under which space is subleased for cargo operations, including the leases identified on Schedule C. Upon termination of any such existing lease with a Cargo Carrier or any such existing lease under which space is subleased by a Cargo Carrier, the Lessee will either (a) offer to enter into a new lease of comparable space with such Cargo Carrier, or (b) offer to enter into a new lease of space under which the lessee will be obligated to offer to sublease comparable space to such Cargo Carrier; and in either case, the lease to the Cargo Carrier shall be at a rental rate that does not exceed the product of (i) the rental rate in effect as of the Closing *multiplied by* (ii) the fraction equal to (A) the CPI Value for the calendar year prior to the effectiveness of such new lease *divided by* (B) the CPI Value for the calendar year prior to the calendar year in which the Closing occurs. In the event that the Lessee does not assume the lease for the Cargo Facility (as defined in the Lease Agreement) pursuant to Section 3.20 of the Lease Agreement or any other lease with a Cargo Carrier or existing lease under which space is subleased by a Cargo Carrier, then the Authority shall be bound (i) by the obligations under the immediately preceding sentence of this Section 3.11 with respect to the Cargo Facility or other space for cargo operations, as may be the case, as if it were the Lessee, for purposes of such preceding sentence, including causing third party operators, if any, to comply with such obligations and (ii) by the Operating Standards, as if it were the Lessee, to the extent applicable, with respect to the Cargo Facility or other space for cargo operations. For the avoidance of doubt, Cargo Carriers shall not pay Terminal Contributions.

**Section 3.12. Governance.**

(a) *Airline Management Committee.* Each Signatory Airline has the right to designate one representative to an Airline Management Committee (the “**Airline Management Committee**”) consisting of representatives of each Signatory Airline. The Airline Management Committee shall meet to review such matters as the Signatory Airlines determine to be appropriate. At the request of the Airline Management Committee, the Lessee shall meet with the Airline Management Committee at least monthly to discuss matters of mutual concern. Non-Signatory Airlines shall be given notice of, and invited to attend, Airline Management Committee meetings.

(b) *Executive Committee.* Each Signatory Airline has the right to designate one representative to an Executive Committee (the “**Executive Committee**”) consisting of a representative of each Signatory Airline, a representative of the Lessee who has principal managerial responsibility for the Airport and a representative of the Authority who has the title of Deputy Director (or another representative with a comparable title and job function). As may be necessary or convenient under the circumstances, each of the Signatory Airlines, the Lessee

and the Authority may invite and include in meetings of the Executive Committee such other representatives of Signatory Airlines, the Lessee or the Authority (as applicable) who possess specialized knowledge or experience in connection with the matters to be discussed by the Executive Committee. The Executive Committee will meet at least quarterly and will review ongoing operations and policies of the Airport, including any significant planned changes in operations, policies, financing and key personnel, as well as any other matters relating to the Airport and its operations as any of its members may determine to be appropriate. A written report on each meeting of the Executive Committee, including any specific matters that are requested to be included in such report by any of its members, will be promptly presented to the governing board of the Lessee. The Lessee will also give to the Executive Committee notice in advance of each meeting of its governing board of any agenda items to be considered at such meeting that relate to the operations of the Airport. In addition, in the event any of the Airline representatives on the Executive Committee requests to discuss any matter relating to the operations of the Airport directly with the governing board of the Lessee, the governing board will invite such representatives to the next meeting of the governing board for this purpose.

## ARTICLE 4.

### FEES

**Section 4.1. Total Annual Contribution.** For any Term Year, the Total Annual Contribution shall be determined as follows:

(a) *First Partial Term Year.* The Total Annual Contribution for the First Partial Term Year, if any, shall equal the product of (i) \$62,000,000 *multiplied by* (ii) the fraction equal to (A) the number of days of the Term in that year *divided by* (B) the number of days in that year.

(b) *First Five Full Term Years.* The Total Annual Contribution for each of the first five Full Term Years shall be \$62,000,000.

(c) *Remaining Full Term Years.* The Total Annual Contribution for each of the remaining Full Term Years shall equal the product of (i) the CPI Factor for that year *multiplied by* (ii) the Total Annual Contribution for the prior Term Year.

(d) *Last Partial Term Year.* The Total Annual Contribution for the Last Partial Term Year, if any, shall equal the product of (i) the amount determined in accordance with Section 4.1(b) (if the Last Partial Term Year occurs prior at or to the completion of five Full Term Years) or Section 4.1(c) (if the Last Partial Term Year occurs after the completion of five Full Term Years), as applicable, *multiplied by* (ii) the fraction equal to (A) the number of days of the Term in that year *divided by* (B) the number of days in that year.

(e) For the avoidance of doubt, such amount shall also be increased in accordance with Section 6.3(c) and (d).

**Section 4.2. Annual Contribution.** For any Term Year, [AIRLINE] must pay the Lessee, in accordance with the provisions hereof, its Annual Contribution, which shall equal the sum of (a) [AIRLINE]'s Parking Fees for that year *plus* (b) [AIRLINE]'s Landing Contribution for that year *plus* (c) [AIRLINE]'s Exclusive Use Rent for that year *plus* (d) [AIRLINE]'s Domestic

Terminal Contribution for that year *plus* (e) [AIRLINE]’s International Terminal Contribution for that year *plus* (f) [AIRLINE]’s Local Terminal Contribution for that year.

**Section 4.3. Landing Contribution.** For any Term Year:

(a) *Total Landing Contribution.* The Total Landing Contribution shall equal the difference of (i) 42% of the Total Annual Contribution for that year *minus* (ii) the Total Parking Fees for that year. For the avoidance of doubt, such amount shall also be increased in accordance with Section 6.3(c) and (d).

(b) *Total Non-Signatory Landing Contribution.* The Total Non-Signatory Landing Contribution shall equal:

$$\frac{(1.25 \times N \times T)}{(S + (1.25 \times N))}$$

where “N” is the total MAGTOW of all aircraft of all Non-Signatory Airlines involved in Revenue Landings during that year; “S” is the total MAGTOW of all aircraft of all Signatory Airlines involved in Revenue Landings during that year; and “T” is equal to the Total Landing Contribution for that year.

(c) *Total Signatory Landing Contribution.* The Total Signatory Landing Contribution shall equal the difference of (i) the Total Landing Contribution for that year *minus* (ii) the Total Non-Signatory Landing Contribution.

(d) *Airline’s Landing Contribution.* [AIRLINE]’s Landing Contribution shall equal the product of (i) the Landing Rate for that year *multiplied by* (ii) the MAGTOW of [AIRLINE]’s aircraft involved in Revenues Landings during that year.

(e) *Landing Rate.*

(i) The Landing Rate for Signatory Airlines shall equal the quotient of (A) the Total Signatory Landing Contribution for that year *divided by* (B) the total MAGTOW of all aircraft of all Signatory Airlines involved in Revenue Landings during that year.

(ii) The Landing Rate for Non-Signatory Airlines shall equal the quotient of (A) the Total Non-Signatory Landing Contribution for that year *divided by* (B) the total MAGTOW of all aircraft of all Non-Signatory Airlines involved in Revenue Landings during that year.

**Section 4.4. Parking Fees.** For any Term Year:

(a) *Airline’s Parking Fees.* [AIRLINE] shall be charged Parking Fees for parking aircraft on Airport grounds not under lease by [AIRLINE] at the Parking Rates (which Parking Rates shall be based upon the MAGTOW of the aircraft and the duration of parking).

(b) *Parking Rates for Signatory Airlines.*

(i) *First Partial Term Year and First Five Full Term Years.* The Parking Rates for Signatory Airlines for the First Partial Term Year, if any, and each of the first five Full Term Years shall equal the aircraft parking rates in effect at the Airport as of the Closing.

(ii) *Remaining Years.* The Parking Rates for Signatory Airlines for each of the remaining Full Term Years and the Last Partial Term Year, if any, shall equal (A) the CPI Factor for that year *multiplied by* (B) the Parking Rates for the prior Term Year.

(c) *Parking Rates for Non-Signatory Airlines.* The Parking Rates for Non-Signatory Airlines in any full or partial Term Year shall equal 125% of the Parking Rates charged to Signatory Airlines for that year.

**Section 4.5. Exclusive Use Rent.** For any Term Year:

(a) *Airline's Exclusive Use Rent.* [AIRLINE]'s Exclusive Use Rent shall equal the sum of (i) [AIRLINE]'s Non-Seasonal Exclusive Use Rent *plus* (ii) [AIRLINE]'s Seasonal Exclusive Use Rent.

(b) *Non-Seasonal Exclusive Use Rent.* [AIRLINE]'s Non-Seasonal Exclusive Use Rent shall equal the product of (i) the Non-Seasonal Exclusive Use Rate for that year *multiplied by* (ii) the square feet of Non-Seasonal Exclusive Use Space allocated to [AIRLINE] for that year (it being understood that if the amount of square feet of Non-Seasonal Exclusive Use Space allocated to [AIRLINE] for that year changes during that year in accordance with Section 3.3(b), then the amount of square feet to be used for this calculation is the time-weighted average square feet of Non-Seasonal Exclusive Use Space allocated to [AIRLINE] during the course of that year).

(c) *Non-Seasonal Exclusive Use Rate.*

(i) *First Partial Term Year.* The Non-Seasonal Exclusive Use Rate for Signatory Airlines for the First Partial Term Year, if any, shall equal the product of (A) \$45 *multiplied by* (B) a fraction equal to (1) the number of days of the Term in that year *divided by* (2) the number of days in that year.

(ii) *First Five Full Term Years.* The Non-Seasonal Exclusive Use Rate for Signatory Airlines for each of the first five Full Term Years shall equal \$45.

(iii) *Remaining Full Term Years.* The Non-Seasonal Exclusive Use Rate for Signatory Airlines for each of the remaining Full Term Years shall equal the product of (A) the CPI Factor for that year *multiplied by* (B) the Exclusive Use Rate for the prior Term Year.

(iv) *Last Partial Term Year.* The Non-Seasonal Exclusive Use Rate for the Last Partial Term Year, if any, shall equal the product of (A) the amount determined in accordance with Section 4.5(c)(ii) (if the Last Partial Term Year occurs prior at or to the completion of five Full Term Years) or Section 4.5(c)(iii) (if the Last Partial Term Year occurs after the completion of five Full Term Years), as applicable, *multiplied by* (B) the fraction equal to (1) the number of days of the Term in that year *divided by* (2) the number of days in that year.

(d) *Seasonal Exclusive Use Rent.* [AIRLINE]’s Seasonal Exclusive Use Rent shall be calculated daily as follows: for each day in which [AIRLINE] has been allocated Seasonal Exclusive Use Space, [AIRLINE]’s Seasonal Exclusive Use Rent for that day shall equal the product of (i) the Seasonal Exclusive Use Daily Rate for that day (calculated in accordance with Section 4.5(e)(i) or Section 4.5(e)(ii), as applicable) *multiplied by* (ii) the square feet of Seasonal Exclusive Use Space allocated to [AIRLINE] for that day.

(e) *Seasonal Exclusive Use Rate.*

(i) The Seasonal Exclusive Use Daily Rate for Signatory Airlines in any Term Year shall equal the quotient of (A) the Non-Seasonal Exclusive Use Rate for Signatory Airlines for that Term Year (as calculated in accordance with Section 4.5(c)) *divided by* (B) the number of days of the Term in that year.

(ii) The Seasonal Exclusive Use Daily Rate for Non-Signatory Airlines in any Term Year shall equal the product of (A) the Seasonal Exclusive Use Daily Rate for Signatory Airlines for that Term Year (as calculated in accordance with Section 4.5(e)(i)) *multiplied by* (B) 1.25.

#### **Section 4.6. Terminal Contribution.**

(a) *Total Terminal Contribution.* For any Term Year, the Total Terminal Contribution shall equal the difference of (i) 58% of the Total Annual Contribution for that year *minus* (ii) the Total Exclusive Use Rent for that year. For the avoidance of doubt, such amount shall also be increased in accordance with Section 6.3(c) and (d).

(b) *Domestic Terminal Contribution.* For any Term Year:

(i) *Total Domestic Terminal Contribution.* The Total Domestic Terminal Contribution shall equal 63% of the Total Terminal Contribution. For the avoidance of doubt, such amount shall also be increased in accordance with Section 6.3(c) and (d).

(ii) *Total Non-Signatory Domestic Terminal Contribution.* The Total Non-Signatory Domestic Terminal Contribution shall equal:

$$\frac{(1.25 \times N \times T)}{(S + (1.25 \times N))}$$

where “N” is the total number of all Non-Signatory Airlines’ Deplaned Passengers and Enplaned Passengers during that year, excluding (A) Deplaned International Passengers and (B) Deplaned and Enplaned Local Passengers; “S” is the total number of all Signatory Airlines’ Deplaned Passengers and Enplaned Passengers during that year, excluding (A) Deplaned International Passengers and (B) Deplaned and Enplaned Local Passengers; and “T” is equal to the Total Domestic Terminal Contribution for that year.

(iii) *Total Signatory Domestic Terminal Contribution.* The Total Signatory Domestic Terminal Contribution shall equal the difference of (A) the Total Domestic Terminal Contribution for that year *minus* (B) the Total Non-Signatory Domestic Terminal Contribution.

(iv) *Airline's Domestic Terminal Contribution.* [AIRLINE]'s Domestic Terminal Contribution shall equal the product of (A) the Domestic Terminal Rate for that year *multiplied by* (B) the number of [AIRLINE]'s Deplaned Passengers and Enplaned Passengers (excluding (1) Deplaned International Passengers and (2) Deplaned and Enplaned Local Passengers) during that year.

(v) *Domestic Terminal Rate.*

(A) The Domestic Terminal Rate for Signatory Airlines shall equal the quotient of (1) the Total Signatory Domestic Terminal Contribution for that year *divided by* (2) the total number of all Signatory Airlines' Deplaned Passengers and Enplaned Passengers (excluding (I) Deplaned International Passengers and (II) Deplaned and Enplaned Local Passengers) during that year.

(B) The Domestic Terminal Rate for Non-Signatory Airlines shall equal the quotient of (1) the Total Non-Signatory Domestic Terminal Contribution for that year *divided by* (2) the total number of all Non-Signatory Airlines' Deplaned Passengers and Enplaned Passengers (excluding (I) Deplaned International Passengers and (II) Deplaned and Enplaned Local Passengers) during that year.

(c) *International Terminal Contribution.* For any Term Year:

(i) *Total International Terminal Contribution.* The Total International Terminal Contribution shall equal 36% of the Total Terminal Contribution. For the avoidance of doubt, such amount shall also be increased in accordance with Section 6.3(c) and (d).

(ii) *Total Non-Signatory International Terminal Contribution.* The Total Non-Signatory International Terminal Contribution shall equal:

$$\frac{(1.25 \times N \times T)}{(S + (1.25 \times N))}$$

where "N" is the total number of all Non-Signatory Airlines' Deplaned International Passengers during that year; "S" is the total number of all Signatory Airlines' Deplaned International Passengers during that year; and "T" is equal to the Total International Terminal Contribution for that year.

(iii) *Total Signatory International Terminal Contribution.* The Total Signatory International Terminal Contribution shall equal the difference of (A) the Total International Terminal Contribution for that year *minus* (B) the Total Non-Signatory International Terminal Contribution.



(iv) *Airline's International Terminal Contribution.* [AIRLINE]'s International Terminal Contribution shall equal the product of (A) the International Terminal Rate for that year *multiplied by* (B) the number of [AIRLINE]'s Deplaned International Passengers during that year.

(v) *International Terminal Rate.*

(A) The International Terminal Rate for Signatory Airlines shall equal the quotient of (1) the Total Signatory International Terminal Contribution for that year *divided by* (2) the total number of all Signatory Airlines' Deplaned International Passengers during that year.

(B) The International Terminal Rate for Non-Signatory Airlines shall equal the quotient of (1) the Total Non-Signatory International Terminal Contribution for that year *divided by* (2) the total number of all Non-Signatory Airlines' Deplaned International Passengers during that year.

(d) *Local Terminal Contribution.* For any Term Year:

(i) *Total Local Terminal Contribution.* The Total Local Terminal Contribution shall equal 1% of the Total Terminal Contribution. For the avoidance of doubt, such amount shall also be increased in accordance with Section 6.3(c) and (d).

(ii) *Total Non-Signatory Local Terminal Contribution.* The Total Non-Signatory Local Terminal Contribution shall equal:

$$\frac{(1.25 \times N \times T)}{(S + (1.25 \times N))}$$

where "N" is the total number of all Non-Signatory Airlines' Deplaned and Enplaned Local Passengers during that year; "S" is the total number of all Signatory Airlines' Deplaned and Enplaned Local Passengers during that year; and "T" is equal to the Total Local Contribution for that year.

(iii) *Total Signatory Local Terminal Contribution.* The Total Signatory Local Terminal Contribution shall equal the difference of (A) the Total Local Terminal Contribution for that year *minus* (B) the Total Non-Signatory Local Terminal Contribution.

(iv) *Airline's Local Terminal Contribution.* [AIRLINE]'s Local Terminal Contribution shall equal the product of (A) the Local Terminal Rate for that year *multiplied by* (B) the number of [AIRLINE]'s Deplaned and Enplaned Local Passengers during that year.

(v) *Local Terminal Rate.*

(A) The Local Terminal Rate for Signatory Airlines shall equal the quotient of (1) the Total Signatory Local Terminal Contribution for that year *divided by* (2) the

total number of all Signatory Airlines' Deplaned and Enplaned Local Passengers during that year.

(B) The Local Terminal Rate for Non-Signatory Airlines shall equal the quotient of (1) the Total Non-Signatory Local Terminal Contribution for that year *divided by* (2) the total number of all Non-Signatory Airlines' Deplaned and Enplaned Local Passengers during that year.

(e) *Adjustments to Allocation of Total Terminal Contribution.* The percentages of the Total Terminal Contribution specified in Section 4.6(b)(i) (initially 63%), Section 4.6(c)(i) (initially 36%) and Section 4.6(d)(i) (initially 1%) used to compute the Total Domestic Terminal Contribution, Total International Terminal Contribution and Total Local Terminal Contribution, respectively, may be adjusted from time to time in accordance with the following:

(i) If a Terminal MII, or the Lessee with approval by a Terminal MII, determines that there has been a significant change in the allocation and use of terminal space at the Airport or volume of flights as between the domestic Terminal Area, international Terminal Area and local Terminal Area, the determination of the Terminal MII or the Lessee (with approval by a Terminal MII), as appropriate, may adjust the percentages of the Total Terminal Contribution used to compute the Total Domestic Terminal Contribution, Total International Terminal Contribution and Total Local Terminal Contribution by specifying different percentages that more accurately reflect the allocation and use of terminal space at the Airport. In making such adjustment, the Local Terminal Rate for Signatory Airlines following the adjustment must be expected to not exceed 75% of the Domestic Terminal Rate for Signatory Airlines following the adjustment. Any adjustment made by a Terminal MII hereunder is subject to further revision by the Lessee in accordance with Section 4.6(e)(ii).

(ii) If the Lessee determines that the Local Terminal Rate for Signatory Airlines exceeds or is expected to exceed 75% of the Domestic Terminal Rate for Signatory Airlines, the Lessee shall adjust the percentages of the Total Terminal Contribution used to compute the Total Domestic Terminal Contribution, Total International Terminal Contribution and Total Local Terminal Contribution by specifying different percentages, such that the Local Terminal Rate for Signatory Airlines following the adjustment is expected to not exceed 75% of the Domestic Terminal Rate for Signatory Airlines following the adjustment. In making such an adjustment, the Lessee shall preserve the ratio between the percentages of the Total Terminal Contribution used to compute the Total Domestic Terminal Contribution and the Total International Terminal Contribution as set forth initially in this Agreement and thereafter adjusted by a Terminal MII in accordance with Section 4.6(e)(i).

(iii) The sum of the percentages used to compute the Total Domestic Terminal Contribution, Total International Terminal Contribution and Total Local Terminal Contribution, as adjusted, must always remain 100%.

(iv) Any adjustment made in accordance with this Section 4.6(e) shall take effect January 1<sup>st</sup> of the Term Year immediately after the Terminal MII gives notice of the adjustment to the Lessee (in the case of an adjustment made by a Terminal MII) or the Lessee gives notice of the adjustment to the Airlines (in the case of an adjustment made by the Lessee);

*provided, however*, that if such notice is given in December of any year, such adjustment shall take effect January 1st of the Term Year following the Term Year immediately after such notice is given (for illustrative purposes only, if such notice is given on December 1, 2012, such adjustment shall take effect January 1, 2014).

#### **Section 4.7. Adjustments for Inflation.**

(a) For a particular calendar year, the “**CPI Value**” is the “Annual Value” of that year obtained from “Consumer Price Index—All Urban Consumers—U.S. All Items Less Food and Energy (CUUR0000SA0L1E)” published by the Bureau of Labor Statistics of the U.S. Department of Labor; *provided* that if the base year used for such index changes during the Term, such index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics of the U.S. Department of Labor; and *provided further* that if such index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such index had not been discontinued or revised. For illustrative purposes only, the CPI Value for the calendar year 2009 is 219.235.

(b) For a particular calendar year, the “**Unadjusted CPI Factor**” is equal to (i) the CPI Value for the calendar year that is one year prior *divided by* (ii) the CPI Value for the calendar year that is two years prior. For illustrative purposes only, the Unadjusted CPI Factor for the calendar year 2010, if computed in accordance herewith, would be 1.017, which is the CPI Value for calendar year 2009 (which is 219.235) *divided by* the CPI Value for calendar year 2008 (which is 215.572).

(c) For a particular calendar year, except as provided in Section 4.7(d), the “**CPI Factor**” shall be equal to the Unadjusted CPI Factor for that year; *provided* that, if the Unadjusted CPI Factor is greater than 1.050, then the CPI Factor shall be equal to the Unadjusted CPI Factor less one-half of the excess of such amount over 1.050; and *provided further* that, if the Unadjusted CPI Factor is less than 1.000, then the CPI Factor shall be equal to 1.000. For illustrative purposes only, if the Unadjusted CPI Factor for a particular year is determined to be 1.060, the CPI Factor for that year, if computed in accordance herewith, would be 1.055.

(d) The CPI Factor for each year following the expiration of the Term shall be equal to the Unadjusted CPI Factor for that year, without any adjustment whatsoever, unless the Parties otherwise agree.

**Section 4.8. Treatment of Affiliates.** Solely with respect to the calculation and payment of fees under this Article 4 and Article 5, an Affiliate of a Signatory Airline that is not itself a Signatory Airline shall be deemed to be a Signatory Airline.

**Section 4.9. Puerto Rico Air Travel Promotion and Support Fund.** Upon Closing, the Lessee will deposit \$6,000,000 into a separate escrow account to be called the Puerto Rico Air Travel Promotion and Support Fund (the “**Fund**”), with a bank or other escrow holder mutually acceptable to the Parties. The monies of the Fund shall be held in such account until distributed in accordance with the terms of this Section 4.9. Within 60 days following the end of each of the first three Full Term Years, a distribution from the Fund (the “**Annual Payment**”) will be made

to each Signatory Airline for which the total number of passengers arriving at the Airport by such Signatory Airline during such year exceeds its total arriving passengers for the fiscal year of the Authority ended on June 30, 2011 (“**Eligible Airlines**”). \$3,000,000 will be distributed following the end of the first Full Term Year, \$2,000,000 following the end of the second Full Term Year and \$1,000,000 following the end of the third Full Term Year. Each Eligible Airline shall receive the proportion of the Annual Payment determined by dividing the number of its increased arriving passengers for such Full Term Year by the total increased arriving passengers for all Eligible Airlines for such Full Term Year in excess of passengers for the fiscal year of the Authority ended on June 30, 2011. For the avoidance of doubt, if only one Signatory Airline has increased its arriving passengers compared to the fiscal year of the Authority ended on June 30, 2011, such Signatory Airline shall be entitled to the entire distribution for the applicable Full Term Year or Full Term Years, as may be the case. The monies of the Fund shall be held in an interest-bearing account, and the interest on such and any funds remaining after the third distribution will be transferred to the Lessee for its general purposes.

## **ARTICLE 5.**

### **PAYMENTS**

#### **Section 5.1. Information on Airline Operations.**

(a) *Annual Report.* For each Term Year, not later than 90 days prior to the start of that year, [AIRLINE] shall submit to the Lessee an estimate of (i) the total MAGTOW of all aircraft to be landed at the Airport by [AIRLINE] and its Affiliates during that year, (ii) the number and MAGTOW of Revenue Landings of [AIRLINE] and its Affiliates, (iii) the number of Deplaned Passengers and Enplaned Passengers at the Airport (itemized by domestic, international and local Terminal Area) of [AIRLINE] and its Affiliates and (iv) any other information reasonably required by the Lessee to prepare or confirm the calculations required by Section 5.2, Section 5.4 and Section 5.5. At such time, [AIRLINE] shall also submit to the Lessee any requests to adjust its Non-Seasonal Exclusive Use Space, in accordance with Section 3.3(b).

(b) *Monthly Report.* For each full or partial calendar month of the Term, not later than 20 days after the end of that month, [AIRLINE] shall submit to the Lessee information regarding its actual operations and the operations of its Affiliates (the “**Monthly Report**”), certified and signed by an authorized representative of [AIRLINE], on forms prescribed by the Lessee, which shall include at minimum (i) the number and MAGTOW of Revenue Landings, (ii) the number of Deplaned Passengers and Enplaned Passengers at the Airport (itemized by domestic, international and local Terminal Area) and (iii) any other information reasonably required by the Lessee to prepare or confirm the calculations required by Section 5.2, Section 5.4 and Section 5.5.

#### **Section 5.2. Statement of Estimated Annual Contribution.**

(a) For each Term Year, not later than 60 days prior to the start of that year, the Lessee shall provide [AIRLINE] with a preliminary, estimated, itemized calculation for that year of the following:

- (i) The Total Annual Contribution for that year;
- (ii) [AIRLINE]'s Annual Contribution for that year, including its Landing Contribution, Parking Fees, Exclusive Use Rent, Domestic Terminal Contribution, International Terminal Contribution and Local Terminal Contribution for that year;
- (iii) The CPI Factor for that year;
- (iv) The applicable rates for that year, including the Landing Rate, Parking Rates, Domestic Terminal Rate, International Terminal Rate and Local Terminal Rate for that year;
- (v) The percentages used to compute the Total Domestic Terminal Contribution, Total International Terminal Contribution and Total Local Terminal Contribution, as adjusted in accordance with Section 4.6(e); and
- (vi) The information required by Section 5.10(f).

(b) Within 30 days after the information required by Section 5.2(a) has been delivered to the Airlines, a meeting of the Executive Committee shall be held for the purpose of reviewing such amounts and rates and providing comments by the Airlines to such amounts and rates, which comments will be given due consideration by the Lessee.

(c) For each Term Year, within 15 days after the Executive Committee meeting described in Section 5.2(b) has been held, the Lessee shall provide [AIRLINE] with a final estimated calculation for that year of the amounts and rates enumerated in Section 5.2(a) (the “**Statement of Estimated Annual Contribution**”).

### **Section 5.3. Adjustment to Statement of Estimated Annual Contribution.**

(a) *When Permitted.* If, at any time during any Term Year, the Lessee’s forecast, based upon its most recently available information with respect to that year (including reports received from Airlines in accordance with Section 5.1(b)), indicates that payments to be made by the Airlines pursuant to the then-existing Statement of Estimated Annual Contribution (in accordance with Section 5.4) would result in an underpayment or overpayment by the Airlines in aggregate of 10 percent or more of the amount of Total Annual Contribution required hereunder to be paid to the Lessee during that year, then the Lessee may adjust (the “**Interim Adjustment**”) the Statement of Estimated Annual Contribution for each Airline so as to adjust the Landing Rate, the Domestic Terminal Rate, the International Terminal Rate or the Local Terminal Rate, as appropriate under the circumstances, in order to conform to the Lessee’s then-current forecast; *provided* that in no event may the Lessee be entitled to make more than two Interim Adjustments during any Term Year.

(b) *Notice and Effect.* The Lessee shall provide notice to each Airline of any Interim Adjustment and the effect thereof on the Monthly Payments at least 30 days prior to the effective date of such Interim Adjustment. If requested by the Executive Committee or any Signatory Airline, the Lessee shall make appropriate representatives available to discuss the Interim Adjustment, the revised Statement of Estimated Annual Contribution and the revised Monthly

Payment. Upon the effective date of the Interim Adjustment, [AIRLINE] shall make payments to the Lessee for the remainder of the year as provided in Section 5.4 but in the amount of the revised Monthly Payment.

**Section 5.4. Monthly Payments.** [AIRLINE] shall pay, without invoice,

(a) not later than the first business day of each month, (i) one-twelfth of [AIRLINE]'s Non-Seasonal Exclusive Use Rent as shown on [AIRLINE]'s Statement of Estimated Annual Contribution, or (ii) if there is a change in the amount of Non-Seasonal Exclusive Use Space allocated to [AIRLINE] during the year in accordance with Section 3.3(b), such other monthly amount that will result in [AIRLINE] having paid the correct amount of Non-Seasonal Exclusive Use Rent (as calculated in accordance with Section 4.5) by the end of that year, which the Lessee shall calculate and give notice thereof to [AIRLINE];

(b) not later than the first business day of each month, an amount equal to [AIRLINE]'s Seasonal Exclusive Use Rent for the immediately prior month, calculated in accordance with Section 4.5(d); and

(c) not later than the date on which the Monthly Report is due, an amount equal to the sum of:

(i) the Parking Fees due from [AIRLINE] for its aircraft parked on Airport grounds not under lease by [AIRLINE] in the immediately prior month as shown in [AIRLINE]'s Monthly Report, calculated based upon the Parking Rates shown in [AIRLINE]'s Statement of Estimated Annual Contribution, the MAGTOW of such aircraft and the duration of such parking; *plus*

(ii) the product of (A) the MAGTOW of [AIRLINE]'s aircraft involved in Revenue Landings in the immediately prior month as shown in [AIRLINE]'s Monthly Report *multiplied by* (B) the Landing Rate shown in [AIRLINE]'s Statement of Estimated Annual Contribution; *plus*

(iii) the product of (A) [AIRLINE]'s number of Deplaned and Enplaned Domestic Passengers in the immediately prior month as shown in [AIRLINE]'s Monthly Report *multiplied by* (B) the Domestic Terminal Rate shown in [AIRLINE]'s Statement of Estimated Annual Contribution; *plus*

(iv) the product of (A) [AIRLINE]'s number of Deplaned International Passengers in the immediately prior month as shown in [AIRLINE]'s Monthly Report *multiplied by* (B) the International Terminal Rate shown in [AIRLINE]'s Statement of Estimated Annual Contribution; *plus*

(v) the product of (A) [AIRLINE]'s number of Deplaned and Enplaned Local Passengers *multiplied by* (B) the Local Terminal Rate shown in [AIRLINE]'s Statement of Estimated Annual Contribution;

(collectively each such payment, a “**Monthly Payment**”); *provided* that the amount of actual payment in any month shall be subject to increase or decrease in accordance with Section 5.5(b) resulting from an Underpayment or Overpayment during the prior year.

**Section 5.5. Statement of Actual Annual Contribution; Overpayment; Underpayment.**

(a) *Statement of Actual Annual Contribution.* Within 90 days after the end of each Term Year, the Lessee shall recalculate and adjust all applicable rates (as enumerated in Section 5.2(a)(iv)). The Lessee’s adjustments shall be based on the calculation procedures established in this Agreement, but shall use actual (rather than estimated) figures. Based on such adjustments, the Lessee shall recalculate [AIRLINE]’s Annual Contribution for that year, which shall be set forth on and supported by the Statement of Actual Annual Contribution provided to [AIRLINE]. Within 30 days after the Statement of Actual Annual Contribution has been delivered to the Airlines, a meeting of the Executive Committee shall be held for the purpose of reviewing the Statements of Actual Annual Contribution.

(b) *Overpayment and Underpayment.* If the Annual Contribution paid by [AIRLINE] during any Term Year exceeded the amount of Annual Contribution payable (the excess payment being the “**Overpayment**”) or was less than the amount of Annual Contribution payable (the deficiency being the “**Underpayment**”), [AIRLINE], as the case may be, either (i) shall pay the Lessee any Underpayment in monthly installments evenly over the balance of the then-current year (*i.e.* the year in which the Statement of Actual Annual Contribution is provided to [AIRLINE]) to allow the Lessee to recover any Underpayment by [AIRLINE] or (ii) shall recover its Overpayment by monthly reductions in its monthly payments to the Lessee evenly over the balance of the then-current year (*i.e.* the year in which the Statement of Actual Annual Contribution is provided to [AIRLINE]) to compensate [AIRLINE] for any Overpayment to the Lessee. With respect to the Term Year in which this Agreement is terminated, any Underpayments or Overpayments, as the case may be, resulting from such Term Year shall be due and payable by [AIRLINE] to the Lessee or by the Lessee to [AIRLINE], as the case may be, within 10 business days after the Lessee provides the Statement of Actual Annual Contribution to [AIRLINE].

**Section 5.6. Place of Payment.** All amounts due from [AIRLINE] hereunder shall be paid to the Lessee at the office of the Lessee or at such other place as may be hereafter designated in writing by the Lessee.

**Section 5.7. Late Payments.** With respect to any amount that is not paid within 10 days of when due, the Lessee shall have the right to charge interest on such amount from its due date at the Late Payment Interest Rate.

**Section 5.8. Security Deposits.**

(a) *When No Security Deposit Required.* [AIRLINE] shall not be required to deposit a Security Deposit with the Lessee if:

- (i) [AIRLINE] is a Signatory Airline as of the Closing; or

(ii) [AIRLINE] has provided regularly scheduled flights to and from the Airport during the 18 months prior to the Effective Date of this Agreement without the occurrence of any act or omission, beyond applicable cure period, that would have been an event of default hereunder had this Agreement been in effect during those 18 months and [AIRLINE] been a party to an Airport Use Agreement; or

(iii) (A) [AIRLINE] has a credit rating at or above the “investment grade” rating (currently Baa3 for Moody’s Investors Services, Inc., BBB- for Standard & Poor’s Rating Service and Fitch Investors Service) or (B) if [AIRLINE] does not yet have a credit rating, [AIRLINE] has demonstrated continuous profitability for three consecutive quarters, as shown on [AIRLINE]’s Quarterly Certified Statement of Net Income filed with the Securities and Exchange Commission or other comparable audited financial statements.

(b) *Security Deposit.* Unless excepted from the requirement to provide a Security Deposit in accordance with Section 5.8(a), [AIRLINE] shall, upon request of the Lessee, deposit with the Lessee, on or before the Effective Date, a security deposit (the “**Security Deposit**”) in the form of a bond, letter of credit from a bank reasonably acceptable to the Lessee, cash or such other form of security as the Lessee may reasonably deem acceptable, in an amount equal to the sum of the first three Monthly Payments due to the Lessee from [AIRLINE], as determined from the Statement of Estimated Annual Contribution. The Security Deposit shall be held as security for the full and faithful performance of every provision of this Agreement to be performed by [AIRLINE]. In the event that [AIRLINE] obtains a letter of credit as its Security Deposit, the letter of credit shall be in the form attached hereto as Schedule I or in another form mutually acceptable to the Lessee and [AIRLINE]. [AIRLINE] shall be obligated to maintain the Security Deposit in effect until the passing of 18 consecutive months without the occurrence of any act or omission, beyond applicable cure periods, that constitutes an event of Airline Default hereunder with respect to [AIRLINE]. Upon the expiration of [AIRLINE]’s obligation to provide a Security Deposit as described in the preceding sentence, the Lessee shall return the Security Deposit to [AIRLINE]. Notwithstanding anything in this Section 5.8, if an event of Airline Default occurs and remains uncured for the applicable cure period, if any, for such event of default as described in Section 10.1 hereof, [AIRLINE] shall be required to deposit a Security Deposit with the Lessee until such time as [AIRLINE] has operated at the Airport for 18 consecutive months without the occurrence of any act or omission, beyond applicable cure periods, that would have been an event enumerated as an event of Airline Default hereunder.

(c) *Use or Application of Security Deposit.* If [AIRLINE] defaults with respect to any provision of this Agreement, the Lessee may use, apply or retain all or any part of this Security Deposit for the payment of all or part of any Annual Contribution or other fee or charge, or for the payment of any other amount which the Lessee may spend or become obligated to spend by reason of [AIRLINE]’s default or failure to compensate the Lessee for any loss, cost or damage that the Lessee may suffer by reason of such default; *provided* that the Lessee has notified [AIRLINE] of the default and [AIRLINE] is not disputing in good faith the default or the application or retention of the Security Deposit in accordance with Article 11. If any portion of said Security Deposit is so used or applied, [AIRLINE] shall, within 10 business days after written demand therefor, restore the Security Deposit to the amount required under this Section 5.8. The Lessee shall not be required to keep this Security Deposit separate from its general funds, and [AIRLINE] shall not be entitled to interest on such Security Deposit.



(d) *Return of Security Deposit.* Upon termination of [AIRLINE]'s operations at the Airport, or upon the expiration of [AIRLINE]'s obligation to provide a Security Deposit as set forth in Section 5.8(b), the Security Deposit or any balance thereof shall be returned to [AIRLINE] within a reasonable time (and in any case, within 30 days) after the complete termination of [AIRLINE]'s operations or the expiration of its obligations to provide a Security Deposit; *provided* that the Lessee may retain the Security Deposit until such time as any amount due from [AIRLINE] for all Annual Contributions or other fees and charges for its operations at the Airport has been determined and paid in full. [AIRLINE] shall not assign nor encumber its contingent rights in the Security Deposit, and neither shall the Lessee nor its successors or assigns be bound by any such assignment or encumbrance.

#### **Section 5.9. Right to Contest; No Abatement or Set-Off.**

(a) The payment by [AIRLINE] to the Lessee, and the acceptance by the Lessee from [AIRLINE], of any amount hereunder shall not preclude either [AIRLINE] or the Lessee from questioning the accuracy of any statement on the basis of which such payment was made, or preclude the Lessee from making any claim against [AIRLINE] for any additional amount payable by [AIRLINE] hereunder, or preclude [AIRLINE] from making any claim against the Lessee for credit for any excess amount paid by [AIRLINE] hereunder.

(b) Notwithstanding the foregoing, [AIRLINE] shall not abate, suspend, postpone, set-off or discontinue any payments of the Annual Contribution payable hereunder except as may be permitted hereunder or under applicable Law.

#### **Section 5.10. No Other Fees and Charges.**

(a) Subject to Section 6.3, no direct or indirect rents, fees or charges of any kind (including the pass-through of any costs incurred by the Lessee in providing police, security or other direct or indirect services or the imposition of costs to Airline Providers which may be passed through to the Airlines) other than those expressly referred to or provided for in this Agreement or other agreements with [AIRLINE] shall be imposed by the Lessee upon [AIRLINE], its Delegates, passengers, customers, suppliers of materials or Airline Providers for [AIRLINE]'s use of or access to the Airport pursuant to and as provided under this Agreement. Without limiting the generality of the foregoing, the Lessee may not seek or collect any fee from [AIRLINE] in respect of fees assessed by [AIRLINE] to its ticketed passengers that are necessary, incidental or convenient to [AIRLINE]'s Air Transportation Business, including baggage fees, fees for unaccompanied minors, upgrade fees or other fees related to the actual carriage of passengers by [AIRLINE]. Subject to the provisions of this Agreement, all revenues and other amounts or obligations due and payable to the Lessee resulting from the exercise by the Lessee of any of its rights with respect to the Authority or with respect to the Airport under the Lease Agreement or resulting from the Lessee's management of the Airport pursuant to the Lease Agreement, including any payments by Signatory Airlines and Non-Signatory Airlines under this Agreement, belong to the Lessee for the purposes of this Agreement and [AIRLINE] shall have no interest therein or thereto. Subject to the provisions of this Agreement, the Lessee is entitled to impose and collect reasonable and non-discriminatory charges and fees relating to use of the Airport (none of which are included in, subject to, or have any effect on the Total Annual Contribution) on Persons (other than a Signatory Airline conducting an Air

Transportation Business with respect to rights granted to a Signatory Airline under this Agreement), including those:

- (i) For the use of the public automobile parking areas at the Airport;
- (ii) From operators of ground transportation to, from and on the Airport, except for ground transportation provided directly by or through an Airline Provider for [AIRLINE]'s employees;
- (iii) From any concessionaire at the Airport (other than an Airline Provider);
- (iv) From any Person for access to the Airport for the conduct of its business;
- (v) From any Person (other than an Airline Provider) for the exercise of any rights conferred by the Lease Agreement; and
- (vi) Fees chargeable to aircraft landing at or taking off from the Airport other than those engaged in the Air Transportation Business.

(b) Notwithstanding the foregoing, the Airlines and employees of the Airlines may be required to pay miscellaneous charges for badges, parking and other services that are imposed at the rate in effect as of the Closing, subject to being multiplied each year by the CPI Factor for that year. The Parties shall include in the Transition Plan a complete schedule of all such miscellaneous charges. Without limiting the rights of the Signatory Airlines' employees to parking pursuant to Section 3.1(r) and this Section 5.10(b), the Lessee may charge Airline employees for the actual, reasonable cost of providing reasonable shuttle or similar transportation service between a new employee parking area, if any, and the Airport terminals; it being understood and agreed that the Lessee shall not have the right to prohibit the Airlines' employees from using parking for the general public.

(c) Any fee charged by the Lessee to Airline Providers that do not lease or occupy space at the Airport shall not be in excess of an administrative charge to cover the reasonable and direct costs of monitoring and administration.

(d) The restrictions set forth in this Section 5.10 do not apply to any generally applicable permits or license fees levied or imposed by the Authority, or any generally applicable taxes, that are not specific to or directed at the Airlines at the Airport or indirectly levied or imposed on the Airlines by being applicable to all of the Authority's airports. The Lessee reserves the right to impose and use a PFC in accordance with applicable Law and to receive and use (to the extent authorized by applicable Law) a car rental facility charge (imposed on a car rental company or other Persons renting cars, but not on an Airline or its Affiliates or Airline Providers).

(e) The Lessee may not pass through any charges to the Airlines related to compliance with or implementation of a Government-Mandated Capital Project or any Government-Mandated Operating Expenses to the extent that the Lessee has received or will receive compensation from the Authority under the terms of the Lease Agreement or from any other entity.

(f) The Lessee shall separately itemize all charges identified as Government-Mandated Operating Expenses added into the Total Annual Contribution, provide notice of the same to the Airlines before adding such charges to the Total Annual Contribution and provide back-up documentation of all such charges reasonably satisfactory to the Airlines. Once a Government-Mandated Operating Expense is added to the Total Annual Contribution and charged to the Airlines, a Government-Mandated Operating Expense shall not be increased except on an annual basis to reflect actual increases in such expenses incurred and paid by the Lessee. The Lessee shall notify the Airlines of any projected Government-Mandated Operating Expenses and any projected increases in such expenses each year in accordance with Section 5.2. Government-Mandated Operating Expenses, if any, known to the Lessee before the Closing and projected to be charged to the Airlines in the first Term Year shall have been disclosed to the Airlines by the Closing and may not be charged to the Airlines unless such expenses have been disclosed to the Airlines prior to the Closing and the Eligible Security, Safety or Environmental Requirement goes into effect after the Closing. For the avoidance of doubt, nothing in this Section 5.10(f) shall exempt the Lessee from its obligations under Section 6.3(d)(iii).

(g) It is the intention of the Parties that the compensation payable by the Airlines to the Lessee be subject to a maximum amount for any and all kinds of sources of compensation that the Lessee may potentially claim from the Airlines now or in the future, including for rents, fees, charges, permits, authorizations and reimbursements. The Parties agree that such agreed maximum amount shall be the Maximum Annual Lessee Compensation. Accordingly, the aggregate of the compensation payable by the Airlines to the Lessee each year shall not exceed the Maximum Annual Lessee Compensation for that year. For the avoidance of doubt, however, and notwithstanding anything to the contrary, the following shall not be considered in determining the compensation payable by the Airlines to the Lessee: charges pursuant to Section 2.4(b), Section 2.4(c) (if the Lessee is directly operating the fuel farm), Section 3.10, Section 5.8 or this Section 5.10; payments that may be owed by the Airlines to the Lessee pursuant to Section 3.2(h), Section 3.7, Section 3.9, Section 7.1, Section 9.2(e) or Section 10.2(g) or other similar cure rights; compensation for Losses or from resolution of a dispute; awards, interest or penalties due in accordance with this Agreement or the resolution of a dispute; or consideration paid to the Lessee under other agreements.

**Section 5.11. Airline Books and Records.** [AIRLINE], upon reasonable notice, shall maintain and/or make available at its office in or near San Juan, Puerto Rico, or at the Airport, books, records and accounts relevant to the determination of [AIRLINE]'s Annual Contribution (or any part thereof), including records of its Revenue Landings at the Airport. Each such item of information shall be maintained for a period of at least 5 years from the date of creation, or for any greater period if required by applicable Law or necessary for pending litigation. If such books, records and accounts are not maintained at such office, [AIRLINE] shall in any case maintain such books, records and accounts, and [AIRLINE] shall promptly furnish the Lessee and any Governmental Authority with all information reasonably requested by them with respect to such books, records and accounts. The Lessee, and such Persons as may be designated by the Lessee and such Governmental Authorities, shall have the right, at any reasonable time at their own expense, subject to prior notice to [AIRLINE], to examine, make copies of, take extracts from and audit such books, records and accounts, but (with respect to such right to audit) only such books, records and accounts that relate to the computation and payment of the Airlines' Annual Contributions. For the avoidance of doubt, any materials obtained by the Lessee

pursuant to this Section 5.11 shall be subject to the confidentiality obligations set forth in Section 12.16.

**Section 5.12. Lessee Books and Records.** The Lessee shall follow such procedures and keep and maintain such books, records and accounts related to this Agreement (including as set forth in Article 4 and Article 5) at the Airport or in or near San Juan, Puerto Rico as may be necessary or appropriate under the provisions of this Agreement for a period of at least 5 years from the date of creation, or for any greater period if required by applicable Law or necessary for pending litigation. Such books, records and accounts shall contain all items affecting the computation of the Airlines' Annual Contributions, recorded in accordance with generally accepted accounting principles. [AIRLINE] shall have the right, at any reasonable time and at its own expense, subject to prior notice to the Lessee, to examine, make copies of, take extracts from and, with approval by an Airline MII, audit such books, records and accounts, but (with respect to such right to audit) only such books, records and accounts that relate to the computation and payment of the Airlines' Annual Contributions. For the avoidance of doubt, any materials obtained by [AIRLINE] pursuant to this Section 5.12 shall be subject to the confidentiality obligations set forth in Section 12.16.

## ARTICLE 6.

### CAPITAL PROJECTS

#### **Section 6.1. Initial Capital Projects.**

(a) *General.* Subject to this Section 6.1, the Lessee shall diligently carry out and complete all Capital Projects identified on Schedule J (the “**Initial Capital Projects**”) without any addition to the Total Annual Contribution. The commencement and completion dates for each Initial Capital Project shall be set forth in the Transition Plan. The Authority and the Lessee (pursuant to the Lease Agreement) and the Authority, the Lessee and the Signatory Airlines (pursuant to this Agreement and the other Airport Use Agreements) have agreed that the Initial Capital Projects are necessary to bring the condition of the Airport to a high level consistent with the Operating Standards. In the event that the aggregate cost incurred by the Lessee for all Initial Capital Projects (including reasonable overhead and equivalent costs incurred for such projects) is less than \$34,000,000, the Airlines, acting by Airline MII, shall have the right to require the Lessee to expend an amount equal to such deficiency (the amount by which such aggregate costs are less than \$34,000,000) toward the completion of other Capital Projects approved by an Airline MII without any addition to the Total Annual Contribution. For purposes of the preceding sentence only, supervisory, management, administrative or equivalent costs incurred by the Lessee toward the completion of a Capital Project and payable to the Lessee or a Lessee Affiliate, as well as any costs related to completion of the General Accelerated Upgrades, shall not be considered in calculating the “aggregate cost” incurred by the Lessee. The Lessee shall not be responsible or otherwise liable for the payment or reimbursement of any costs or expenses incurred by the Authority with respect to any Initial Capital Project prior to the Effective Date.

(b) *Construction Progress Reports.* Until the Initial Capital Projects have been completed, the Lessee shall deliver to the Authority and the Signatory Airlines a quarterly report

on the design, permitting, contracting and construction progress of the Initial Capital Projects. The form of the report shall be included in the Transition Plan.

**Section 6.2. Passenger Facility Charges.** For purposes of this Section 6.2, in the event of a conflict between the terms of this Section and the provisions of 49 U.S.C. § 40117 or the PFC Regulations (as defined below), the provisions of the statute and PFC Regulations shall govern.

(a) [AIRLINE] shall hold the net principal amount of all PFCs that are collected by [AIRLINE] or its Delegates on behalf of the Lessee pursuant to, and in accordance with, 49 U.S.C. § 40117 and the rules and regulations thereunder (14 C.F.R. Part 158, herein, the “**PFC Regulations**”), both as may be amended from time to time, in trust for the Lessee. For purposes of this Section 6.2, “net principal amount” shall mean the total principal amount of all PFCs that are collected by [AIRLINE] or its Delegates on behalf of the Lessee, reduced by all amounts that [AIRLINE] is permitted to retain pursuant to Section 158.53(a) of the PFC Regulations. [AIRLINE] shall pay all PFC amounts due to the Lessee promptly.

(b) In the absence of additional regulations governing the treatment of refunds, any refunds of PFCs due to passengers as a result of changes of itinerary shall be paid proportionately out of the net principal amount attributable to such PFCs and the amount that the Airlines were permitted to retain under Section 158.53(a) of the PFC Regulations attributable to such PFCs. [AIRLINE] hereby acknowledges its obligations under Section 158.49 of the PFC Regulations. Other than the amounts that [AIRLINE] is entitled to retain pursuant to Section 158.53 of the PFC Regulations, [AIRLINE] shall be entitled to no compensation.

(c) Schedule K sets forth all PFC commitments as of the Closing. Any PFCs that are not shown on Schedule K shall be used, in order of priority, for (i) the Initial Capital Projects, (ii) Government-Mandated Capital Projects, (iii) Airline Projects, (iv) Capital Projects for the Airfield and Terminal Areas in accordance with Section 6.3(c) and (v) other PFC-eligible projects. PFCs collected at the Airport shall not be used to finance projects at any other airport.

(d) The Lessee shall comply with all PFC Regulations. In the event that any PFC funding is cancelled by reason of Lessee’s failure to comply with such regulations including assurances or agreements in connection therewith (as determined by a final arbitral judgment pursuant to Article 11 if such failure is contested), the Lessee shall be solely responsible to substitute such funding with its own funding with no recourse to the Airlines.

(e) [AIRLINE] shall comply with all PFC Regulations. In the event of [AIRLINE]’s failure to comply (as determined by the FAA or by a final arbitral judgment pursuant to Article 11), [AIRLINE] shall be solely responsible to substitute such funding with its own funding with no recourse to the Lessee or the other Airlines.

**Section 6.3. Additional Capital Projects.**

(a) *Scope.* This Section 6.3 applies to any Capital Project for which the Lessee seeks contribution from the Airlines in the form of an increase to the Total Annual Contribution. For the avoidance of doubt, this Section 6.3 does not apply to (i) any Capital Project undertaken by the Lessee for which the Lessee does not seek such contribution from the Airlines (including Small Capital Projects except to the extent that Airline contribution is permitted and obtained in

accordance with Section 6.3(c)) or (ii) the Initial Capital Projects and General Accelerated Upgrades, for which the Lessee may not seek such contribution from the Airlines.

(b) *Alternate Funding Sources.* Prior to adding the cost of any Capital Project to any Annual Contribution in accordance with subsection (c) or (d) of this Section 6.3, the Lessee shall use its best efforts to obtain any available federal funding and to utilize PFCs to the extent such funding sources are available, and [AIRLINE] shall, at no expense, cooperate in such efforts in accordance with customary practice in the Air Transportation Business.

(c) *Airline-Approved Projects.*

(i) *Executive Committee Consultation.* In the event that the Lessee wishes to develop and implement a Capital Project with respect to the Airport, the Lessee shall call a meeting of the Executive Committee to discuss such Capital Project prior to submitting a proposal for such Capital Project to the Airlines for approval.

(ii) *Capital Project Proposal.* After consulting the Executive Committee, to obtain approval of an Airfield MII or Terminal MII for a Capital Project as required by Section 6.3(c)(iii) or (iv), respectively, the Lessee shall submit a proposal for such Capital Project to the Signatory Airlines. Such proposal shall be submitted to the Airlines in substantially the form attached as Schedule L and shall include a detailed description of the project (including the purpose or expected benefits of and justification for the project), the estimated completion date, the estimated costs of the project (including any costs for designing, constructing, equipping and financing the project), the proposed sources and uses of funds and the expected terms of financing. The proposal shall also include a schedule of the annual amortized cost of the project and of the estimated increases to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution (if the project is approved by an Airfield MII and/or Terminal MII, as the case may be, in accordance with this Section 6.3(c)).

(iii) *Additional Capital Projects Benefiting the Airfield Area.* If all or a portion of such a Capital Project benefits the Airfield Area, the Lessee may seek to obtain approval of an Airfield MII (each Airline determining in its discretion whether to participate in such Airfield MII). If approved by an Airfield MII, the annual amortized costs of such project attributable to the Airfield Area shall be added to the Total Landing Contribution, beginning the first Full Term Year after the project is substantially complete, in the amounts and years set forth in, and otherwise in accordance with, the proposal described in Section 6.3(c)(ii) and approved by an Airfield MII.

(iv) *Additional Capital Projects Benefiting the Terminal.* If all or a portion of such a Capital Project benefits the Terminal, the Lessee may seek to obtain approval of a Terminal MII (each Airline determining in its discretion whether to participate in such Terminal MII). If approved by a Terminal MII, the annual amortized costs of the project attributable to the Terminal shall be added to the Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution, beginning the first Full Term Year after the project is substantially complete, in the amounts and years set forth in, and otherwise in accordance with, the proposal described in Section 6.3(c)(ii) and approved by a

Terminal MII. The annual amortized costs attributable to the domestic, international and local Terminal Areas shall be added to the Total Domestic Terminal Contribution, Total International Terminal Contribution and Total Local Terminal Contribution, respectively (or if the annual amortized costs attributable to the Terminal are not easily allocable among the domestic, international and local Terminal Areas, then 63% of such costs attributable to the Terminal shall be added to the Total Domestic Terminal Contribution, 36% of such costs attributable to the Terminal shall be added to the Total International Terminal Contribution and 1% of such costs attributable to the Terminal shall be added to the Total Local Terminal Contribution; *provided* that these percentages shall be adjusted to conform with any adjustments made in accordance with Section 4.6(e)).

(v) *Cost Overruns.*

(A) The amount of annual amortized project costs to be added to the Total Landing Contribution in any year may not exceed the amount scheduled to be added in that Term Year in accordance with the proposal approved by an Airfield MII, unless an increase to such amount is subsequently approved by an Airfield MII (each Airline determining in its discretion whether to participate in such Airfield MII). The amount of annual amortized project costs to be added to the Total Domestic Terminal Contribution, Total International Terminal Contribution and Total Local Terminal Contribution, respectively, in any year may not exceed the amounts scheduled to be added in that Term Year in accordance with the proposal approved by a Terminal MII, unless an increase to such amount is subsequently approved by a Terminal MII (each Airline determining in its discretion whether to participate in such Terminal MII). The total amount of annual amortized project costs to be added to the Total Landing Contributions, Total Domestic Terminal Contributions, Total International Terminal Contributions and Total Local Terminal Contributions, in aggregate in all years, may not exceed the lesser of (A) the total annual amortized costs of the project approved by an Airfield MII and/or Terminal MII, as the case may be, or (B) the total annual amortized costs of the project actually incurred by the Lessee. Notwithstanding the foregoing limitations, with respect to any such excess costs attributable to Force Majeure Events that are not recouped by the Lessee through insurance proceeds or other compensation, the annual amortized amounts thereof may be added to the Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution consistent with the allocation and schedule of costs for that project previously identified in the project proposal.

(B) The Lessee shall provide notice to the Signatory Airlines (through the individual then serving on the Executive Committee on behalf of each Signatory Airline) of any anticipated cost overruns attributable to an approved Capital Project as soon as practicable after the Lessee becomes aware of such cost overruns. The Lessee shall consult the Signatory Airlines as to the best method for addressing additional costs before seeking approval of a cost increase by an Airfield MII and/or Terminal MII in accordance with Section 6.3(c)(v)(A).

(vi) *No Adjustment for Inflation.* For the avoidance of doubt, any increase to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution on account of an approved Capital Project is not subject to, and does not affect, any adjustment of the Total Annual Contribution for inflation. Further for the avoidance of doubt, any such increase to the Total Landing

Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution shall be only as approved by the Airfield MII or Terminal MII or both, as the case may be, and shall not be adjusted to reflect inflation or any other increase in costs except as indicated in the approved project proposal.

(vii) *Small Capital Projects.* Notwithstanding the foregoing provisions, the Lessee shall bear the costs for Small Capital Projects, up to a maximum of \$500,000 (which amount shall be adjusted in accordance with the following sentence) per Term Year, and shall not add the same to the Total Annual Contribution. Such amount shall be adjusted in every Term Year after the first Term Year by multiplying the CPI Factor for such Term Year by such amount applicable in the prior Term Year.

(d) *Government-Mandated Capital Projects; Government-Mandated Operating Expenses.*

(i) *Executive Committee Consultation.* The Lessee shall call a meeting of the Executive Committee to discuss any Government-Mandated Capital Project or any Government-Mandated Operating Expenses. For the avoidance of doubt, any Capital Project that results from a TSA security requirement under applicable Law qualifies as a “Government-Mandated Capital Project.”

(ii) *Government-Mandated Capital Project Proposal.* After consulting the Executive Committee, the Lessee shall submit a proposal with respect to any Government-Mandated Capital Project to the Signatory Airlines. The proposal shall be submitted to the Airlines in substantially the form attached as Schedule L and shall include a detailed description of the project (including the purpose or expected benefits of the project), a justification for the determination that the project is a Government-Mandated Capital Project, an evaluation of the project in comparison to other available alternatives for achieving compliance with the relevant Law or airport certification requirement, documentation that the Lessee intends to seek funds from all available Governmental Authority grant funding sources (including what those sources may be), the estimated completion date, the estimated costs of the project (including any costs for designing, constructing, equipping and financing the project), the proposed sources and uses of funds and the expected terms of financing (it being understood that the Lessee is not obligated to propose obtaining, or to subsequently obtain, equity financing as part of the financing of the project). The proposal shall also include a schedule of the annual amortized cost of the project and of the estimated increases to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution. The proposal must disclose any compensation to be received by the Lessee from any other party to contracts related to the project and the relationship between such party and the Lessee, if any. If an Airfield MII (with respect to a project attributable to the Airfield Area) or a Terminal MII (with respect to a project attributable to the Terminal), as the case may be (and in each case, each Airline determining in its discretion whether to participate in such Airfield MII or Terminal MII), disputes that the project qualifies as a Government-Mandated Capital Project and initiates the dispute resolution procedures in accordance with Article 11 within 90 days after the Lessee has submitted the proposal to the Signatory Airlines, the Lessee may not add the costs of the Government-Mandated Capital Project to the Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal



Contribution in accordance with Section 6.3(d)(iv) or (v) until such dispute is resolved. For the avoidance of doubt, the initiation of the dispute resolution procedures in accordance with the foregoing shall not preclude the Lessee from commencing that Government-Mandated Capital Project within the time frame required by the applicable Law or airport certification requirement. If no dispute is initiated within such 90-day period, or if the dispute is resolved in favor of the Lessee (or to the extent it is resolved in favor of the Lessee), the costs of the Government-Mandated Capital Project may be added the Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution in accordance with Section 6.3(d)(iv) or (v), or both, as appropriate, as of the date the costs began to be incurred by the Lessee.

(iii) *Government-Mandated Operating Expenses Proposal.* After consulting the Executive Committee, the Lessee shall submit a proposal with respect to any Government-Mandated Operating Expenses to the Signatory Airlines. The proposal shall include a detailed description of such expenses on a line item basis, a justification for the determination that such expenses are Government-Mandated Operating Expenses, an evaluation of such expenses in comparison to other available alternatives for achieving compliance with the relevant Law or airport certification requirement, documentation that the Lessee intends to seek funds from all available funding sources (including what those sources may be), and the estimated amount of such Government-Mandated Operating Expenses. The proposal shall also include a schedule of the estimated increases to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution. If an Airfield MII (with respect to a project attributable to the Airfield Area) or a Terminal MII (with respect to a project attributable to the Terminal), as the case may be (and in each case, each Airline determining in its discretion whether to participate in such Airfield MII or Terminal MII), disputes that the expenses qualify as Government-Mandated Operating Expenses and initiates the dispute resolution procedures in accordance with Article 11 within 90 days after the Lessee has submitted the proposal to the Signatory Airlines, the Lessee may not add the Government-Mandated Operating Expenses to the Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution in accordance with Section 6.3(d)(iv) or (v) until such dispute is resolved. For the avoidance of doubt, the initiation of the dispute resolution procedures in accordance with the foregoing shall not preclude the Lessee from incurring or paying such claimed Government-Mandated Operating Expenses within the time frame required by the applicable Law or airport certification requirement. If no dispute resolution is initiated within such 90-day period, or if the dispute is resolved in favor of the Lessee (or to the extent it is resolved in favor of the Lessee), the Government-Mandated Operating Expenses may be added the Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution in accordance with Section 6.3(d)(iv) or (v), or both, as appropriate, as of the date the costs began to be incurred by the Lessee.

(iv) *Costs Attributable to the Airfield Area.* The annual amortized costs of a Government-Mandated Capital Project (including any costs for designing, constructing, equipping and financing the project) and those annual Government-Mandated Operating Expenses incurred that are attributable to the Airfield Area shall be added to the Landing Contribution, beginning the first Full Term Year after the project is substantially complete, in the amounts and years set forth in, and otherwise in accordance with, the proposal (in the case of a

Government-Mandated Capital Project) or after such expenses are incurred (in the case of any Government-Mandated Operating Expenses).

(v) *Costs Attributable to the Terminal.* The annual amortized costs of a Government-Mandated Capital Project (including any costs for designing, constructing, equipping and financing the project) and those annual Government-Mandated Operating Expenses incurred that are attributable to the Terminal shall be added to the Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution, respectively, in the amounts and years set forth in, and otherwise in accordance with, the proposal (in the case of a Government-Mandated Capital Project) or after such expenses are incurred (in the case of any Government-Mandated Operating Expenses); *provided* that if the annual amortized costs or expenses attributable to the Terminal are not easily allocable among the domestic, international and local Terminal Areas, then 63% of such costs attributable to the Terminal shall be added to the Total Domestic Terminal Contribution, 36% of such costs attributable to the Terminal shall be added to the Total International Terminal Contribution and 1% of such costs attributable to the Terminal shall be added to the Total Local Terminal Contribution; *provided further* that these percentages shall be adjusted to conform with any adjustments made in accordance with Section 4.6(e).

(vi) *Cost Mitigation.* The Parties shall use their best efforts to minimize the cost of any Government-Mandated Capital Project and any Government-Mandated Operating Expenses, to evaluate equitable methods to share the risk, and to assess costs to the appropriate users or beneficiaries of such projects and expenses. Such efforts notwithstanding, the total amount of Government-Mandated Capital Project annual amortized costs and Government-Mandated Operating Expenses to be added to the Total Landing Contributions, Total Domestic Terminal Contributions, Total International Terminal Contributions and Total Local Terminal Contributions, as applicable, shall equal the total annual amortized costs of the project and those expenses actually incurred by the Lessee.

(vii) *Cost Overruns.* The Lessee shall be responsible for the costs of a Government-Mandated Capital Project that are in excess of the costs included in the proposal for such project submitted to the Signatory Airlines in accordance with Section 6.3(d)(ii) (but for the avoidance of doubt, the Lessee may seek approval of a Terminal MII or Airfield MII in accordance with Section 6.3(c) to add such costs to the Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution); *provided* that with respect to any such excess costs attributable to Force Majeure Events that are not recouped by the Lessee through insurance proceeds or other compensation, the annual amortized amounts thereof may be added to the Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution consistent with the allocation and schedule of costs for that project previously identified in the project proposal.

(viii) *No Adjustment for Inflation.* For the avoidance of doubt, any increase to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution on account of a Government-Mandated Capital Project or any Government-Mandated Operating Expenses is not subject to, and does not affect, any adjustment of the Total Annual Contribution for inflation. Further for

the avoidance of doubt, any such increase to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution shall not be adjusted to reflect inflation or any other increase in costs except as indicated in the project proposal submitted to the Signatory Airlines.

(ix) *Amortization of Costs.*

(A) With respect to Government-Mandated Capital Projects, except as may be otherwise approved by an Airfield MII (with respect to a project attributable to the Airfield Area) or a Terminal MII (with respect to a project attributable to the Terminal), the Government-Mandated Capital Project costs to be added to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution must be amortized over the useful life of such projects, beginning the first Term year in which such project is first available for use. In any given Term Year, the amount included in such portion of the Total Annual Contribution shall equal the amortized amount for that Term Year plus financing costs on the unamortized portion of the project calculated on a straight line basis at a rate equal to the announced rate for the Bank of America Merrill Lynch U.S. Corporate Master Index (Ticker: COA0) in effect at a date reasonably designated by the Lessee.

(B) With respect to Government-Mandated Operating Expenses, the Government-Mandated Operating Expenses to be added to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution and/or Total Local Terminal Contribution each Term Year must reflect the actual Government-Mandated Operating Expenses incurred each Term Year.

(x) *Work by the Airlines.* Notwithstanding the foregoing, the Airlines acting by a determination of an Airline MII, after reviewing the proposal of the Lessee provided in accordance with Section 6.3(d)(ii), may elect, upon prior notice to the Lessee and the Authority within 90 days after the Lessee has submitted the proposal to the Airlines to undertake and complete a Government-Mandated Capital Project at their own cost and expense, in which case the Airlines participating in such Airline MII shall be jointly and severally responsible for completion of such project, in full compliance with all requirements applicable to the Lessee or the project under applicable Law, this Agreement (including the Operating Standards), the Lease Agreement or other commitments or obligations of the Lessee, and the cost for such project (except for any cost borne by the Lessee) shall not be added to the Total Landing Contribution, Total Domestic Terminal Contribution, Total International Terminal Contribution or Total Local Terminal Contribution.

(e) *Airline Projects.* The following provisions shall apply to the Airline Projects.

(i) *Consultation and Agreements prior to Closing.* Prior to the Closing, the Signatory Airlines and the Lessee shall meet to discuss and reach agreement through a Pre-Closing MII on the (A) acceptable third-party consultants (or with approval of a Pre-Closing MII, the Lessee or its affiliate or designee) to conduct the Airline Project Studies, (B) scope and methodology of such studies, including developing the cost estimates for the Airline Projects, (C) timeframe for completion and delivery of the results of the studies to the Signatory Airlines

and the Lessee, which in no event shall be later than six months after the Closing and (D) key terms and conditions of the contracts with the consultants for the studies. The Lessee shall bear all the costs of (x) Concourse B Jet Bridge Replacement Study which is required to be undertaken as part of the General Accelerated Updates required under the Lease Agreement and (y) the In-Line Baggage System Study up to a maximum of \$500,000.

(ii) *Incorporation of the Airline Project Studies into the Transition Plan.* The Transition Plan submitted by the Lessee to the Authority and the Signatory Airlines in accordance with Section 2.6 shall incorporate the agreements reached between the Signatory Airlines and the Lessee regarding the Airline Project Studies in accordance with Section 6.3(e)(i).

(iii) *Submission of Airlines Projects for Terminal MII; Proposed Funding.* No later than 60 days after the receipt of each Airline Project Study, the Lessee shall submit to the Signatory Airlines in accordance with Section 6.3(c) a Capital Project in good faith based upon the respective Airline Project Study, provided that if the Lessee shall fail to make such proposal, any Signatory Airline may propose such Capital Projects for a Terminal MII. With respect to the In-Line Baggage System Project, the Terminal MII approval may be conditioned on the receipt of a certain level of TSA funding for that Project, and, in any event, the Lessee shall submit in good faith an application for TSA funding to the maximum extent available. With respect to the Concourse B Jet Bridge Replacement Project, and if TSA funding is unavailable or insufficient to cover the estimated costs of the In-Line Baggage System Project, the Lessee shall propose to the Signatory Airlines a funding plan consisting of the maximum available funding from PFCs, grants, and other funding sources for the Airline Projects consisting of grant funds received from Governmental Authorities plus, if such funding sources are insufficient to cover the costs of applicable Airline Project, a proposed increase to the Total Annual Contribution. Any application for TSA funding, PFCs, grants, and other funding for the Airline Projects shall have priority over any application for such funding sources for any Capital Project other than a Government-Mandated Capital Project.

(iv) *Airline Projects Implementation and Funding.* As soon as commercially practicable after the approval by a Terminal MII of an Airline Project, if any, the Lessee shall diligently carry out and complete such Airline Project in accordance with the terms of such approval.

(f) *Lessee Capital Projects.* If a Capital Project is not approved by the Airlines in accordance with Section 6.3(c) and is not a Government-Mandated Capital Project, the Lessee may undertake the project at its own expense, and those costs shall not be added to the Total Annual Contribution (or any part thereof).

(g) *Lessee Financing Obligations.* The Lessee shall be responsible for all Capital Project financing (except with respect to Capital Projects undertaken by the Airlines pursuant to Section 6.3(d)(x)) and shall have no right to impose any additional obligation for financing on the Signatory Airlines except by adding the costs to the applicable parts of the Total Annual Contribution in accordance with the (i) approval of the Airfield MII obtained in accordance with Section 6.3(c)(iii), (ii) approval of the Terminal MII obtained in accordance with Section 6.3(c)(iv) or Section 6.3(e) or (iii) Government-Mandated Capital Project proposal submitted to

the Signatory Airlines in accordance with Section 6.3(d). The Lessee shall seek the most attractive financing terms reasonably practicable under the circumstances for any such Capital Project financing.

(h) *Major Capital Project Contract or Eligible Security, Safety or Environmental Requirement Contract.* The Lessee shall not enter into any contract except on the basis of arm's length arrangements for (i) work related to a Capital Project in excess of \$5,000,000, or a series of such contracts with a single contractor that in aggregate in one Term Year are in excess of \$5,000,000, (a "**Major Capital Project Contract**") or (ii) non-Capital Project work related to an Eligible Security, Safety or Environmental Requirement in excess of \$500,000 or a series of such contracts with a single contractor that in aggregate in one Term Year are in excess of \$500,000 (an "**Eligible Security, Safety or Environmental Requirement Contract**"). For the avoidance of doubt, the foregoing includes contracts with a Lessee Affiliate (which, for the purpose of this Section 6.3(h) only, means such term as defined in the Lease Agreement) or Lessee-Related Parties or whereby the Lessee might pay more than the ordinary price for any good or service. The Lessee shall ensure that all contractors with which it enters into a Major Capital Project Contract or an Eligible Security, Safety or Environmental Requirement Contract have the requisite expertise, qualifications, experience, competence, skills and know-how and financial capability to carry out the contract. Each Major Capital Project Contract or Eligible Security, Safety or Environmental Requirement Contract shall permit the Airlines, by approval of an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII), to cure any default by the Lessee thereunder. The Lessee shall select a contractor with which to enter into a Major Capital Project Contract or an Eligible Security, Safety or Environmental Requirement Contract, as the case may be, through a competitive process and shall provide the Signatory Airlines with reasonably satisfactory documentation of such competitive process prior to entering into the Major Capital Project Contract or Eligible Security, Safety or Environmental Requirement Contract, as the case may be.

(i) *No Allocation of Costs for Non-Airline Space.* For the avoidance of doubt, the Lessee shall bear all costs related to the portion of any Capital Project in connection with space that is leased to non-Airline tenants or that is occupied by the Authority or the Lessee, and no allocation of such costs shall be made to the Airlines.

## ARTICLE 7.

### INDEMNIFICATION AND INSURANCE

#### Section 7.1. Indemnification.

(a) [AIRLINE] shall indemnify, save, hold harmless, and defend the Authority, the Lessee, each of their respective officials, agents and employees, and each of their respective successors and assigns, individually and collectively, from and against any claim, action, loss, damage, injury, liability, and cost and expense of whatsoever kind or nature (including reasonable attorney fees, disbursements, court costs, and expert fees) due to or caused by injury to persons, including death, or damage to property to the extent arising from [AIRLINE]'s or any [AIRLINE]'s contractor's, while such contractor is performing work on behalf of [AIRLINE], use and occupancy of or work at the Airport and actions undertaken pursuant to this Agreement,

except to the extent such injury or damage is due to or caused by the negligence or willful misconduct of the Authority, the Lessee, a third party not contractually related to [AIRLINE], or their respective officers, employees, agents, successors, or assigns, as applicable.

(b) The Lessee shall indemnify, save, hold harmless, and defend the Authority, [AIRLINE], each of their respective officials, agents and employees, and each of their respective successors and assigns, individually and collectively, from and against any claim, action, loss, damage, injury, liability and cost and expense of whatsoever kind or nature (including reasonable attorney fees, disbursements, court costs and expert fees) due to or caused by injury to persons, including death, or damage to property to the extent arising from the Lessee's use, occupancy and operation of the Airport, except to the extent that such injury or damage is caused by the negligence or willful misconduct of the Authority, [AIRLINE], a third party not contractually related to the Lessee, or their respective officers, employees, agents, successors, or assigns, as applicable.

(c) To the extent that any claim, action, loss, damage, injury, liability, and cost and expense of whatsoever kind or nature (including reasonable attorneys' fees, disbursements, court costs, and expert fees) pursuant to this Section 7.1 arose during the term of this Agreement, the provisions of this Section 7.1 shall survive the expiration, termination or early cancellation of this Agreement for a period of five years following the date of such expiration, termination or early cancellation of this Agreement.

(d) Any final judgment, after any applicable appeal process, rendered against any Party by a court of competent jurisdiction for any cause for which the other party is liable hereunder shall be conclusive against such party as to liability and amount upon the expiration of the time for appeal therefrom.

## **Section 7.2. Insurance.**

(a) Without limiting [AIRLINE]'s obligation to indemnify the Lessee as provided for in Section 7.1, [AIRLINE] shall procure and maintain, or cause to be procured and maintained, in force at all times during the Term of this Agreement a customary policy or policies of insurance insuring [AIRLINE] against the liabilities outlined below, subject to policy terms and conditions, for injuries to persons (including wrongful death) and damages to property caused by [AIRLINE]'s or any of [AIRLINE]'s Affiliates' use and occupancy of the Airport or otherwise caused by [AIRLINE]'s or any of [AIRLINE]'s Affiliates' activities and operations on the Airport, the policy limits thereof to be in the minimum as set forth herein.

(i) *Comprehensive Airline Liability Insurance.* [AIRLINE] shall maintain comprehensive airline liability insurance.

(A) The comprehensive airline liability insurance and, if necessary, commercial umbrella insurance shall be at a limit of not less than (1) \$50,000,000 for each occurrence and in the aggregate, with respect to a Signatory Airline that at the Airport only operates aircraft with a passenger capacity not in excess of 20 persons, or (2) \$300,000,000 for each occurrence and in the aggregate, with respect to all other Signatory Airlines.

(B) The comprehensive airline liability insurance shall include, with aggregates where applicable, coverage for Commercial/Comprehensive General Liability, Bodily Injury and Property Damage to Third Parties, Passenger Liability (applicable only to Passenger Carriers), Personal Injury and Advertising Injury Liability (sublimited to \$25,000,000), Contractual Liability, Passengers' Checked and Unchecked Baggage Liability (applicable only to Passenger Carriers), Premises, Operations, Independent Contractors, Products-Completed Operations Liabilities and Cargo Legal Liabilities.

(C) The comprehensive airline liability insurance shall include coverage for mobile or other ground vehicle equipment operated on those parts of the Airport that are not accessible to the public and are designated as restricted areas with a limit of not less than \$10,000,000 for each occurrence. Mobile or other ground vehicle equipment shall include, baggage tugs, aircraft pushback tugs, provisioning trucks, air stair truck and belt loaders.

(D) The comprehensive airline liability insurance shall apply as primary insurance with respect to any other insurance afforded to the Lessee. There shall be no endorsement or modification of the policy to make it excess over other available insurance. If the policy states that it is excess or *pro rata*, the policy shall be endorsed to be primary with respect to the Lessee as an additional insured.

(ii) *Aircraft Liability Insurance.* [AIRLINE] shall maintain aircraft liability insurance with a limit of not less than (A) \$50,000,000, with respect to a Signatory Airline that at the Airport only operates aircraft with a passenger capacity not in excess of 20 persons, or (B) \$300,000,000, with respect to all other Signatory Airlines, in any case with aggregates where applicable, for bodily injury or death, personal injury, and property damage for all owned, operated, maintained, non-owned, leased, or hired aircraft, including passenger coverage for any Passenger Carrier. The aircraft liability insurance may be included in the comprehensive airline liability insurance policy.

(iii) *Commercial Automobile Liability Insurance.*

(A) [AIRLINE] shall maintain automobile liability insurance with a limit of not less than \$5,000,000 for each accident for vehicles operated in restricted areas at the Airport.

(B) [AIRLINE] shall maintain automobile liability insurance with a limit of not less than \$1,000,000 for each accident for vehicles operated in areas at the Airport other than restricted areas.

(C) Such insurance shall cover liability arising out of any automobile owned or operated by [AIRLINE], [AIRLINE]'s Affiliates or their respective employees during the course of their employment.

(iv) *Workers' Compensation, Unemployment and Disability Insurance.* [AIRLINE] shall maintain workers' compensation insurance. Coverage shall be at statutory limits as required by the Laws of the Commonwealth. [AIRLINE] shall also maintain proof of unemployment and disability insurance as required by the Laws of the Commonwealth.

(v) *Commercial Property Insurance.* [AIRLINE] shall maintain all-risk property insurance covering the full value and full replacement cost of [AIRLINE]'s property and any improvements and betterments.

(b) The aforesaid amounts and types of insurance shall be reviewed from time to time by the Lessee and may be adjusted by the Lessee if the Lessee reasonably determines such adjustments are necessary to protect the Lessee's interests, but in no event shall the Lessee require insurance with greater coverage than is required for Comparable Public Airports. The Lessee shall not make any adjustments without prior notice to and consultation with the Signatory Airlines. [AIRLINE] will have 90 days to comply with any such adjustments after receiving a second notice from the Lessee specifying the amount of the adjustment. If [AIRLINE] is unable or does not desire to comply with any such adjustments, then this Agreement may be terminated by [AIRLINE] no later than 90 days after receiving such second notice from the Lessee. [AIRLINE] shall furnish the Lessee, prior to the commencement of the Term hereof, with a certificate or certificates of insurance as evidence that the required insurance is in force. The Lessee shall be named as an additional insured on each such liability insurance policy or policies to the extent of [AIRLINE]'s obligations assumed under this Section 7.2, subject to policy terms, conditions, limitations, warranties and exclusions. Said policies shall be issued by insurance companies of nationally recognized financial responsibility with a Best's Guide rating of no less than A-(VII), by a captive insurance company of [AIRLINE], or by insurance companies of internationally recognized and favorable reputation in the aviation marketplace. Said policies shall be in a form and content reasonably satisfactory to the Lessee and shall provide for 30 days (10 days cancellation in the event of non-payment of premium) advance notice to the Lessee prior to the cancellation of or any adverse material change affecting the additional insureds in such policies. [AIRLINE]'s failure to provide or maintain the required insurance coverages as set forth herein shall be grounds for immediate termination of this Agreement, at the Lessee's option.

(c) *No Representation of Coverage Adequacy.* By requiring insurance herein, the Lessee does not represent that coverage and limits will necessarily be adequate to protect the Airline or any of [AIRLINE]'s Affiliates, and such coverage and limits shall not be deemed as a limitation on [AIRLINE]'s liability under the indemnities granted to the Lessee in this Agreement.

(d) *Commercial Umbrella Liability Insurance.* As indicated above, [AIRLINE] may use commercial umbrella liability insurance so that [AIRLINE] has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Agreement, provided that the coverages provided under the umbrella policy meet the requirements for the primary policies as set forth in this Agreement.

(e) *Incidents.* In addition to any applicable requirements contained in the Operating Standards or imposed by applicable Law, [AIRLINE] shall, within a reasonable time after [AIRLINE] has received legal notice of the accident or event, notify the Lessee of any accident or event which occurs at the Airport as a result of or in connection with [AIRLINE]'s performance of this Agreement, which results in or might reasonably be expected to have resulted in bodily injury, personal injury or property damage. Additionally, [AIRLINE] shall send a written report of such accident or event to the Lessee within 24 hours or as soon as



possible, but no more than four business days after the Lessee requests [AIRLINE] to provide additional information about such accident or event. Initial notification of such accidents and events and written reports shall be sent to such person as designated by the Lessee by notice to [AIRLINE]. In the event that the Lessee causes such an accident or event at the Airport that impacts [AIRLINE] or any of [AIRLINE]'s Affiliates and results in a claim, the Lessee shall, not more than five days after the Lessee has notice of the accident or event, notify the Airline in writing, and provide a written report of such accident or event.

**Section 7.3. Waiver of Subrogation.** The Lessee and [AIRLINE] hereby mutually waive any and all rights of recovery against the other party arising out of damage or destruction of the buildings, Airport, or any other property from causes included under any property insurance policies to the extent such damage or destruction is covered by the proceeds of such policies and whether or not such damage or destruction shall have been caused by the parties, their officers, employees or agents, but only to the extent that the insurance policies then in force permit such waiver. All policies of property insurance shall contain, to the extent available, this waiver of subrogation provision and the cost of such provision shall be borne by the primary insured.

## ARTICLE 8.

### AIRLINE RIGHTS WITH RESPECT TO THE LEASE AGREEMENT

#### Section 8.1. Lessee Capitalization and Financing.

(a) *Special Purpose Entity.* The Lessee is and shall remain a special purpose entity that has no operations or assets other than in connection with the Airport in accordance with the Lease Agreement.

(b) *Capitalization.* As of the Closing, the Lessee shall have a capitalization that includes equity that is equal to at least 20% of the total upfront payments by the Lessee to the Authority under the Lease Agreement.

(c) *Leasehold Mortgagee.* Any Leasehold Mortgagee must be an Institutional Lender; the rights of such Leasehold Mortgagee under any Leasehold Mortgage and the Lease Agreement shall be subject to the rights of the Signatory Airlines under this Agreement; and any Leasehold Mortgage shall be in compliance with the requirements of Section 18.1 of the Lease Agreement. It is understood and agreed that the Use Agreement shall survive any enforcement of the Leasehold Mortgage including foreclosure and that in the event of any conflict between the terms and conditions of the Use Agreement and those of the Leasehold Mortgage, the terms and conditions of the Use Agreement shall prevail. The Leasehold Mortgage shall contain language to that effect and provide that [AIRLINE] is a third party beneficiary of the Leasehold Mortgage. The Authority shall deliver to the Signatory Airlines a copy of the form of the security documentation for any Leasehold Mortgage received by the Lessee in accordance with Section 18.1(a) of the Lease Agreement and shall consult with the Signatory Airlines in determining whether the Leasehold Mortgage is in compliance with the Lease Agreement. While the Leasehold Mortgage is outstanding, the Lessee shall not agree to any amendment or modification of the Leasehold Mortgage that would affect the priority of the rights of the Signatory Airlines as described above without approval by an Airline MII.

(d) *Cash Reserve.* In accordance with the Lease Agreement, the Lessee shall maintain the reserves set forth in Section 3.8 of the Lease Agreement. The Lessee shall deliver to the Authority and [AIRLINE], on the first business day of each quarter of each Term Year, and as otherwise requested from time to time by the Authority or [AIRLINE], an Officer's Certificate in which the Lessee represents and warrants that it is compliance with the requirements contemplated by Section 3.8 of the Lease Agreement.

## **Section 8.2. Transfers by Lessee and Changes in Control.**

(a) *Transfers by the Lessee.* Except as provided in Section 8.2(d), the Lessee shall not Transfer, or otherwise permit a Transfer of, its interests in the Airport created by the Lease Agreement or its rights, benefits and obligations under the Lease Agreement to or in favor of any Person unless (in addition to having satisfied all criteria required by the Lease Agreement) such proposed transferee has been approved by Airlines constituting an Airline MII.

(b) *Changes in Control.* Except as provided in Section 8.2(d), direct or indirect ownership interests in the Lessee may not be Transferred if such Transfer would result in a Change in Control of the Lessee unless (in addition to having satisfied all criteria required by the Lease Agreement) such proposed Transfer has been approved by Airlines constituting an Airline MII.

(c) *Standard for Withholding Approval.* The approval by the Airline MII under this Section 8.2 may be withheld only if the Signatory Airlines acting by an Airline MII reasonably determine that the proposed transfer would be detrimental to the Signatory Airlines' Air Transportation Business at the Airport taking into account one or more of the following factors: (i) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates (for the purposes of this Section 8.2(c) only, as such term is defined in the Lease Agreement); (ii) the experience of the proposed transferee or any proposed managers or operating partners to be engaged by the proposed transferee in operating airports and performing other projects; and (iii) the background and reputation of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects).

(d) *Permitted Transfers.* This Section 8.2 does not apply to Transfers to a Leasehold Mortgagee or to a designee or nominee permitted in accordance with Article 18 of the Lease Agreement or to Changes in Control occasioned by the exercise by any Leasehold Mortgagee of its remedies under any pledge of shares, limited liability company interests or partnership interests.

**Section 8.3. Insurance Requirements.** The Lessee shall maintain, or cause to be maintained, the insurance coverages required by Article 13 of the Lease Agreement. Such coverages required to be maintained by the Lessee may not be lessened (relative to the coverages required to be maintained as of the date of Closing) without approval of an Airline MII or except as provided in Section 13.2(o) of the Lease Agreement. With respect to commercial general

liability insurance and automobile liability insurance, the Signatory Airlines shall be named as additional insureds for claims arising out of the operations of the Lessee. The Lessee shall concurrently provide the Signatory Airlines with a copy of any certificate of insurance provided to the Authority in accordance with Section 13.2(a) of the Lease Agreement.

#### **Section 8.4. Damage and Destruction; Completion of Work.**

(a) *Damage and Destruction.*

(i) *Application of Insurance Proceeds.* If the Airport or any portion thereof shall be damaged or destroyed, all insurance proceeds from insurance policies required to be maintained by the Lessee pursuant to the Lease Agreement for damage and destruction of the Airport shall be applied as provided by the Lease Agreement.

(ii) *Restoration by the Airlines.* If the Authority fails or chooses not to commence or complete any Restoration required to be undertaken by the Lessee, which the Authority would be entitled to undertake by exercising its rights under Section 13.3(b) of the Lease Agreement, the Airlines, upon approval by an Airline MII, may, but shall not be required to, enter the relevant Airport facilities and each and every part thereof as necessary, at any reasonable time and upon reasonable prior notice to the Lessee, and complete such Restoration at the Lessee's expense and shall be entitled to be paid for out of the Restoration Funds for the relevant Restoration costs incurred by such Airlines.

(b) *Completion of Work at the Airport.* If the Authority fails or chooses not to commence or complete any activity required to be undertaken by the Lessee, which the Authority would be entitled to undertake by exercising its rights under Section 3.7(a) of the Lease Agreement, the Airlines, upon approval by an Airline MII, may, but shall not be required to, enter the relevant Airport facilities and each and every part thereof at all reasonable times and upon reasonable prior notice to the Lessee (except in the circumstances set forth in Section 3.7(a)(iii) or (iv) of the Lease Agreement) to conduct such activities; *provided* that the Airlines acting hereunder shall give five days' notice to the Authority, except in cases of emergencies or actions resulting or threatening to result in materially increase cost or disruption of service, in which case no notice is required; and *provided further* that any entry made by Airlines hereunder shall be subject to the same restrictions that apply to the Authority under Section 3.7 of the Lease Agreement.

(c) *Effect of Reservation.* Any reservation of a right by the [AIRLINE] and any of its representatives to enter the Airport facilities and to make or perform any repairs, alterations, Restoration or other work in, to or about the Airport facilities that is the Lessee's obligation pursuant to the Lease Agreement, shall not be deemed to impose any obligation on [AIRLINE] to do so or render [AIRLINE] liable to the Lessee or any other Person for the failure to do so. Nothing in this Agreement shall impose any duty upon the part of [AIRLINE] to do any work required to be performed by the Lessee hereunder and performance of any such work by [AIRLINE] and any of its Representatives shall not constitute a waiver of the Lessee's default in failing to perform the same.

(d) *Agreements by the Lessee.* No agreement or contract of any kind between the Lessee and any other Person shall affect the right of the Authority and of [AIRLINE] to exercise any remedies provided under this Agreement, including any right of access to the Airport facilities in accordance with this Section 8.4.

**Section 8.5. Compliance Monitoring; Notice of Default.**

(a) The Authority shall monitor compliance by the Lessee of the Lessee's obligations under the Lease Agreement. In the event that there is a breach or potential breach of the Lease Agreement that could be reasonably anticipated to have anticipated to have a material adverse effect on the ability of the Lessee to comply with the Lessee's obligation to this Agreement, after consulting with the Lessee and providing the Lessee an opportunity to dispute or cure such breach or potential breach in accordance with the Lease Agreement, the Authority shall promptly notify the Signatory Airlines of such breach or potential breach and consult with the Signatory Airlines, acting reasonably, regarding potential courses of action by the Authority to enforce its rights under this Agreement and the Lease Agreement.

(b) The Authority shall promptly give notice to the Lessee and [AIRLINE] (i) if an Authority Default (as defined under the Lease Agreement) occurs under the Lease Agreement and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation pertaining to the Airport facilities or operations (whether or not such claim, proceeding, dispute or litigation is covered by insurance) of which the Authority is aware; and the Authority shall provide the Lessee and [AIRLINE] with all reasonable information requested by them from time to time concerning the status of such claims, proceedings, disputes or litigation.

(c) The Lessee shall promptly give notice to the Authority and [AIRLINE] (i) if a Lessee Default (as defined under the Lease Agreement) occurs under the Lease Agreement and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation pertaining to the Airport facilities or operations (whether or not such claim, proceeding, dispute or litigation is covered by insurance) of which the Lessee is aware; and the Lessee shall provide the Authority and [AIRLINE] with all reasonable information requested by them from time to time concerning the status of such claims, proceedings, disputes or litigation.

**Section 8.6. Incident and Financial Reports.** The Lessee shall concurrently provide the Signatory Airlines with a copy of any notice or report provided to the Authority in accordance with Section 8.1(a) and (c) of the Lease Agreement, subject to any restrictions imposed by Law or stock exchange regulation.

**Section 8.7. Security Deposit.** In the event that the Lease Agreement becomes effective and is subsequently terminated, any security deposits from the Lessee required to be maintained under the Lease Agreement that are properly retained by the Authority upon such termination in accordance with the Lease Agreement will be used exclusively to cover ongoing costs of operations of the Airport incurred by the Authority or any other future operator of the Airport.

**Section 8.8. Modifications under the Lease Agreement.** A Modification agreed to by the Authority and the Lessee pursuant to Section 5.1 of the Lease Agreement, or a Modification required by the Authority to be implemented pursuant to Section 5.2 of the Lease Agreement,

that is reasonably likely to materially diminish or impair the rights of the Signatory Airlines under this Agreement or materially interfere with the Air Transportation Business of the Signatory Airlines at the Airport may not be effectuated without approval by an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII). Notwithstanding the foregoing, no approval by an Airline MII shall be necessary for any Modification that is reasonably necessary to ensure the safety or security of the Airline and its users.

#### **Section 8.9. Modifications to the Operating Standards.**

(a) *Modifications Requiring Airline Approval.* A modification by the Authority to the Operating Standards in accordance with Section 6.2 of the Lease Agreement that is reasonably likely to materially diminish or impair the rights of the Airlines under this Agreement or materially interfere with the Air Transportation Business of the Airlines at the Airport may not be effectuated without approval by an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII). Approval by an Airline MII may be withheld, delayed or conditioned only if there is a reasonable basis to determine that such modification is not reasonably designed to achieve the objectives of the applicable Operating Standards. The Authority shall provide notice to the Signatory Airlines of any modification to the Operating Standards for which approval by an Airline MII is required hereunder.

(b) *Alternative Proposals by the Airlines.* With respect to any modification to the Operating Standards to comply with any new Law or to conform to standards or practices generally adopted at Comparable Public Airports in accordance with Section 6.2 of the Lease Agreement that is not subject to approval by an Airline MII in accordance with Section 8.9(a), the Authority shall give notice of the proposed modification to the Operating Standards to the Signatory Airlines at least five business days in advance of requiring compliance therewith. The Signatory Airlines may propose an alternative modification to the Operating Standards to comply with such new Law or to conform to standards or practices generally adopted at Comparable Public Airports, as the case may be. The Authority and the Lessee shall consider in good faith such proposal and whether to modify the Authority's proposed modification to the Operating Standards accordingly.

(c) *Proposals Initiated by the Airlines.* If the Signatory Airlines believe that a modification to the Operating Standards is necessary to comply with any new Law applicable to the Airport or wish to modify the Operating Standards to conform to standards or practices generally adopted at Comparable Public Airports, and neither the Authority nor the Lessee has proposed a modification to the Operating Standards to so comply or conform, as the case may be, the Signatory Airlines acting by determination of an Airline MII may propose a modification to the Operating Standards to comply with such new Law or to conform to such standards or practices. The Authority and the Lessee shall consider in good faith such proposal and whether to modify the Operating Standards accordingly. Promptly upon receipt of such proposal, the Lessee and the Authority shall engage the Airlines participating in the Airline MII to determine in good faith whether implementation of the proposed modification is necessary to satisfy the requirements set forth above. If the Lessee or the Authority does not agree that the proposed modification is necessary to satisfy the requirements set forth above, the Lessee or the Authority, as the case may be, shall provide prompt notice of such disagreement to such Airlines, and

thereafter the Parties shall work together in good faith to resolve such disagreement, including by discussing alternative modifications to the Operating Standards and examining the standards or practices generally adopted at Comparable Public Airports. If such disagreement is unable to be resolved, it may be submitted for resolution in accordance with Article 11.

**Section 8.10. Lessee Work Plan.** A work plan submitted by the Lessee to the Authority in accordance with Section 16.1(b)(iii) of the Lease Agreement in order to a cure a default by the Lessee under the Lease Agreement, if such work plan is reasonably likely to materially diminish or impair the rights of the Signatory Airlines under this Agreement or materially interfere with the Air Transportation Business of the Signatory Airlines at the Airport, may not be approved by the Authority without approval by an Airline MII (each Signatory Airline determining in its discretion whether to participate in such Airline MII). The Authority shall provide notice to the Signatory Airlines of any Lessee work plan for which approval by an Airline MII is required hereunder.

**Section 8.11. Amendments to the Lease Agreement.** An amendment to the Lease Agreement that is reasonably likely to affect the rights of the Airlines under this Agreement, including this Article 8, may not be effectuated without approval by an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII). The Authority shall provide notice to the Signatory Airlines of any proposed amendment to the Lease Agreement for which approval by an Airline MII is required hereunder. The Authority also shall provide notice to the Signatory Airlines of any amendment to the Lease Agreement that does not, in the opinion of the Authority, require approval by an Airline MII, at least five business days prior to entering into such amendment, and the Airlines acting by determination of an Airline MII may refer the matter for resolution in accordance with Article 11 if they believe approval by an Airline MII is required. If within such five-day period the matter is referred to resolution in accordance with the foregoing, the Lessee and the Authority shall not effectuate such amendment until the matter is resolved and any amendment in contravention of this sentence shall be considered null and void *ab initio*.

**Section 8.12. General Provisions Concerning Airline Approvals.**

(a) *Airline Competition.* It is understood that the Airline approval rights under this Article 8 are not intended to protect the competitive interests of particular Airlines in relation to other Airlines or any new Airlines, and that the promotion of competition among Airlines at the Airport, including the accommodation of new Airlines, in and of itself will not be deemed to impair the rights of the Airlines hereunder or have a material adverse effect upon the Airport Transportation Business of the Airlines at the Airport.

(b) *Support for Airline Position.* The Authority or the Lessee may request any supporting information from the Signatory Airlines available to the Signatory Airlines as may be reasonably required to review any claim that a Modification, modification to the Operating Standards, Lessee work plan or proposed amendment to the Lease Agreement for which approval by an Airline MII is required in accordance with this Article 8 is reasonably likely to materially diminish or impair the rights of the Airlines under this Agreement, to materially interfere with the Air Transportation Business of the Airlines at the Airport or to affect the rights of the Airlines, as the case may be.

(c) *No Approvals Required.* Notwithstanding anything in this Article 8 to the contrary, no approval by an Airline MII shall be necessary for any Modification, modification to the Operating Standards, Lessee Work Plan or amendment to the Lease Agreement that is required in order to comply with any applicable Law or airport certification requirement.

(d) *Dispute Resolution.* If a proposed Modification, modification to the Operating Standards, Lessee work plan or amendment to the Lease Agreement for which approval by an Airline MII is required in accordance with this Article 8 is not so approved within 60 days after notice thereof is provided to the Signatory Airlines, the Authority or the Lessee may refer the matter for resolution in accordance with Article 11. The proposed Modification, modification to the Operating Standards, Lessee work plan or amendment to the Lease Agreement, as applicable, shall not be effectuated until approved by an Airline MII or ordered by a final award in accordance with Article 11.

**Section 8.13. Approval of Plan for the Reconfiguration of Terminal Space.** Approval of a Plan for the Reconfiguration of Terminal Space must be obtained in writing (a) from Signatory Airlines that (i) in the aggregate paid a majority of the Total Annual Contribution charged to all Signatory Airlines for the prior Term Year (or if approval is being obtained prior to the completion of the initial Term Year, a majority of the total fees paid by the Signatory Airlines to the Authority during the 12 months prior to the Bid Date as defined in the Lease Agreement) and (ii) constitute a numerical majority of all votes cast by such Signatory Airlines and (b) from any Signatory Airline whose operations would be directly affected by the Plan for the Reconfiguration of Terminal Space. Solely for purposes of determining whether the required approval of a Plan for the Reconfiguration of Terminal Space has been obtained, no Airline shall be deemed to be a Signatory Airline (A) so long as an Airline Default with respect to such Airline has occurred and is continuing and the Lessee has provided notice to all the Signatory Airlines or (B) if a Signatory Airline is no longer operating at the Airport (except if such Signatory Airline's cessation of operations results from a temporary suspension by the FAA). Such approval may be granted by the Airlines in writing at any time from their execution of the Transaction Implementation Agreement through the second anniversary of the Effective Date. The provisions of this Section 8.13 shall be construed as in addition to and not in derogation or limitation of the rights of the Parties under any other provisions of this Agreement.

## ARTICLE 9.

### COMPLIANCE WITH LAW

#### Section 9.1. Observance and Compliance with Laws.

(a) *General.* [AIRLINE] and the Lessee shall, and shall cause their Delegates and licensees to, observe and comply with, and pay all taxes and obtain all licenses, permits, certificates and other authorizations required by all applicable Laws in connection with each respective Party's operations or activities hereunder, including all rules, regulations and directives of the FAA, TSA, any successor agency to the FAA or TSA, or any other Governmental Authority having jurisdiction to the extent such Laws, taxes, licenses, permits, certificates, rules, regulations and directions are applicable to [AIRLINE] or the Lessee.

(b) *Preemption.* Notwithstanding any provision of this Agreement to the contrary, any requirement that is imposed on [AIRLINE] in this Agreement or by any agreement, law, ordinance, rule or regulation shall not apply to [AIRLINE] to the extent that such requirement is or would otherwise be preempted by federal law, including the Airline Deregulation Act (49 U.S.C. § 41713).

**Section 9.2. Compliance with Environmental Laws.** [AIRLINE] and the Lessee shall, in conducting any activity or business on the Airport premises, including environmental response or remedial activities, comply with all applicable Laws in connection with each respective Party's operations or activities hereunder, including applicable Environmental Laws regarding the generation, storage, use, transportation and disposal of Hazardous Materials and regarding Releases or threatened Releases of Hazardous Materials into the environment.

(a) *Review of Environmental Documents.* [AIRLINE], on the one hand, or the Lessee, on the other hand, at the request of the other, shall make available for inspection and copying upon reasonable notice and at reasonable times, any or all of the non-privileged documents and materials the Party has prepared pursuant to any applicable Law or submitted to any Governmental Authority; *provided* that such documents and materials relate to environmental issues or applicable Environmental Laws and are pertinent to the Airport. If any applicable Environmental Law requires [AIRLINE] to file any notice or report of a Release or threatened Release of Hazardous Materials on, under or about the Airport, [AIRLINE] shall file such notice or report and shall provide a copy of the same to the Lessee. To the extent practicable, [AIRLINE] shall provide a copy to the Lessee prior to submitting such notice or report to the appropriate Governmental Authority.

(b) *Access for Environmental Inspection.* The Lessee shall have access to all Airport facility space, including all Exclusive Use Space, to inspect the same in order to confirm that [AIRLINE] is using such space in accordance with all applicable Environmental Laws. Any such inspection shall be done after reasonable notice to [AIRLINE] and providing for the presence of an authorized representative of [AIRLINE] (except, in each case, if not reasonably possible in the case of an emergency), and in a way that does not materially disrupt or interfere with the operations and occupancy of [AIRLINE] to the extent possible. If there is reasonable cause to believe that [AIRLINE] is not in compliance with an Environmental Law, [AIRLINE], at the request of the Lessee and at [AIRLINE]'s expense (except as provided in the immediately succeeding sentence of this Section 9.2(b)), shall conduct such testing and analysis as is reasonable and necessary to ascertain whether [AIRLINE] is using such space in compliance with the applicable Environmental Law in question. If such testing and analysis confirms that [AIRLINE] is using the space in compliance with all applicable Environmental Laws, all costs of testing and analysis shall be borne by the Lessee. Any such tests shall be conducted by qualified independent experts chosen by [AIRLINE] and subject to the Lessee's approval. Copies of reports from any such testing shall be provided to the Lessee upon receipt by [AIRLINE].

(c) *Environmental Noncompliance.* If [AIRLINE] fails to comply with any applicable Environmental Laws with respect to the Airport, the Lessee, consistent with its rights and remedies as otherwise provided for in this Agreement, after providing [AIRLINE] with reasonable notice under the circumstances and reasonable opportunity to correct such noncompliance, may take all reasonable and necessary measures, at [AIRLINE]'s expense, to



correct such noncompliance, except if not reasonably possible in the case of any emergency, with applicable Environmental Laws.

(d) *Duty to Notify Lessee.* In the event of a Release of Hazardous Materials into the environment relating to or arising out of [AIRLINE]'s use or occupancy of the Airport, or in the event of any claim, demand, action or notice made against [AIRLINE] regarding [AIRLINE]'s failure or alleged failure to comply with any applicable Environmental Laws with respect to the Airport, [AIRLINE] immediately shall notify the Lessee and shall provide the Lessee with copies of any written claims, demands, notices, or actions so made.

(e) *Environmental Remediation.* [AIRLINE] shall undertake all necessary steps in accordance with applicable Environmental Laws to remedy and remove any Releases of Hazardous Materials caused by [AIRLINE] at the Airport as are necessary to bring the Airport into compliance with all applicable Environmental Laws when such lack of compliance is caused by [AIRLINE]. Such work shall be performed at [AIRLINE]'s expense (to the extent of [AIRLINE]'s responsibility under the applicable Environmental Laws) after [AIRLINE] submits to the Lessee a written plan for completing such work and receives the prior approval of the Lessee (to the extent practicable and authorized by applicable Law). The Lessee shall have, at the Lessee's expense and using consultants and representatives of its choice, the right to review and inspect all such work. Specific cleanup levels for any environmental remediation work shall be designed to meet all of the applicable Environmental Laws. In the event that the Lessee is named in any enforcement action or lawsuit in connection with the environmental condition of any Airport facility space caused by the action or inaction of [AIRLINE], [AIRLINE] shall defend the Lessee and indemnify and hold harmless the Lessee from any costs, damages or fines resulting therefrom to the extent of [AIRLINE]'s responsibility under the applicable Environmental Laws. Nothing in this Section 9.2 imposes any liability, duty or indemnification obligation on [AIRLINE] for acts or omissions of the Lessee.

(f) *National Emission Standards for Hazardous Air Pollutants.* [AIRLINE] warrants that all work performed by it and on its behalf pursuant to this Agreement shall be performed in accordance with any applicable National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. pt. 61.145.

**Section 9.3. Compliance with FAA Standards.** [AIRLINE] and the Lessee shall comply, and shall cause their contractors to comply, with all applicable Laws, including the following:

(a) *Prohibition Against Exclusive Rights.* Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct an Air Transportation Business as prohibited by 49 U.S.C. §§ 40103 and 47107, and associated grant agreements, and the Lessee reserves the right to grant to others the privileges and right of conducting any or all activities of an aeronautical nature.

(b) *Government Inclusion.* [AIRLINE] and the Lessee covenant and agree that this Agreement shall be subordinated to the provisions of any existing or future agreement or assurances between the Lessee and the United States Government, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the approval to impose or use PFCs for the development of the Airport. Upon request, the Lessee shall

provide copies at no cost to [AIRLINE] of any documentation related to the imposition or use of PFCs. [AIRLINE] further agrees that it shall not cause the Lessee to violate any assurances made by the Lessee to the federal government in connection with the granting of such federal funds or approvals.

(c) *Non-Discrimination and Affirmative Action.* This Agreement involves the use of or access to space on, over or under real property acquired or improved under the Airport Development Aid Program of the FAA, and therefore involves activity that serves the public. [AIRLINE] and the Lessee, for themselves, their personal representatives, successors in interest and assigns, as part of the consideration hereof, do hereby covenant and agree, as a covenant running with the land, that (i) each shall abide by the non-discrimination and affirmative action provisions set forth on Schedule R to this Agreement; and (ii) that [AIRLINE] and the Lessee shall use the premises in compliance with all other applicable requirements imposed by or pursuant to regulations of the United States Department of Transportation.

(d) *Non-Discrimination in Furnishing Services.* [AIRLINE] agrees to furnish services in the United States in compliance with applicable federal law and on a fair and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; *provided that* [AIRLINE] may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions.

(e) No Party hereby waives any right to file a complaint with the United States Department of Transportation with respect to matters not covered by this Agreement or the Lease Agreement.

**Section 9.4. Non-Contravention.** The Lessee and [AIRLINE] acknowledge and agree that nothing contemplated in this Agreement obligates the Lessee or [AIRLINE] to take any action that would cause the Lessee to violate any Law, lose its Airport Operating Certificate or violate the Airport Security Program.

**Section 9.5. Local Goods and Services.** With respect to any work performed by [AIRLINE] at the Airport related to permanent improvements or repairs, as required by Article 10 of Act No. 14 of the Legislative Assembly of Puerto Rico, enacted on January 8, 2004, 3 P.R. Laws Ann. § 930 *et seq.*, [AIRLINE] shall use, to the extent available and applicable to the services provided hereunder, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth.

**Section 9.6. Filing with the Office of the Comptroller of Puerto Rico.** Pursuant to Act Number 18 of October 30, 1975, as amended by Law No. 127 of May 31, 2004, the Authority advises [AIRLINE] that until a copy of this Agreement is remitted to the Office of the Comptroller, no party may demand any contractual obligation from another party.

**Section 9.7. Code of Ethics.** [AIRLINE] agrees to comply with the “Code of Ethics for Contractors, Suppliers of Goods and Services and Applicants for Economic Incentives of the Executives Agencies of the Commonwealth of Puerto Rico”, Act No. 84 of the Legislative Assembly of Puerto Rico, enacted on June 18, 2002, as amended.

## ARTICLE 10.

### DEFAULT AND TERMINATION

**Section 10.1. Default by Airline.** The occurrence of any one or more of the following events during the Term constitutes an “**Airline Default**” by [AIRLINE] under this Agreement:

(a) Except as described in Section 10.1(b) through (k), if [AIRLINE] fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement or the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 11, and such failure continues unremedied for a period of 45 days following initial notice thereof (giving particulars of the failure in reasonable detail) from the Lessee to [AIRLINE]; *provided* that such failure shall not constitute an Airline Default if [AIRLINE], within 45 days following such initial notice, has demonstrated to the satisfaction of the Lessee, acting reasonably, that (A) it is proceeding and will proceed with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Lessee, acting reasonably and (C) such failure is in fact cured within such period of time;

(b) If [AIRLINE] fails to pay any of [AIRLINE]’s Annual Contribution or to satisfy any other monetary obligations to the Lessee when due, including the obligation to timely remit PFCs to the Lessee when due or requirements or directives of a final monetary award in a matter submitted to dispute resolution in accordance with Article 11, and such failure continues unremedied for a period of 20 business days following initial notice thereof from the Lessee to [AIRLINE];

(c) If [AIRLINE] fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement or the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 11, which failure creates a material danger to the safety of Airport operations or a material impairment to the Airport or to the continuing use of the Airport as a commercial service airport, and, in either case, such Airline Default remains unremedied for a period of 10 business days following initial notice thereof from the Lessee;

(d) If [AIRLINE] fails to comply in any material respect with a work plan approved by the Lessee in accordance with Section 10.2(b);

(e) If [AIRLINE] (i) admits, in writing, that it is unable to pay its debts as such become due, (ii) makes an assignment for the benefit of creditors, (iii) files a voluntary petition under the Federal Bankruptcy Code, or if [AIRLINE] files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of [AIRLINE], or of all or any substantial part of its properties or of the Airport or any interest therein, or (iv) takes any corporate action in furtherance of any action described in this Section 10.1(e);

(f) If (i) any proceeding against [AIRLINE] seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable Law is commenced and is not dismissed within 60 days after its commencement without the consent or acquiescence of [AIRLINE], or if any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of [AIRLINE] is appointed over all or any substantial part of its properties or over the Airport or any interest therein, and such appointment is not vacated or stayed on appeal or otherwise within 60 days or (ii) if, in any such proceeding, (A) such proceeding is converted to a case under Chapter 7 of the Federal Bankruptcy Code, including pursuant to section 1112 of the Federal Bankruptcy Code, (B) a trustee or examiner with expanded powers is appointed in such proceeding, (C) there is an admission by [AIRLINE] or a statement by the court or other judicial authority supervising such proceeding that [AIRLINE] is administratively insolvent, (D) [AIRLINE] proposes or supports any plan of reorganization or liquidation in such proceeding that does not call for the performance of all obligations under this Agreement or (E) any order is entered in such proceeding that impairs or limits Lessee's rights under this Agreement;

(g) If a levy under execution or attachment has been made against all or any portion of the Airport or any interest therein as a result of an encumbrance created, incurred, assumed or suffered to exist by [AIRLINE], or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Lessee or its Delegates;

(h) [AIRLINE] shall become a corporation in dissolution, except in connection with its merger into another entity;

(i) [AIRLINE] shall discontinue its Air Transportation Business at the Airport for a period of 30 consecutive days or for a period of 60 nonconsecutive days whenever occurring in the aggregate in any Fiscal Year (or if [AIRLINE] has notified the Lessee that it provides only seasonal service at the Airport, in the season in which [AIRLINE] operates at the Airport) or, after exhausting or abandoning any further appeals, [AIRLINE] shall be prevented for a period of 30 consecutive days by action of any Governmental Authority other than the Lessee from conducting its Air Transportation Business at the Airport;

(j) [AIRLINE] fails to maintain the insurance policies required by Section 7.2; or

(k) [AIRLINE] fails to renew or extend any Security Deposit required under Section 5.8 at least 30 days before the stated expiration of such Security Deposit.

**Section 10.2. Remedies of the Lessee Upon Airline Default.** Upon the occurrence of and during the continuance of an Airline Default, the Lessee may, by notice to [AIRLINE], declare [AIRLINE] to be in default and may do any or all of the following as the Lessee, in its discretion, shall determine:

(a) With respect to an Airline Default described in subsection (b) or (c) of Section 10.1, the Lessee is entitled to terminate this Agreement (without the need for reentry or any other

action on behalf of the Lessee) upon notice to [AIRLINE], which may be given immediately upon the expiration of the 20-business-day period described in Section 10.1(b) or immediately upon the expiration of the 10-business-day period described in Section 10.1(c), as the case may be;

(b) With respect to an Airline Default described in Section 10.1(d), the Lessee is entitled to terminate this Agreement (without the need for reentry or any other action on behalf of the Lessee) by giving 60 days' prior notice to [AIRLINE] (for the avoidance of doubt, the entitlement of [AIRLINE] to cure such Airline Default by the delivery of an approved work plan, as described in Section 10.2(c), shall not apply thereto);

(c) With respect to an Airline Default described in Section 10.1(j), the Lessee is entitled to direct [AIRLINE] to immediately cease all operations at the Airport as soon as the Lessee becomes aware of such Airline Default. Additionally, if [AIRLINE] has not cured such Airline Default within 10 business days of receiving notice thereof by the Lessee, the Lessee is entitled to terminate this Agreement (without the need for reentry or any other action on behalf of the Lessee) upon notice to [AIRLINE], which may be given immediately upon the expiration of such 10-business-day period.

(d) With respect to an Airline Default, other than one described in subsection (b), (c), (d) or (j) of Section 10.1, the Lessee is entitled to terminate this Agreement (without the need for reentry or any other action on behalf of the Lessee) by giving 60 days' prior notice to [AIRLINE]; *provided* that [AIRLINE] shall be entitled to cure a curable non-monetary Airline Default by providing the Lessee with a written work plan within such 60-day period, which work plan is approved by the Lessee, outlining the actions by which [AIRLINE] will ensure future compliance with either the obligation, covenant, agreement, term or condition in this Agreement or the requirements or directives of the issued final award in accordance with Article 11 that [AIRLINE] failed to perform or observe;

(e) With respect to an Airline Default described in Section 10.1(k), the Lessee is entitled to draw in full the outstanding amount of the Security Deposit and hold the proceeds thereof as security for the future payment obligations of [AIRLINE];

(f) If the Airline Default is by reason of the failure to pay any monies, the Lessee is entitled to (without obligation to do so) make payment on behalf of [AIRLINE] of such monies, and any amount so paid by the Lessee shall be payable by [AIRLINE] to the Lessee within three business days after demand therefor;

(g) The Lessee is entitled to cure the Airline Default (but this shall not obligate the Lessee to cure or attempt to cure an Airline Default or, after having commenced to cure or attempted to cure an Airline Default, to continue to do so), and all costs and expenses reasonably incurred by the Lessee in curing or attempting to cure the Airline Default, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by [AIRLINE] to the Lessee within three business days of demand; *provided* that (i) the Lessee shall not incur any liability to [AIRLINE] for any act or omission of the Lessee or any other Person in the course of remedying or attempting to remedy any Airline Default and (ii) the Lessee's cure of any Airline Default shall not affect the Lessee's rights against [AIRLINE] by reason of the Airline Default;

(h) The Lessee is entitled to seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for an Airline Default;

(i) The Lessee is entitled to seek to recover its Losses arising from such Airline Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(j) The Lessee is entitled to, subject to applicable Law, distrain against any of [AIRLINE]'s goods situated at the Airport (other than the Airline's aircraft and any passenger luggage or cargo) and [AIRLINE] waives any statutory protections and exemptions in connection therewith; and

(k) The Lessee is entitled to exercise any of its other rights and remedies provided for hereunder.

**Section 10.3. Defaults by the Lessee.** The occurrence of any one or more of the following events during the Term shall constitute a "**Lessee Default**" under this Agreement:

(a) If the Lessee fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement (including the Operating Standards) or the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 11, and such failure continues unremedied for a period of 30 days following initial notice thereof (giving particulars of the failure in reasonable detail) from [AIRLINE] to the Lessee; *provided* that such failure shall not constitute a Lessee Default if the Lessee, within 30 days following such initial notice, has demonstrated to the satisfaction of [AIRLINE], acting reasonably, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to [AIRLINE], acting reasonably and (C) such failure is in fact cured within such period of time;

(b) If the Lessee fails to comply in any material respect with a work plan approved by [AIRLINE] in accordance with Section 10.4(b), and such failure continues for 10 business days following notice thereof from [AIRLINE] to the Lessee;

(c) If a levy under execution or attachment has been made against any portion of the Airport facility used by [AIRLINE] as result of an encumbrance created, incurred, assumed or suffered to exist by the Lessee or any Person claiming through it (other than a Permitted Lessee Encumbrance under the Lease Agreement), and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of [AIRLINE] or its Delegates, or if all or any material portion of the Airport shall be subject to a condemnation or similar taking by a Governmental Authority;

(d) If the Lessee (i) admits, in writing, that it is unable to pay its debts as such become due, (ii) makes an assignment for the benefit of creditors, (iii) files a voluntary petition under the federal bankruptcy code, or if the Lessee files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code

or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Lessee, or of all or any substantial part of its properties (in each case, if the Lessee is the Authority, to the extent applicable to a Governmental Authority), or (iv) takes any action in furtherance of any action described in this Section 10.3(d); or

(e) If any proceeding against the Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable Law is commenced and is not dismissed within 60 days after its commencement without the consent or acquiescence of the Lessee, or if any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Lessee is appointed over all or any substantial part of its properties or over the Airport or any interest therein (in each case, if the Lessee is the Authority, to the extent applicable to a Governmental Authority), and such appointment is not vacated or stayed on appeal or otherwise within 60 days.

**Section 10.4. Remedies of Airline Upon Lessee Default.** Upon the occurrence and during the continuance of a Lessee Default, [AIRLINE] may by notice to the Lessee declare the Lessee to be in default and, except as provided in Section 10.5, do any or all of the following as [AIRLINE], in its discretion, shall determine:

(a) With respect to a Lessee Default described in Section 10.3(b), [AIRLINE] is entitled to terminate this Agreement by giving 60 days' prior notice to the Lessee (for the avoidance of doubt, the entitlement of the Lessee to cure such Lessee Default by the delivery of an approved work plan, as described in Section 10.4(b), shall not apply thereto);

(b) With respect to a Lessee Default, other than one described in Section 10.3(b), [AIRLINE] is entitled to terminate this Agreement by giving 60 days' prior notice to the Lessee; *provided* that the Lessee shall be entitled to cure a curable Lessee Default by providing [AIRLINE] with a written work plan within such 60-day period, which work plan is approved by [AIRLINE], outlining the actions by which the Lessee will ensure future compliance with either the obligation, covenant, agreement, term or condition in this Agreement or the requirement or directive of the final award in accordance with Article 11 that the Lessee failed to perform or observe;

(c) [AIRLINE] is entitled to seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt by the Lessee;

(d) [AIRLINE] is entitled to seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Lessee Default;

(e) [AIRLINE] is entitled to cure the Lessee Default (but this shall not obligate [AIRLINE] to cure or attempt to cure a Lessee Default or, after having commenced to cure or attempted to cure a Lessee Default, to continue to do so), and all costs and expenses reasonably incurred by [AIRLINE] in curing or attempting to cure the Lessee Default, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by the Lessee to

[AIRLINE] within three business days of demand; *provided* that (i) [AIRLINE] shall not incur any liability to the Lessee for any act or omission of [AIRLINE] or any other Person in the course of remedying or attempting to remedy any Lessee Default and (ii) [AIRLINE]'s cure of any Lessee Default shall not affect [AIRLINE]'s rights against the Lessee by reason of the Lessee Default; *provided further* that [AIRLINE] shall not cure a Lessee Default unless it has previously provided notice of such default to each Leasehold Mortgagee and no Leasehold Mortgagee has cured such default within the period provided in Section 10.5(b);

(f) Upon the occurrence and continuation (without cure) of a Lessee Default that materially adversely affects [AIRLINE]'s operations or rights under this Agreement and to the exclusion of the exercise of any other monetary remedies in respect of such Lessee Default that otherwise may be available to [AIRLINE], [AIRLINE] shall be entitled, upon 45 days' prior notice to the Lessee, to establish a third-party interest-bearing escrow account with a commercial bank, as escrow agent, reasonably satisfactory to [AIRLINE] and to pay over to such escrow agent, in lieu of making such payments to the Lessee, such portion of [AIRLINE]'s Annual Contribution corresponding to [AIRLINE]'s reasonably claimed Losses in respect of such Lessee Default. Any funds deposited into such escrow account shall be released only by direction of a joint letter of [AIRLINE] and the Lessee or by direction of a court order or final award in a matter submitted to dispute resolution in accordance with Article 11. Interest earned on the account shall be paid along with other funds released to the Lessee or [AIRLINE] or both, as may be the case (it being understood that if funds are released to both such Parties, the interest will be paid to such Parties in proportion to the funds released to each of them). The lost revenue to the Lessee by any such escrow account established in accordance with this Section 10.4(f) shall not be allocated to the other Signatory Airlines; and

(g) [AIRLINE] is entitled to exercise any of its other rights and remedies provided for hereunder.

### **Section 10.5. Leasehold Mortgagee's Right to Cure.**

(a) Whenever a Leasehold Mortgage exists as to which [AIRLINE] has been provided notice by the holder thereof in accordance with the Lease Agreement, [AIRLINE] shall, simultaneous with providing the Lessee any required notice under this Agreement, provide a copy of such notice to such Leasehold Mortgagee. Any failure by [AIRLINE] to provide such notice to the Leasehold Mortgagee shall not operate to cure the Lessee Default.

(b) The Leasehold Mortgagee shall have a period of 60 days with respect to any Lessee Default beyond any cure period expressly provided to the Lessee in this Agreement in which to cure or cause to be cured any such Lessee Default. That 60-day period shall be extended if (i) the Lessee Default is non-monetary, (ii) may be cured but cannot reasonably be cured within the 60-day period, (iii) the Leasehold Mortgagee begins to cure such default within the 60-day period (or, if possession is necessary in order to effect such cure, the Leasehold Mortgagee, within that 60-day period, files the appropriate legal action to commence foreclosure on the liens of the Leasehold Mortgage or take other appropriate legal action to commence a transfer of title to the relevant property) and (iv) thereafter proceeds with all due diligence to cure such Lessee Default (including by proceeding with all due diligence to effect such



foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to [AIRLINE], acting reasonably.

(c) If a Leasehold Mortgagee is acting with all due diligence to cure a Lessee Default in accordance with this Section 10.5, then [AIRLINE] shall not exercise its rights to terminate this Agreement by reason of such Lessee Default. [AIRLINE] may, however, exercise any of its other rights and remedies provided for under this Agreement (at law or in equity) as may be necessary for the continued operation of [AIRLINE]'s Air Transportation Business at the Airport, so long as the exercise of such rights does not interfere with the Leasehold Mortgagee's rights hereunder.

(d) Any actions taken by a Leasehold Mortgagee or its representatives under this Section 10.5 shall be undertaken in accordance with the provisions of this Agreement that would be applicable to the Lessee if it were taking such actions. [AIRLINE] shall accept any such performance by a Leasehold Mortgagee or its nominee as though the same had been done or performed by the Lessee. Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Leasehold Mortgagee. Any exercise of the Leasehold Mortgagee's rights to cure hereunder do not result in the assumption by such Leasehold Mortgagee of the Lessee's obligations hereunder.

(e) Notwithstanding the Leasehold Mortgagee's right to cure as provided under this Section 10.5, if a Lessee Default materially impairs airline operations at the Airport, [AIRLINE] may proceed to cure the Lessee Default pursuant to Section 10.4(e), in which event the cure by the Leasehold Mortgagee shall include the payments to [AIRLINE] contemplated by Section 10.4(e).

#### **Section 10.6. Other Termination by the Airline.**

(a) If (i) [AIRLINE] is prevented from conducting its Air Transportation Business at the Airport for a period of 120 consecutive days for any reason not attributable to [AIRLINE], (ii) [AIRLINE] desires to cease all of its Air Transportation Business at the Airport upon not less than 120 days' prior notice of the same to the Lessee or (iii) [AIRLINE] wishes to terminate this Agreement pursuant to Section 7.2(b), [AIRLINE] may terminate this Agreement (as to itself only) and its obligations hereunder by giving the Lessee 10 days' prior notice (in the case of clauses (i) and (ii), following the expiration of such 120-day period); *provided that* [AIRLINE] may not terminate this Agreement pursuant to this Section 10.6 if, at the time of giving such notice or at any time during such 10-day period, (x) there is an Airline Default, (y) the Lessee has given initial notice to [AIRLINE] of its failure to comply with an obligation, as described in subsection (a), (b) or (c) of Section 10.1(a), or (z) [AIRLINE] is otherwise in default by the occurrence of any other event described in this Agreement as an event of default.

(b) If this Agreement is terminated pursuant to Section 10.6(a), such termination shall not be effective until [AIRLINE] has satisfied all of its then-outstanding obligations to the Lessee, including any Monthly Payments then owing through and until such termination is effective. [AIRLINE] shall remain liable to the Lessee for any Underpayment that may be due

by [AIRLINE] for the final Term Year in which [AIRLINE] operates at the Airport; it being understood that because such Underpayment may not be known or calculated until the following Term Year, a termination under this Section 10.6 may take effect subject to the potential liability for an Underpayment.

**Section 10.7. Covenants Regarding Airport Operations; Termination by the Airlines upon Material Limitations on Operations.**

(a) The Lessee and [AIRLINE] agree that the continued operation of the Airport is important to the Lessee and [AIRLINE]. Accordingly, the Lessee will use its best efforts to ensure that the Airport's flight operations, passenger handling, cargo handling and other capacities germane to the operation of commercial air service at the Airport are not constrained, restricted, limited or reduced by action by the Lessee and remain available to meet the demand for transportation to the region.

(b) Neither the Lessee nor [AIRLINE] shall advocate or support any constraints, restrictions, limitations or reductions on the Airport's flight operations, passenger handling, cargo handling or other capacities germane to the operation of the Airport by any Governmental Authority.

(c) The Lessee shall not voluntarily transfer its ownership, oversight or control of the Airport to any Governmental Authority other than as permitted by the Lease Agreement.

(d) The Lessee and [AIRLINE] shall use commercially reasonable efforts to cooperate to oppose any effort by any Governmental Authority that will have the effect of (i) increasing taxes or tax rates imposed upon the Airlines, (ii) constraining or otherwise limiting the Airlines' operations at the Airport that are not imposed generally at airports in the United States, or (iii) imposing additional costs or expenses on the Airlines' operations at the Airport that are not imposed generally at airports in the United States.

(e) In the event that the Lessee fails to comply with this Section 10.7, [AIRLINE] may, upon notice to the Lessee (as provided below), terminate this Agreement (as provided below). The Lessee or [AIRLINE] shall be deemed to have failed to comply with the provisions of this Section 10.7 if the cumulative effect of individual actions by the Lessee or [AIRLINE] creates such a failure. The Lessee shall have 90 days in which to review and respond to the notice given by [AIRLINE]. In the event that the Lessee disagrees with the determination of [AIRLINE], [AIRLINE] may not terminate this Agreement until 30 days after the Lessee has responded to such notice. However, [AIRLINE] shall not have the right to terminate this Agreement in the event that constraints, restrictions, limitations or reductions on the Airport's flight operations, passenger handling, cargo handling or other capacities are enacted with general applicability to all airports within the jurisdiction of the applicable Governmental Authority.

(f) In the event of termination pursuant to Section 10.7(e), such termination shall not be effective until [AIRLINE] has satisfied all of its then-outstanding obligations to the Lessee, including any Monthly Payments then owing. [AIRLINE] shall remain liable to the Lessee for any Underpayment that may be due by [AIRLINE] for the final Term Year in which [AIRLINE] operates at the Airport; it being understood that because such Underpayment may not be known

or calculated until the following Term Year, a termination under Section 10.7(e) may take effect subject to the potential liability for an Underpayment.

**Section 10.8. No Waiver.** A failure by any Party to take any action with respect to any default or violation by the other of any of the terms, covenants or conditions of this Agreement shall not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the party to act with respect to any prior, contemporaneous or subsequent violation or default. The acceptance by the Lessee of payment of [AIRLINE]'s Annual Contribution for any period or periods after a default or violation of any of the terms, conditions and covenants of this Agreement shall not constitute a waiver or diminution of, nor create any limitation upon any right of the Lessee pursuant to this Agreement to terminate this Agreement for subsequent violation or default, or for continuation or repetition of the original violation or default.

**Section 10.9. Force Majeure.**

(a) No Party hereto shall be liable to any other Party for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its reasonable control (a "**Force Majeure Event**"), including fire, tornado, hurricane, Named Windstorm, flooding, earthquake or other natural disaster, bomb scares, explosions, fires, terrorist acts, any response to the foregoing by a Governmental Authority, strikes, boycotts, picketing, slow-downs, work stoppages, or other labor actions affecting the Lessee or its contractors, or [AIRLINE] or its contractors, except to the extent that such failure, delay or interruption results from failure on the part of the Lessee or [AIRLINE] to use reasonable care to prevent, or, after such failure, delay or interruption, use its commercially reasonable efforts to cure, such failure, delay or interruption; *provided* that nothing in this Section 10.9 is intended or shall be construed to abate, postpone or in any respect diminish [AIRLINE]'s obligations to make any payments due the Lessee pursuant to this Agreement. It is expressly understood that a Force Majeure Event will not include any of the following events: (i) economic hardship; (ii) changes in market conditions; (iii) changes in Law except as set forth in Section 10.9(b); (iv) delays caused by Delegates of the Parties, *provided* that such delay was not caused by a Force Majeure Event; (v) [AIRLINE]'s capacity reductions at the Airport or other airports; and (vi) any weather conditions that are ordinarily or customarily encountered or experienced at or in the vicinity of the Airport, including any Ordinary Storm, but excluding any tornado, hurricane or Named Windstorm.

(b) The Lessee shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited, materially restricted or rationed by any Law or Governmental Authority.

(c) The Party claiming a Force Majeure Event shall, within five business days after it knows of the occurrence of the Force Majeure Event, give the other Party notice describing the details of the cause and nature of the Force Majeure Event, the anticipated length of delay due to the Force Majeure Event and any other effect on the Party's performance of its obligations hereunder. Within 15 days after initial notification, such Party shall provide sufficient proof of the occurrence and duration of such Force Majeure Event to the other Party and shall thereafter provide the other Party with periodic supplemental updates to reflect any change in information

given to the other Party as often as requested by the other Party. The Party claiming the Force Majeure Event shall give notice to the other Party of (i) the cessation of the relevant Force Majeure Event and (ii) the cessation of the effects of such Force Majeure Event on the performance by its of its obligations under this Agreement as soon as practicable after becoming aware of each such cessation.

(d) Except as otherwise provided herein, the performance by the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, and in the event that such Party is required to start or complete an action during a specific period of time, such start date or period for completion shall be extended, on the condition that (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Force Majeure Event, and (ii) the Party claiming the Force Majeure Event continually uses its commercially reasonable efforts to alleviate and mitigate the cause and effect of the Force Majeure Event and remedy its inability to perform.

(e) In the event that the Parties are unable in good faith to agree that a Force Majeure Event has occurred or performance hereunder is excused as a result thereof, the Parties shall submit the dispute for resolution pursuant to Article 11 and the Party claiming relief from a Force Majeure Event shall have the burden of proof as to whether such a Force Majeure Event has occurred and whether performance hereunder is excused as a result thereof.

(f) If a Force Majeure Event has occurred and continues for more than six months, any Party may terminate this Agreement by notice to the other Party.

**Section 10.10. Limitation of Liability.** Except as otherwise set forth in this Agreement and to the extent not otherwise prohibited by applicable Law, no Party (or any of its Delegates) shall be liable to any other Party (or any of its Delegates) for any diminution in value or any consequential, punitive, incidental or special damages of such other Party (or any of its Delegates), including lost profits or loss of business reputation or opportunity relating to any breach or alleged breach of this Agreement or with respect to the transactions contemplated hereby.

## ARTICLE 11.

### DISPUTE RESOLUTION

**Section 11.1. Scope.** Except for disputes concerning termination of this Agreement by any Party (which shall be resolved as provided in Section 12.8), any dispute arising out of, relating to or in connection with this Agreement, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Article 11. For the avoidance of doubt, [AIRLINE] may initiate a dispute by itself, without the concurrence of any other Airline.

#### **Section 11.2. Disputes Involving Multiple Signatory Airlines.**

(a) A dispute arising from a Lessee Default under multiple Airport Use Agreements that adversely affects multiple Signatory Airlines may be brought jointly by the adversely-affected Signatory Airlines.

(b) To promote the efficient and consistent resolution of disputes, (i) the Signatory Airlines involved in such disputes shall cooperate to consider in good faith whether to bring disputes under this Agreement and other Airport Use Agreements jointly through a single arbitration proceeding or (ii) to the extent that multiple disputes have already been brought, the Lessee and the Signatory Airlines involved in such disputes shall cooperate to consider in good faith whether to consolidate disputes into a single arbitration proceeding, in any case where (A) the claims or defenses would raise common issues of law or fact and create the possibility of conflicting decisions if the proceedings are not consolidated and (B) the risk of undue delay or prejudice to the rights of a party opposing consolidation would be outweighed by prejudice resulting from a failure to consolidate.

(c) In any dispute involving multiple Signatory Airlines (whether jointly brought by such Signatory Airlines or consolidated by an arbitral panel) the individual Airlines shall appoint a single Designated Person for mediation in accordance with Section 11.5 and shall select an arbitrator in accordance with Section 11.6.

### **Section 11.3. Notice; Tolling.**

(a) If a Party receives an initial notice of a failure that might constitute an event of default if unremedied, as described in Section 10.1(a), Section 10.1(b), Section 10.1(c) or Section 10.3(a), and contests, disputes or challenges the propriety of such notice, the Party may, by notice of dispute to the other Party, initiate the dispute resolution procedure in this Article 11. If applicable, the cure period set forth in Section 10.1(a) or Section 10.3(a), as the case may be, shall be tolled from and after the time notice of dispute is given until the issuance of a final award.

(b) If a Party receives a notice of an event of default, as described in Section 10.2 or Section 10.4, and contests, disputes or challenges the propriety of such notice, the Party may, by notice to the other Party, initiate the dispute resolution procedure in this Article 11. If applicable, the cure period set forth in Section 10.2(b), Section 10.2(c), Section 10.2(d) or Section 10.4, as the case may be, shall be tolled from and after the time notice of dispute is given until the issuance of a final award.

(c) For avoidance of doubt, the time period in which to cure an Airline Default described in Section 10.1(b) or Section 10.1(c) shall not be tolled.

**Section 11.4. Informal Dispute Resolution Procedures.** The Parties agree that, at all times, they will attempt in good faith to resolve all disputes that may arise under this Agreement. The Parties further agree that, upon receipt of notice of a dispute from a Party, the Parties will refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall meet and in good faith furnish to each other the information pertinent to the dispute. Statements made by Representatives of the Parties during the dispute resolution mechanisms set forth in this Section 11.4 and documents specifically created for such dispute resolution mechanisms shall be considered part of settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

**Section 11.5. Mediation.** Mediation of a dispute under this Agreement may not be commenced until the earlier of (a) such time as both of the Designated Persons, after following the procedures set forth in Section 11.4, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely or (b) 15 days after the date of the notice referring the dispute to the Designated Persons, pursuant to Section 11.4. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Procedures before resorting to binding arbitration, as provided by Section 11.6.

**Section 11.6. Arbitration.** If the procedures described in Section 11.4 and Section 11.5 do not result in resolution of the dispute within 30 business days following a reference to mediation, the dispute shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the AAA (the “AAA Rules”). Any Party may initiate the arbitration, as provided in the AAA Rules. The place of arbitration shall be San Juan, Puerto Rico, unless the Parties agree otherwise, and the language of the arbitration shall be English. The arbitral panel shall determine the rights and obligations of the Parties in accordance with the substantive Laws of the Commonwealth and without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitral panel shall have no power to alter or modify any terms or provisions of this Agreement, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Agreement. The arbitral panel shall be composed of three arbitrators, one to be selected by the Airline(s), one to be selected by the Lessee and the third (who shall act as chairman of the panel) to be selected by the two previously selected arbitrators. If the two previously-selected arbitrators cannot agree on the selection of the third arbitrator, the third arbitrator shall be selected in accordance with the AAA Rules. Once the arbitral panel has been composed, the arbitrators shall act as neutrals and not as Party arbitrators, and no Party shall engage in any ex parte communication with any member of the arbitral panel. Each Party shall bear its own attorney fees, expenses and costs. The award shall include interest at the Late Payment Interest Rate from the date of any breach or violation of this Agreement or the incurring of any obligation as determined in the arbitral award until paid in full. The award shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties. Judgment on the award may be entered by any court with competent jurisdiction. The Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall govern any arbitration conducted pursuant to this Section 11.6.

**Section 11.7. Provisional Remedies.** No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement.

**Section 11.8. Technical Arbitration.**

(a) *Informal Dispute Resolution by Independent Engineer.* The Parties may agree to submit any engineering or technical dispute under this Agreement to the Independent Engineer, which submission may be made without submitting the engineering or technical dispute to engineering arbitration pursuant to Section 11.8(b) or to the dispute resolution process described in Section 11.4 through Section 11.6. The Independent Engineer shall determine any unresolved

disputed items within three business days of the submission of such dispute to the Independent Engineer, unless the Independent Engineer has good cause to extend such date for determination. The Parties shall each bear their own costs with respect to the submission of such dispute to the Independent Engineer and shall bear equally the cost of the Independent Engineer with respect to such dispute. The Independent Engineer's decision shall be in writing and state the reasons upon which it is based. The decision of the Independent Engineer shall be final and binding on the Parties, unless any Party expressly reserves the right, at the time of the submission of the engineering or technical dispute to the Independent Engineer, to submit the dispute to engineering arbitration pursuant to Section 11.8(b) or to the dispute resolution process described in Section 11.4 through Section 11.6.

(b) *Engineering Arbitration.* The Parties may agree to submit any engineering or technical dispute under this Agreement to engineering arbitration, which submission may be made without submitting the engineering or technical dispute to the Independent Engineer pursuant to Section 11.8(a) or to the dispute resolution process described in Section 11.5 through Section 11.6. Such engineering arbitration shall be conducted by an independent engineering arbitrator, which shall be an engineering firm with nationally recognized engineering experience related to Comparable Public Airports and that is acceptable to the Airline(s) and the Lessee (and if the Parties fail to agree upon the independent engineering arbitrator within five business days after the Parties agree to submit the dispute to engineering arbitration, then the Airline(s) and the Lessee shall each appoint an independent engineering arbitrator and both such arbitrators shall be instructed to select a third independent engineering arbitrator to conduct the engineering arbitration). Such submission shall be in the form of written statements of position by one or both of the Parties, which statements shall be provided to both the other Party and the independent engineering arbitrator, with each Party having an opportunity to respond to such written statements of the other Party and any requests for statements or information by the independent engineering arbitrator, including in-person meetings. All such submissions by a Party shall be made within 10 business days following appointment of the independent engineering arbitrator and, notwithstanding any provision herein to the contrary, any unresolved disputed items shall be determined by the independent engineering arbitrator within seven business days following receipt by the independent engineering arbitrator of the Parties' submissions of information unless such independent engineering arbitrator has good cause to extend such date for determination. The Parties shall each bear their own costs with respect to the arbitration of any such engineering dispute and shall bear equally the cost of retaining such independent engineering arbitrator. The independent engineering arbitrator's award shall be in writing and state the reasons upon which it is based. The independent engineering arbitrator's award shall be final and binding on the Parties.

## ARTICLE 12.

### GENERAL PROVISIONS

**Section 12.1. Covenant Not to Grant More Favorable Terms.** The Lessee shall not enter into any lease, contract or other agreement with any other Airline providing service at the Airport with respect to those portions of the Airport that are subject to this Agreement (other than any lease set forth on Schedule C that is assumed by the Lessee and renewals thereof as contemplated by Section 2.4), which contains any terms (including rates or charges) more favorable to such

Airline than the terms applicable hereunder to [AIRLINE] unless the Lessee also makes those more favorable terms available to [AIRLINE]. Notwithstanding anything in this Agreement to the contrary, the Lessee may engage in marketing, promotional and incentive programs, including non-discriminatory waivers or reductions of fees consistent with applicable Law, including FAA regulations and policy, including efforts to attract new air transportation service to the Airport and increased frequencies of existing air transportation service and to encourage the movement of certain peak period air transportation services to off-peak periods.

**Section 12.2. No Partnership or Agency.** Nothing herein contained is intended or shall be construed to in any respect create or establish any partnership, joint venture or association or to make [AIRLINE] the general representative or Delegate of the Lessee for any purpose whatsoever.

**Section 12.3. No Personal Liability.** No Delegate of the Lessee or [AIRLINE] shall be charged personally by the other party, its Delegates, or by any assignee of [AIRLINE], with any liability or expenses of defense or be held personally liable to them under any term or provision of this Agreement, or because of the Lessee's execution or attempted execution, or because of any breach hereof.

**Section 12.4. Notices.** Except as otherwise expressly provided hereunder, all notices and other communications provided for under this Agreement shall be in writing and shall be mailed, electronically mailed (e-mailed), faxed or personally delivered to the Lessee or [AIRLINE], to the person and at the address set forth at the foot of this Agreement next to such Party, or to such other Person or address as either the Lessee or [AIRLINE] may hereafter designate by notice to the other in accordance with this Section 12.4. Except as otherwise expressly provided hereunder, any notice or communication under this Agreement shall be deemed to have been given or made (a) if a messenger or courier service is used, when delivered to the addressee; (b) if sent by mail (certified or otherwise), five days after being deposited in the mails, postage prepaid and properly addressed; and (c) if sent by facsimile or electronic mail (e-mail), the earlier of (i) actual receipt by addressee and (ii) confirmation of receipt by the addressee.

**Section 12.5. Entire Agreement.** This Agreement, including the attached exhibits and endorsements, constitutes the entire agreement of the parties on the subject matter hereof.

**Section 12.6. Amendment.**

(a) *Amendments Requiring Approval of the Airline.* Subject to Section 12.1, the provisions of this Agreement that, when viewed together with comparable provisions of other Airport Use Agreements, do not relate to or confer rights upon multiple Signatory Airlines, may be amended only by a written agreement signed by the Lessee and [AIRLINE] (and, subject to Section 11.14(c), without need for approval by the Authority).

(b) *Amendments Requiring Approval of an Airline MII.* Subject to Section 12.1, the provisions of this Agreement that, when viewed together with comparable provisions of other Airport Use Agreements, relate to or confer rights upon multiple Signatory Airlines, may be amended only by a written agreement signed by the Lessee and Airlines constituting an Airline MII (each Airline determining in its discretion whether to participate in such Airline MII) (and,



subject to Section 12.14(c), without need for approval by the Authority); *provided* that this Section 12.6(b) shall not apply to an amendment that would have an effect described in Section 12.6(c). Such a written agreement between the Lessee and an Airline MII under this Section 12.6(b) shall uniformly amend this Agreement and each other Airport Use Agreement. In accordance with Section 12.11(c), [AIRLINE] and each other Signatory Airline agrees to be bound by the approval, action or decision of the Airline MII with respect to such written agreement, whether or not [AIRLINE] constitutes a part of the Airline MII that so acted or rendered its approval or decision. [AIRLINE] shall execute such supplements or amendments in connection with the effectuation of an amendment subject to this Section 12.6(b) and approved by an Airline MII; *provided* that the failure of [AIRLINE] to execute such supplements or amendments shall not impair the effectiveness of such amendment against [AIRLINE].

(c) *Amendments Requiring Approval of All Signatory Airlines.* The provisions of this Agreement that, when viewed together with comparable provisions of other Airport Use Agreements, relate to or confer rights upon multiple Signatory Airlines, may be amended only by a written agreement signed by the Lessee and all Signatory Airlines (and, subject to Section 11.14(c), without need for approval by the Authority), where such amendment would (i) subject any Signatory Airline to an increase in the Total Annual Contribution or any new fees, rental or charges not otherwise permitted under this Agreement, (ii) amend the definitions of each Airline MII, Airfield MII and Terminal MII, (iii) reduce the Term, (iv) amend this Agreement to alter the manner in which space is allocated at the Airport (other than as provided in Section 8.13) or (v) discriminate materially and adversely against the rights of a Signatory Airline without its approval. Solely for the purpose of this Section 12.6(c), no Airline shall be deemed to be a Signatory Airline (x) so long as an Airline Default with respect to such Airline has occurred and is continuing and the Lessee has provided notice to all the Signatory Airlines or (y) if a Signatory Airline is no longer operating at the Airport (except if such Signatory Airline's cessation of operations results from a temporary suspension by the FAA).

**Section 12.7. Applicable Law.** This Agreement shall be deemed to have been made in, and shall be construed in accordance with, the Laws of the Commonwealth without regard to conflict of laws principles.

**Section 12.8. Authorization to Operate; Consent to Service of Process and Jurisdiction.**

(a) The Lessee and [AIRLINE] each warrants that it is a duly organized and validly existing corporation or other business entity under the laws of the state shown on the signature page hereof. The Lessee and [AIRLINE] each warrants that it is, and throughout the term of this Agreement it will continue to be, duly qualified to do business in the Commonwealth.

(b) All judicial proceedings brought against [AIRLINE] or the Lessee with respect to this Agreement may be brought in any court of competent jurisdiction having situs within the boundaries of the Commonwealth (including the United States District Court for the District of Puerto Rico) and by execution and delivery of this Agreement, [AIRLINE] and the Lessee each accepts, for itself and in connection with its properties, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. The Lessee and [AIRLINE] each irrevocably designates and appoints the representative designated on the

signature page hereto under the heading “**Agent for Service of Process**” as its agent for service of process, such service being hereby acknowledged by such representative to be effective and binding service in every respect. The agent may be changed only upon the giving of notice by [AIRLINE] to the other Parties of the name and address of a new Agent for Service of Process that works within the geographical boundaries of the Commonwealth and is employed by the Lessee or [AIRLINE], as the case may be. [AIRLINE] and the Lessee each irrevocably waives any objection (including any objection of the laying of venue or based on the grounds of forum non conveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Agreement in the jurisdiction set forth above. Nothing herein shall affect the right to serve process in any other manner permitted by Law.

**Section 12.9. Severability.** If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or of any Law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

**Section 12.10. Representatives.** The Lessee and [AIRLINE] shall each designate a representative who, except as otherwise provided hereunder, shall be authorized to act for the Lessee and [AIRLINE], respectively, with respect to any actions to be taken by either of them under the terms of this Agreement. Any Party hereto may change its designated representative by subsequent notice to the other Party.

**Section 12.11. Actions by the Lessee and a Majority-in-Interest.**

(a) Wherever in this Agreement the approval of the Lessee is required, such approval may be given by either the Lessee or a designee of the Lessee, except as otherwise expressly provided herein.

(b) Whenever the approval of or an action by an Airfield MII, Airline MII or Terminal MII is required hereunder, it shall be evidenced in writing and the Lessee notified thereof. The Lessee shall be entitled to rely, without further investigation, on any statement in writing of an Airfield MII, Airline MII or Terminal MII that (i) certifies that it constitutes the action of the Airfield MII, Airline MII or Terminal MII, as applicable, and (ii) describes in reasonable detail the nature and extent of such action and the matter approved or authorized by such action.

(c) Subject to the provisions of Section 12.6(c),

(i) all approvals, actions and decisions by an Airline MII with respect to matters hereunder requiring such approval, action or decision shall be binding upon all Signatory Airlines, including [AIRLINE], whether or not [AIRLINE] constitutes a part of the Airline MII that so acted or rendered its approval or decision;

(ii) all approvals, actions and decisions by an Airfield MII with respect to matters hereunder requiring such approval, action or decision shall be binding upon all Signatory Airlines, including [AIRLINE], that paid any portion of the Total Airfield Contribution that Term Year, whether or not [AIRLINE] constitutes a part of the Airfield MII that so acted or rendered its approval or decision; and

(iii) all approvals, actions and decisions by a Terminal MII with respect to matters hereunder requiring such approval, action or decision shall be binding upon all Signatory Airlines, including [AIRLINE], that paid any portion of the Total Terminal Contribution or Total Exclusive Use Rent that Term Year, whether or not [AIRLINE] constitutes a part of the Terminal MII that so acted or rendered its approval or decision.

**Section 12.12. Successors and Assigns.** All of the covenants, stipulations and agreements herein contained shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. [AIRLINE] may, without the consent of the Lessee, assign this Agreement and [AIRLINE]'s rights hereunder to or authorize the use of [AIRLINE]'s space at the Airport by a sister, parent, subsidiary or Affiliate of [AIRLINE] or to an entity with whom [AIRLINE] may merge or consolidate or to an entity that succeeds to all or substantially all of [AIRLINE]'s assets; *provided* that, notwithstanding any such assignment of this Agreement and [AIRLINE]'s rights hereunder, [AIRLINE] shall remain fully liable for the payment of all fees and charges according to the provisions of this Agreement and fully responsible for the performance of all of its other obligations hereunder. To the extent that the Lease Agreement is assigned to the Leasehold Mortgagee or a New Agreement is entered into by the Authority and the Leasehold Mortgagee (or the designee or nominee of the Leasehold Mortgagee), the Lessee shall, without any need for the consent of the Signatory Airlines (including [AIRLINE]), assign this Agreement to the Leasehold Mortgagee or to such designee or nominee of the Leasehold Mortgagee that enters into the New Agreement with the Authority in accordance with the Lease Agreement and this Agreement, so long as the Leasehold Mortgagee (or the designee or nominee of the Leasehold Mortgagee) and the Lessee have provided to the Airlines a duly executed notice of assignment and assumption of obligations at least 15 days before the effective date of the assignment.

**Section 12.13. Non-Discriminatory Management.** In the course of operating and managing the Airport, the Lessee shall not undertake its activities in a manner that unreasonably favors one or more Signatory Airlines with respect to any other Signatory Airlines (it being understood, however, that the Lessee may administer an air carrier incentive program consistent with applicable Law, including FAA regulations). The Lessee shall comply with the Operating Standards in a manner that does not unreasonably grant a competitive advantage to any Signatory Airline. To the extent that the Lessee exceeds the Operating Standards, it shall do so in a manner that does not unreasonably provide a material benefit or cause a material detriment to a Signatory Airline under the circumstances then present at the Airport.

**Section 12.14. Reversion to Authority and Attornment.**

(a) Except as provided in Section 12.14(b), if the Lease Agreement is terminated while this Agreement is in effect, and the Airport is returned to the Authority under the terms of the Lease Agreement, the Authority shall operate and manage the Airport thereafter and charge

the Airlines for the use of the Airport in accordance with the provisions of this Agreement and provide the Airlines with the same rights and economic benefits afforded by this Agreement for the remainder of the stated Term of this Agreement, without regard to Section 2.5. If, notwithstanding that under the Law this Agreement may otherwise terminate upon such event, the Airlines shall attorn to the Authority, and the Authority shall accept such attornment, upon all of the terms and conditions of this Agreement. For the avoidance of doubt, such attornment shall also include the obligation by the Authority to complete the Initial Capital Projects at its own cost to the extent the same have not been completed by the Lessee. In no event shall any payment by the Authority to the Lessee in connection with a termination of the Lease Agreement while this Agreement is in effect result in additional charges to the Airlines.

(b) In the event the Lease Agreement terminates and the Airport reverts to the Authority, no Authority debt at the time of such reversion shall become the responsibility of or allow recourse to the Airport or the Signatory Airlines, and the Authority shall continue to operate the Airport in accordance with the terms of this Agreement.

(c) No changes or amendments to this Agreement or a new use agreement are binding on the Authority unless the Authority has consented to such amended or new use agreement.

**Section 12.15. Certificate in Connection with Lessee Debt.** [AIRLINE] agrees that in connection with debt incurred by the Lessee related to the Airport, upon not less than 15 days prior request by the Lessee, [AIRLINE] will deliver to the Lessee a statement in writing certifying as of the date of the certificate:

(a) That this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of such modification and that the Agreement as modified is in full force and effect, or specifying any provisions that are no longer in full force and effect);

(b) That to the best of [AIRLINE]'s knowledge, the Lessee is not in material default under any provision of this Agreement, or, if in material default, the nature thereof in default; and

(c) Such further matters to the best of the knowledge of [AIRLINE] relating to this Agreement as may be reasonably requested by the Lessee.

**Section 12.16. Confidentiality.** The Parties shall, and shall cause their representatives to, keep confidential any information obtained from the other Parties or their representatives in connection with the negotiation and performance of this Agreement, except as is required by Law to be disclosed, but only to the extent necessary and only for the purposes required. Notwithstanding the foregoing, this Section 12.16 shall not apply to information that (a) is or becomes generally available to the public through no breach of such Party; (b) is or was received by such Party from third parties who are not participating in the negotiations; (c) is approved for release in writing by the owner of such confidential information; or (d) is or was independently developed by such Party.

**Section 12.17. No Third Party Beneficiaries; Later Signatories.**

(a) This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any Person or entity other than the Parties hereto and their assigns any legal or equitable rights hereunder; *provided* that, if for any reason any Leasehold Mortgagee is deemed not to be a direct beneficiary hereof, such Leasehold Mortgagee shall be a third-party beneficiary for the purposes of exercising its respective rights under Section 10.5.

(b) Any Airline that becomes a Signatory Airline by executing an Airport Use Agreement with the Lessee after the Closing shall, without any further action, be considered a “Signatory Airline” for all purposes under this Agreement and for those purposes identified under the Implementation Agreement.

**Section 12.18. Counterparts.** This Agreement may be executed in one or more counterparts.

**\* \* \* Signature Pages Follow \* \* \***

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the day and year first written above.

**[ LESSEE ]**

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

Name: \_\_\_\_\_

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

**Address for Notice:**

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

**Agent for Service of Process:**

\_\_\_\_\_

**[AIRLINE]**

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

Name: \_\_\_\_\_

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

**Address for Notice:**

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

**Agent for Service of Process:**

\_\_\_\_\_

**[AUTHORITY]**

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

Name: \_\_\_\_\_

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

**Address for Notice:**

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

**Agent for Service of Process:**

\_\_\_\_\_

**SCHEDULE A**  
**OPERATING STANDARDS**

*[See Attached]*

*See Schedule 12 to the Lease Agreement*



**SCHEDULE B**  
**PLAT OF AIRPORT**

*[See Attached]*



**LEGEND:**  
— BOUNDARY LIMIT  
— NOT IN CONTRACT

**NOTES:**  
BOUNDARY LINES IN THESE DRAWING WAS PROVIDED BY OTHERS, URS CARRIES OUT VISUAL CHECK ONLY. URS CANNOT GUARANTEE THE ACCURACY OF THESE DATA. WHICH IS PROVIDED FOR INFORMATION PURPOSE ONLY.

LMMA OBLIGATION MAPS  
URS WORLD WIDE INTERNATIONAL AIRPORT GROUP



DATE: 2013-01-10  
SCALE: 1:1000  
PROJECT: SFBAA

## **SCHEDULE C**

### **LIST OF EXISTING AGREEMENTS ASSUMED BY THE LESSEE**

#### **Cargo Facilities Leases**

1. Lease Agreement AP-04-05-4-083, dated September 9, 2004, between the Authority and Cargo Services Corporation.
2. Lease Agreement AP-86-87-4-024, dated November 17, 1986, between the Authority and Cargo Services Corporation.

#### **American Airlines Leases and Concession Agreement**

1. Cargo Lease Agreement AP-09-10-4-065, dated October 5, 2009, between the Authority and American Airlines, Inc.
2. Equipment Facilities Lease Agreement AP-75-76-4-176, dated June 14, 1976, between the Authority and American Airlines, Inc. (with an understanding that the Authority and American Airlines will enter into an amended and restated version of such agreement with substantially the same terms prior to the Closing).
3. Concession Agreement AP-83-84-4-132, dated as of April 23, 1984, as amended by AP-84-85-4-083 E-2 / AP-83-84-4-132 on June 30, 2004, by and between the Authority and Airport Aviation Services, Inc.

#### **American Eagle Airlines Leases**

1. Hangar Lease by and between the Authority and American Eagle Airlines, Inc.

#### **Fuel Farm Agreements**

1. Lease Agreement AP-96-97-4-066, dated October 28, 1996, between the Authority and The Pipelines of Puerto Rico, Inc.

## SCHEDULE D

### LIST OF TERMINATED AGREEMENTS

1. Lease Agreement AP-75-76-4-176, dated as of June 14, 1976, as amended by AP-75-76-4-176 A-1 dated August 10, 1981, as amended further by AP-75-76-4-176 A-2 dated June 21, 1991, and as amended further by AP-75-76-4-176 A-3 on December 24, 199[X], by and between the Authority and American Airlines.
2. Lease Agreement AP-07-08-4-084, dated as of October 1, 2007, by and between the Authority and Aerotransporte Antillana.
3. Lease Agreement AP-10-11-4-002, dated as of August 6, 2010, by and between the Authority and Air America, Inc.
4. Lease Agreement AP-05-06-4-048, dated as of October 24, 2005, by and between the Authority and Air America, Inc.
5. Lease Agreement AP-05-06-4-050, dated as of October 24, 2005, by and between the Authority and Air Charter Inc, d/b/a Air Flamenco.
6. Lease Agreement AP-07-08-4-142, dated as of March 4, 2008, by and between the Authority and AirTran Airways, Inc.
7. Lease Agreement AP-05-06-4-130, dated as of May 3, 2006, by and between the Authority and Caribair, Inc.
8. Lease Agreement AP-06-07-4-141, dated as of June 26, 2007, by and between the Authority and Charter Flights Caribbean, Inc.
9. Lease Agreement AP-08-09-4-149, dated as of February 4, 2009, by and between Compania Panamena de Aviacion, S.A.
10. Lease Agreement AP-99-00-4-021, dated as of September 1, 1999, by and between the Authority and Continental Airlines, Inc.
11. Lease Agreement AP-55-58-02, dated as of May 20, 1955, as amended by AP-55-117-04 on May 24, 1955, as amended further by AP-62-63-219 on April 5, 1963, as amended further by AP-65-66-60 on August 8, 1965, as amended further by AP-55-58-02 A-4 on October 13, 1978, and amended further by AP-55-58-02 A-5 on October 19, 1989, by and between the Authority and Delta Air Lines, Inc.
12. Lease Agreement AP-90-91-4-120, dated as of January 24, 1991, by and between the Authority and Delta Air Lines, Inc.
13. Lease Agreement AP-01-02-4-083, dated as of March 13, 2002, by and between the Authority and Hyannis Air Service d/b/a Cap Air.

14. Lease Agreement AP-10-11-4-015, dated as of July 21, 2010, by and between the Authority and Hyannis Air Service d/b/a Cape Air.
15. Lease Agreement AP-03-04-4-172, dated as of March 9, 2004, by and between the Authority and Iberia L.A.E.
16. Lease Agreement AP-95-96-4-187, dated as of May 8, 1996, by and between the Authority and Isa Nena Air Service, Inc.
17. Lease Agreement AP-09-10-4-092, dated as of February 19, 2010, by and between the Authority and Island Airlines, LLC.
18. Lease Agreement AP-01-02-4-102, dated as of May 2, 2002, as amended by AP-01-02-4-102 on March 8, 2004, by and between the Authority and JetBlue Airways Corporation.
19. Lease Agreement AP-04-05-4-190, dated as of December 31, 2004, by and between the Authority and Jet Center, Inc.
20. Lease Agreement AP-89-90-4-163, dated as of May 7, 1990, as amended by AP-89-90-4-163 A-1 on August 15, 1990, and as amended further by AP-89-90-4-163 A-2 on May 16, 1991, by and between the Authority and Liat Caribbean Airlines.
21. Lease Agreement AP-07-08-4-091, dated as of October 22, 2007, as amended by AP-07-08-4-091 E-1 on December 19, 2007, by and between the Authority and Lineas Aereas Puertorriquenas, Inc.
22. Lease Agreement AP-09-10-4-012, dated as of July 1, 2009, by and between the Authority and Pan Am World Airways Dominicana C. por A.
23. Lease Agreement AP-06-07-4-100, dated as of January 23, 2007, by and between the Authority and Rome International Inc.
24. Lease Agreement AP-09-10-4-143, dated as of June 29, 2010, by and between the Authority and Rome International, Inc.
25. Lease Agreement AP-01-02-4-061, dated as of December 27, 2001, by and between the Authority and Spirit Airlines, Inc.
26. Lease Agreement AP-97-98-4-147, dated as of April 16, 1996, by and between the Authority and United Airlines.
27. Lease Agreement AP-02-03-4-052, dated as October 9, 2002, by and between the Authority and Vieques Air Link.
28. Operating Agreement AP-08-09-0-118, dated as of November 5, 2008, as amended by AP-08-09-0-118 dated June 30, 2010, by and between the Authority and Air Canada.

29. Operating Agreement AP-07-08-0-156, dated as of March 24, 2008, as amended by AP-07-08-0-156 E-1 on July 1, 2010, by and between the Authority and AirTran Airways, Inc.
30. Operating Agreement AP-08-09-0-062, dated as of August 18, 2008, by and between the Authority and Copa Airlines.
31. Operating Agreement AP-07-08-0-161, dated as of March 25, 2008, by and between the Authority and Delta Air Lines.
32. Operating Agreement AP-09-10-0-130, dated as of June 4, 2010, as amended by AP-09-10-0-130 E-1 on July 1, 2010, by and between the Authority and Executive Airlines, Inc.
33. Operating Agreement AP-07-08-0-153, dated as of March 20, 2008, as amended by AP-07-08-0-153 on July 1, 2010, by and between the Authority and Federal Express Corporation.
34. Operating Agreement AP-07-08-0-154, dated as of March 20, 2008, as amended by AP-07-08-0-154 E-1 on July 1, 2010, by and between the Authority and Iberia L.A.E.
35. Operating Agreement AP-07-08-0-149, dated as of March 19, 2008, as amended by AP-07-08-0-149 E-1 on July 1, 2010, by and between the Authority and JetBlue Airways Corporation.
36. Operating Agreement AP-07-08-0-151, dated as of March 20, 2008, by and between the Authority and Martinair Holland N.V.
37. Operating Agreement Extension AP-10-11-0-002, dated as of July 1, 2010, by and between the Authority and Spirit Airlines.
38. Operating Agreement AP-07-08-0-155, dated as of March 24, 2008, as amended by AP-07-08-0-155 E-1 on July 1, 2010, by and between the Authority and Spirit Airlines.
39. Operating Agreement AP-07-08-0-160, dated as of March 25, 2008, as amended by AP-07-08-0-160 E-1 on July 1, 2010, by and between the Authority and United Parcel Service Co.
40. Operating Agreement AP-10-11-4-077, dated as of December 21, 2010, by and between the Authority and Seaborne Virgin Islands, Inc.
41. Operating Agreement AP-07-08-0-157, dated as of July 1, 2010, by and between the Authority and US Airways, Inc.
42. Operating Agreement AP-11-12-4-145, dated as of June 5, 2012, by and between the Authority and JetBlue Airways Corporation.



**SCHEDULE E**

**STATEMENT OF ESTIMATED ANNUAL CONTRIBUTION  
FOR THE FIRST TERM YEAR**

Airline: [AIRLINE]  
Term Year: [\_\_\_\_, 2012 to December 31, 2012]  
CPI Factor: 1.000  
Total Annual Contribution (All Airlines): \$62,000,000

**Airline's Annual Contribution**

---

**Landing Contribution**

Estimated MAGTOW: [●] (1,000 lb. units)  
Estimated Landing Rate: \$[●] (per 1,000 lb. unit)  
Estimated Landing Contribution: \$[●]

**Parking**

Estimated Parking Rates: \$[Insert table of parking rates]  
Estimated Parking Fees: \$[●]

**Non-Seasonal Exclusive Use Rent**

Non-Seasonal Exclusive Use Space: [●] (sq. ft.)  
Non-Seasonal Exclusive Use Rate: \$[●] (per sq. ft.)  
Non-Seasonal Exclusive Use Rent: \$[●]

**Seasonal Exclusive Use Rent**

Seasonal Exclusive Use Space: [●] (sq. ft.)  
Seasonal Exclusive Use Rate: \$[●] (per sq. ft.)  
Seasonal Exclusive Use Rent: \$[●]

**Domestic Terminal Contribution**

Estimated Revenue Landings: [●] (1,000 lb. units)  
Estimated Domestic Terminal Rate: \$[●] (per 1,000 lb. unit)  
Estimated Domestic Terminal Contribution: \$[●]

**International Terminal Contribution**

Estimated Revenue Landings: [●] (1,000 lb. units)  
Estimated Domestic Terminal Rate: \$[●] (per 1,000 lb. unit)  
Estimated Domestic Terminal Contribution: \$[●]

**Local Terminal Contribution**

Estimated Revenue Landings: [●] (1,000 lb. units)  
Estimated Domestic Terminal Rate: \$[●] (per 1,000 lb. unit)  
Estimated Domestic Terminal Contribution: \$[●]

**Estimated Airline's Annual Contribution:        \$[●]**



**SCHEDULE F**

**Terminal Facility Utilization**

*[See Attached]*

## **SCHEDULE F**

### **TERMINAL FACILITY UTILIZATION**

#### **F.1 INTRODUCTION**

In accordance with Section 3.3 of this Agreement, this Schedule F specifies the policies and procedures for: (1) the allocation and assignment, and reallocation and reassignment, of Exclusive Use Space and/or termination of rights to Exclusive Use Space within the passenger terminal building; (2) the allocation or assignment of Common Use Space, including aircraft gates; and (3) the allocation and assignment, and reallocation and reassignment of Common Use Assigned Gates.

#### **F.2 STATEMENT OF INTENT**

The Lessee's objectives shall be to: (1) provide the Signatory Airlines with predictability and stability regarding the use of operational space at the Airport, and (2) offer all airlines desiring to serve the Airport access to the Airport and adequate space in the terminal building. The Lessee shall pursue the objective of achieving a reasonable balance in the overall utilization of the terminal building and associated aircraft aprons, with a particular focus on convenience to passengers and the integrity of the airlines' operations.

#### **F.3 SPACE AT THE AIRPORT**

Space at the Airport shall consist of Exclusive Use Space, Common Use Space and other Lessee Controlled Facilities as shown in Schedule G. Common Use Assigned Gates are part of the Common Use Space, subject to the provisions of this Schedule F.

**Exclusive Use Space** - In accordance with Section 3.3(b), the Lessee has allocated certain terminal space at the Airport (in accordance with Schedule G of this Agreement, subject to modifications in accordance with this Schedule) other than gates (and terminal areas associated with such gates) for exclusive use by Signatory Airlines for exclusive use ticket counters and offices, clubs and other operations and functions as are incidental or reasonably necessary to the conduct of the Airlines' Air Transportation Business and for such other purposes as the Lessee shall approve. The allocation of Exclusive Use Space is not a lease and does not convey any interest in any real or personal property whatsoever, however, subject to the terms of this Schedule F and this Agreement, Signatory Airlines shall have a contractual right to the exclusive use, control and quiet enjoyment of their Exclusive Use Space.

**Common Use Space** - Subject to the provisions of this Agreement and the Lease Agreement, the Lessee shall retain under its exclusive possession and control all Airport facilities, except space under lease or included as Exclusive Use Space, for common use by the Airlines in accordance with the Agreement. All gates and hold rooms, passenger circulation areas, baggage makeup areas, baggage claim areas, and Federal Inspection Services areas (FIS), at the Airport shall be operated on a common use basis; *provided, however*, that, subject to the provisions and conditions set forth in this schedule, certain gates may be Common Use Assigned Gates.

**Common Use Assigned Gates** - has the meaning ascribed in Section F.6 of this Schedule F.

#### **F.4 EXCLUSIVE USE SPACE ACCOMMODATION**

The purpose of this section is to specify the procedures for the reallocation or reassignment of Exclusive Use Space and/or termination of rights to Exclusive Use Space within the passenger terminal building.

Signatory Airlines shall have the right to install proprietary equipment in their respective Exclusive Use Space, in accordance with Section 3.3(b) of the Use Agreement.

##### **F.4.1 Consolidation of Operation**

- A. If the Lessee has an objective material operational need to improve the utilization of the terminal building or to implement a capital improvement and it reasonably determines that a Signatory Airline is under-utilizing its Exclusive Use Space and is able to consolidate such Signatory Airline's operation without sacrificing its operational integrity (or that of its Affiliates and Alliance Partners), the Lessee may, upon consultation with the Signatory Airline and after 60 days notice to the Airline, recapture a portion of the Exclusive Use Space and require the Signatory Airline to consolidate its operations into its remaining Exclusive Use Space; *provided however*, that the Signatory Airline shall have the right to dispute the basis for such recapture in accordance with Article 10 of this Agreement.
- B. For purposes of this Section F.4.1, under-utilization shall be reasonably determined by the Lessee, taking into account (i) the space utilization by all airlines at the Airport over the prior 365 days, (ii) the Signatory Airline's space requirements to accommodate normal operating procedures of the Signatory Airline (or its Affiliates and Alliance Partners), (iii) planned use by the Signatory Airline (or its Affiliates and Alliance Partners) for such premises in the next 365 days and normal seasonal variations, and (iv) any

- related labor agreement. The Lessee shall report its findings to the Signatory Airline and provide copies of all supporting documentation.
- C. Through notice to the Lessee, the Signatory Airline may request the Lessee to reconsider its determination of under-utilization within 30 days of receipt of the Lessee's notice to consolidate without prejudice to the Signatory Airline's rights under Article 10 of this Agreement. In such event, the Signatory Airline shall provide documentation to show future plans for service and other information requested by the Lessee. The Lessee shall make a reasonable determination which it believes best meets its goals for the Airport.
  - D. If the Lessee elects to proceed with the consolidation of space after such reconsideration, the Lessee shall give the Signatory Airline notice within 10 days of such decision, *provided* that the Signatory Airline is not exercising its dispute resolution rights in accordance with Article 10 of this Agreement.
  - E. If there is not an event of default with respect to the Signatory Airline as defined in Article 9 of this Agreement, the Lessee shall pay all reasonable costs (if any) associated with the relocation of the Signatory Airline's equipment, fixtures, furniture, signage, and shall reimburse the Signatory Airline for the original cost, net of depreciation to the date of reimbursement (the "undepreciated value"), of the Signatory Airline's improvements that cannot be relocated pursuant to the provisions of this Section; *provided* that in lieu of reimbursing the undepreciated value of the Signatory Airline's improvements, the Lessee may replace such improvements with like improvements in the consolidated space. If the Signatory Airline is in default pursuant to and has received notice in accordance with Article 9 of this Agreement, the Signatory Airline shall consolidate into its remaining Exclusive Use Space at its sole cost and expense provided that the Signatory Airline is not disputing the default in accordance with Article 10 of this Agreement.

#### **F.4.2 Relinquishment of Abandoned Exclusive Use Space**

- A. If the Lessee reasonably determines that a Signatory Airline has abandoned or constructively abandoned all or a portion of its Exclusive Use Space, the Lessee may, but is not obligated to, upon 30 days' notice to the Signatory Airline, delete from the Signatory Airline's Exclusive Use Space hereunder, such abandoned or constructively abandoned space; *provided* that the Signatory Airline is not disputing the abandonment in accordance with Article 10 of this Agreement. For purposes of this Section F.4.2, abandoned or

constructively abandoned space shall be reasonably determined by the Lessee taking into account planned use by the Signatory Airline for such premises in the following 365 days and normal seasonal variations. A Signatory Airline may request the Lessee to reconsider its determination of abandonment by giving notice to the Lessee without prejudice to the Signatory Airline's right under Article 10 of this Agreement. In such event, the Signatory Airline shall provide documentation to show future plans for service, events of *force majeure*, if any, and other information requested by the Lessee. The Lessee shall make the determination that it believes best meets its overall goals for the Airport.

#### **F.4.3 Reassignment of Exclusive Use Space**

A. In order to optimize the use of Airport facilities, the Lessee reserves the right to reassign any or all of a Signatory Airline's Exclusive Use Space after notice, preceded by a consultation period of no less than 60 days and provided that the Signatory Airline has not disputed such reassignment in accordance with Article 10 of this Agreement. Prior to the consultation period, the Lessee shall identify in writing in its initial notice to the Signatory Airline the proposed assigned new space which shall be reasonably comparable in size, quality, finish, and location. The Signatory Airline's payments under the Agreement for Exclusive Use Space shall not increase as a result of any relocation unless the Signatory Airline requests additional space. In making a reassignment determination, the Lessee shall take into consideration the best interest of the traveling public and the operations of the Airport, and will be guided by all pertinent factors, including:

- i. the Signatory Airline's (including Affiliates and Alliance Partners) historical and then-present space utilization over the prior 365 days;
- ii. the known planned use for such premises, and
- iii. the Signatory Airline's operational space adjacencies.

A Signatory Airline's relocation of any of its Exclusive Use Space resulting from such reassignment shall be at the Lessee's sole expense. The Signatory Airline shall be reimbursed for its reasonable out-of-pocket expenses incurred as part of the relocation and for the undepreciated value of its improvements that cannot be relocated; *provided* that in lieu of reimbursing the undepreciated value of Signatory Airline's improvements, the Lessee may replace such improvements with like improvements in the new space.

#### **F.4.4 Seasonal Exclusive Use Space**

Signatory Airlines may request the allocation of Exclusive Use Space on a seasonal basis. Such Seasonal Exclusive Use Space may be used for the same purposes and on the same terms as other Exclusive Use Space. The cost for such space is set forth in Article 4 of this Agreement. An allocation of Seasonal Exclusive Use Space must be for a minimum of 30 consecutive days and may not exceed a maximum of 120 consecutive days. The allocation of Seasonal Exclusive Use Space may not displace or unreasonably interfere with the allocation of Non-Seasonal Exclusive Use Space.

#### **F.5 COMMON USE SPACE**

The purpose of this section is to specify the procedures for the use of Common Use Space and facilities, excluding aircraft gates which are addressed in Sections F.6 and F.7. This space and facilities include: common use ticket offices, baggage makeup, baggage claim, FIS, and passenger circulation.

##### **F.5.1 Accommodation in Certain Lessee-Controlled Facilities**

- A. Subject to this Agreement and the Lease Agreement, the Lessee will retain under its control and possession certain facilities in the terminal building, excluding the facilities described and shown on Schedule G this Agreement. It is the intent of the Lessee to use, at its discretion but subject to the terms of this Schedule F, any of the Lessee-Controlled facilities to accommodate:
- i. airlines not requiring permanent facilities or airlines requesting temporary accommodation pending allocation of permanent facilities; and
  - ii. the needs of Signatory Airlines and Nonsignatory Airlines.

##### **F.5.2 Baggage Claim**

Common Use baggage claim usage will be allocated on a priority basis to Signatory Airlines with Common Use Assigned Gates within the landside terminal serving such gates. Usage of baggage claim devices will be provided whenever reasonably practicable as requested by the airline. At times, it will be necessary that baggage claim devices will be shared among the airlines, provided that the level of service is reasonable and no worse than Level of Service C, as defined by IATA, in accordance with the Operating Standards.

### **F.5.3 Baggage Makeup Space**

All ticket counters shall be connected to baggage makeup devices. Common Use baggage makeup devices will be allocated on a priority basis to Signatory Airlines with ticket counters associated with those baggage makeup devices. Baggage makeup devices will be provided whenever reasonably practicable as requested by the airline.

## **F.6 COMMON USE ASSIGNED GATES AND ACCOMMODATION**

This section provides the Lessee and airline scheduling and operating personnel guidance on the designation, accommodation, recapture, and reassignment of Common Use Assigned Gates. Common Use Assigned Gates shall mean those gates at the Airport that the Lessee designates as Common Use Assigned Gates for the priority use of a particular Airline in accordance with this Schedule F.

### **F.6.1 Lessee and Airline Gate Pools**

All gates at the Airport shall be Common Use Gates. However, the Lessee shall designate certain gates as Common Use Assigned Gates in accordance with the provisions herein at a Signatory Airline's request. Nonsignatory Airlines shall not be provided with Common Use Assigned Gates. All aircraft gates will be assigned to one of two "pools", the Lessee Pool and the Airline Pool. The Airline Pool will include all gates designated as Common Use Assigned Gates; the Lessee Pool will include the remainder. The number of gates in each pool may be adjusted from time to time in accordance with this Schedule F.

Airline is deemed to have requested and Lessee has agreed to the following initial designation of Common Use Assigned Gates to the Airline, as shown in Figure A.

Figure A  
**AIRLINE POOL – COMMON USE ASSIGNED GATES**

Gate Designation	Concourse	Airline
5	D	AA
6	D	AA
7	D	AA
8	D	AA
9	D	AA
11	D	OW
12	D	FL/WN
14	D	FL/WN
15	D	OW
16	D	FL/WN
17	D	OW

23	C	NK
34	B	UA/CO
36	B	UA/CO
37	B	US
38	B	US
39	B	DL
41	B	DL
A1	A	B6
A2	A	B6
A3	A	B6
A4	A	B6
A5	A	B6
A6	A	B6
A7	A	B6

Subject to the foregoing, the initial delineation of the two pools is also shown in Schedule G to this Agreement. The Airline Pool has 25 gates, including the Airline's Common Use Assigned Gates, and the Lessee Pool has the remaining 20 gates. The initial Lessee Pool is 44% of the total gate pool. The number of gates in the Lessee Pool may increase or decrease based on the designation of additional or recapture of Common Use Assigned Gates in accordance with Sections F.6.2 and F.6.4. In addition, the overall number of available gates may increase or decrease over the term of this agreement in the event of capital improvements to improve customer service or enhance operational efficiency consistent with the statement of intent articulated in Section F.2; provided that any decrease in the number of available gates or a material decrease in the number of ticket counters resulting from a capital improvement shall be considered a Modification subject to an Airline MII in accordance with Section 8.8 of this Agreement and provided further that the Lessee shall comply with the requirements regarding capital improvements set forth in Article 6 of this Agreement. If such capital improvement projects would affect the calculation of gate utilization ratios, then the Lessee shall submit a new proposed calculation of gate utilization ratios as part of the Airline MII approval process for the Modification.

For the purpose of this section, comparisons between the Airline Pool and Lessee Pool average gate utilization ratios will be for the specific type of gate. The gate types are: international and domestic. In addition, it is assumed that all international gates are capable of serving domestic operations, should the gates not be required for international operations. Template 1 provides a summary of calculations for gate utilization ratios.



## **F.6.2 Designation of Common Use Assigned Gates**

In addition to the initial designation of Common Use Assigned Gates under F.6.1, the Lessee shall grant a requesting Signatory Airline a Common Use Assigned Gate if the following conditions are met for the type of gate:

- A. The Lessee Pool average utilization is less than the Airline Pool average utilization with the requested gate(s) assumed to be in the Airline Pool, according to the calculation depicted in Template 1;
- B. The airline requesting a Common Use Assigned Gate would have a utilization ratio on the requested gate greater than the average utilization of the Lessee Pool for that type of gate; *provided, however*, that the airline requesting a Common Use Assigned Gate would have a utilization ratio for all of such airline's existing Common Use Assigned Gates, including the proposed additional Common Use Assigned Gate, at least equal to 4.0 departures per day, per Common Use Assigned Gate. The calculation of average departures would be weighted in accordance with Table B shown in Template 1.
- C. The airline requesting the Common Use Assigned Gate accepts that other airlines may use the Common Use Assigned Gates on occasion in conformance with the terms and conditions in Section F.6.3;
- D. The airline requesting the Common Use Assigned Gate is willing to incur the costs of modifying the gate and its equipment for its use.

The calculation of weighted average gate utilization shall be done on a historical basis, over a period of 365 days.

Gates eligible for designation as a Common Use Assigned Gate will be provided from the Lessee Pool of Gates. The Signatory Airline shall be obligated to permit the occasional use of any of its Common Use Assigned Gates by other airlines to accommodate non-routine irregular operations. These operations by other airlines will be included in the average utilization for the gate when calculating the airline's historical utilization ratio.

The Airline shall have the right to install proprietary equipment at its Common Use Assigned Gates. Prior to installing any proprietary equipment, the Airline shall consult with the Lessee to consider whether there would be any issues regarding interference or incompatibility with the Lessee's systems.

### **F.6.3 Procedures for Accommodation at Common Use Assigned Gates**

If there are no Common Use Gates of the type required available from the Lessee Pool, the Lessee may grant a requesting airline(s) the right to use in common all or a designated portion of a Signatory Airline's Common Use Assigned Gates and rights of ingress and egress subject to and in accordance with the following terms and conditions:

- A. The Lessee on behalf of the requesting airline shall make a request of all Signatory Airlines with Common Use Assigned Gates for accommodation. For regular or continuous operations, the request shall be made to the airline representatives on the Airline Management Committee. Signatory Airlines shall make reasonable efforts to accommodate such request and shall respond to the requesting airline and the Lessee within 15 days. In cases of irregular or one-time operations or emergencies, the Lessee may accommodate a requesting airline without advance notification, in accordance with the priorities established in Section F.7.
  
- B. For regular or continuous operations, if no Signatory Airline volunteers to accommodate the requesting airline's operational needs or requirements for Gate accommodation at reasonable and documented costs, the Lessee may, upon 30 days' notification to a Signatory Airline, grant the requesting airline the right of use in common with the Signatory Airline one or more of the Signatory Airline's Common Use Assigned Gates subject to the conditions contained herein. In making such a determination, the Lessee shall act reasonably and shall take into consideration the best interest of the traveling public and the operations of the Airport and the operational needs of the requesting airline, and will be guided by all pertinent factors, including:
  - i. Signatory Airline's and its Affiliates' and Alliance Partners' flight schedules and needs, including connecting flights, and the flight schedules and needs of the requesting airline;
  - ii. Signatory Airline's and its Affiliates' and Alliance Partners' combined historical and then present Gate utilization in the 365 days immediately prior to the request;
  - iii. The known planned use for such premises in the 365 days immediately after the request;
  - iv. The compatibility of such requesting airline's and its Affiliates' and Alliance Partners' proposed operations and work force, including ground-handling operations with the operations and work force of Signatory Airline and its Affiliates and Alliance Partners;

- v. The Lessee's obligations to promote competition, air service and access by new entrants and limited incumbents; and
- vi. The security of the Signatory Airline's and the requesting airline's operations.

The Lessee may request that planned uses and requirements of the requesting airline and the Signatory Airline be documented and submitted in writing to the Lessee, and that the Lessee treat such planned uses and requirements as confidential, proprietary information, to the extent allowable by law.

- C. The use of a Signatory Airline's Common Use Assigned Gates (and associated terminal apron parking positions, appurtenant equipment, and ancillary support space which are reasonably necessary for the effective use of such Gates) by a requesting airline shall be scheduled so as not to interfere with the Signatory Airline's scheduled arrivals and departures and servicing activities or those of any Affiliate or Alliance Partner. In accommodating the requesting airline at a Signatory Airline's Common Use Assigned Gates, the Lessee shall provide the use of the Gate for a turn (arrival and departure) by the requesting airline when there is at least a two hour window between the Signatory Airline's scheduled operations provided that the use of the Gate by the requesting airline is for an arrival not earlier than one hour after the Signatory Airline's next scheduled departure, and for a departure not later than one hour before the Signatory Airline's next scheduled arrival.
- D. A Signatory Airline and its Affiliates and Alliance Partners shall have priority over other users with respect to overnight parking on the Signatory Airline's assigned Common Use Assigned Gates, *provided* that the Signatory Airline and its Affiliates and Alliance Partners may be required to remove a parked aircraft from its Common Use Assigned Gate during regular hours of operations to accommodate use by others in accordance with the provisions of this section. Off-schedule operations of a Signatory Airline and its Affiliates and Alliance Partners at a Signatory Airline's Common Use Assigned Gates shall take precedence over the use by a requesting airline; *provided* that if a Signatory Airline's off-schedule operations interfere with the requesting airline's use of a Signatory Airline's Common Use Assigned Gates, the Signatory Airline shall work with, and shall make best efforts to accommodate, the requesting airline at another of the Signatory Airline's Common Use Assigned Gates, if any.
- E. A requesting airline has the right to make improvements and alterations necessitated by any long-term accommodation, the scope of which shall be

subject to approval by the Signatory Airline and the Lessee. Approval shall not be unreasonably withheld or delayed.

- F. Upon the termination of such use in common with a Signatory Airline, the requesting airline shall be responsible for returning all Gate and other facilities used by the requesting airline to the original condition, normal wear and tear excepted, unless the Signatory Airline and the Lessee release the requesting airline from this requirement.
- G. A requesting airline shall indemnify the Signatory Airline for any damages caused to any Signatory Airline property or third party claims arising from the requesting airline's use of the Gates.

#### **F.6.4 Recapture of Common Use Assigned Gates**

The Lessee may wish from time to time to recapture Common Use Assigned Gates which the Lessee believes may be necessary for the goal of operational efficiency. In addition, the Lessee may believe that some capital improvements are necessary for the overall operational efficiency of the terminal building which may cause the Lessee to want to recapture Common Use Assigned Gates. In each of the immediately preceding cases, and for the Lessee to recapture any Common Use Assigned Gates in any event, the following conditions must be present for the Lessee to expand the Lessee Pool of gates:

- A. The Lessee Pool average utilization for the type of gate required must be greater or equal to the Airline Pool average utilization with the proposed expanded Lessee Pool gate(s) assumed to be in the Lessee Pool, according to the calculation depicted in Template 1; and
- B. The Lessee requires the gate(s) to accommodate current or foreseeable needs; and
- C. The Lessee has notified the Airlines that it believes that the conditions set forth in A. and B. immediately above have been met and has had 15 days of good faith negotiations with the Airlines, after such notice, on alternative solutions to recapture, including:
  - i. Accommodation at Common Use Assigned Gates;
  - ii. Flight schedule modifications;
  - iii. Capital improvements.

And after consultation, the Lessee, in its sole discretion, determines that no reasonable or viable alternative exists to recapturing gates.

- D. As with the designation of Common Use Assigned Gates, the calculation in Template 1 shall be done on a historical basis, over a period of 365 days.
- E. The Lessee shall identify the gate(s) proposed for recapture by using the tests outlined in Template 1 applied to all Common Use Assigned Gates of each Signatory Airlines as a unit. If the test results in a "pass," for more than one Signatory Airline, the Lessee may propose to select an eligible gate(s) from the Signatory Airlines' Common Use Assigned Gates that resulted in a "pass" in inverse order of the applicable Signatory Airlines' utilization commencing with the Signatory Airlines with the lowest utilization to next Signatory Airline with the lowest utilization. Eligible gates within the applicable Signatory Airline's gates for recapture would include those gates with a utilization ratio less than that of the average utilization of the applicable Signatory Airline in inverse order of the utilization commencing with the gate with the lowest utilization to the next lowest utilization for the specific type of gate. In selecting from the eligible gates with equal utilization rates, if any, the Lessee may consider the following:
- i. The Signatory Airline's status with respect to default, in accordance with Article 9 of this Agreement and subject to the Signatory Airline's rights under Article 10 of this Agreement;
  - ii. The Signatory Airline's historical gate utilization including its Affiliates and Alliance Partners in the 365 days immediately prior to the proposed recapture;
  - iii. The Signatory Airline's operational space adjacencies;
  - iv. Specialized fixtures required for the Signatory Airline's operations;
  - v. The proximity of the gate relative to the Lessee's Pool of gates; and
  - vi. The compatibility of any proposed operations and work force with the operations and work force of the Signatory Airline and its Affiliates and Alliance Partners.
- F. The Lessee shall provide the Signatory Airline whose gate(s) it proposes to recapture with a cure period of 30 days (unless the Airline waives its right to the cure period) after notice to such Signatory Airline during which time the Signatory Airline may alter their schedule to maintain their Common Use Assigned Gate(s). At the end of the cure period, the Lessee shall recalculate the utilization ratios to determine if the Signatory Airline's gate meets the

recapture requirements and shall notify the Signatory Airline of such recalculation and if the gate is subject to recapture, provide reasonable advance notice to the Signatory Airline of the date for recapture.

- A. If any such recapture occurs, the Signatory Airline shall be accommodated at one or more of the Lessee Pool gates without disruption to flight schedules, including priority consideration at the gate(s) recaptured. The Signatory Airline's costs shall not increase as a result of any recapture of Common Use Assigned Gates. A Signatory Airline's relocation of any of its proprietary equipment resulting from such reassignment shall be at the Lessee's sole expense. A Signatory Airline shall be reimbursed by the Lessee for its reasonable out-of-pocket expenses incurred as part of the relocation and for the undepreciated value of its improvements that cannot be relocated or if the Signatory Airline makes improvements in the new space, the reasonable costs of such improvements minus the undepreciated value of its improvements that cannot be relocated; *provided* that in lieu of reimbursing the undepreciated value of Signatory Airline's improvements, the Lessee may replace such improvements with like improvements in the new space.

#### **F.6.5 Reassignment of Common Use Assigned Gates**

This provision provides for the potential reassignment from one Common Use Assigned Gate to another at either the Airline's request or the Lessee's request.

In order to optimize the use of Airport facilities, the Lessee may propose to reassign any or all of a Signatory Airline's Common Use Assigned Gates after notice preceded by a consultation period of no less than 60 days. The Signatory Airline may in its sole discretion reject the reassignment proposal by the Lessee. Prior to the consultation period, the Lessee shall identify in writing in its initial notice to the Signatory Airline the proposed assigned new space which shall be reasonably comparable in size, quality, finish, and location and which must have the same capability to handle aircraft types as the existing space. In making a reassignment determination, the Lessee shall take into consideration the best interest of the traveling public and the operations of the Airport, and will be guided by all pertinent factors, excluding the optimization of non-aeronautical revenue, including:

- i. the Signatory Airline's (including Affiliates and Alliance Partners) historical and then present space utilization in the 365 days immediately prior to such notice;
- ii. the known planned use for such premises, and
- iii. the Signatory Airline's operational space adjacencies.

Signatory Airline's relocation of any of its Common Use Assigned Gates resulting from such reassignment shall be at the Lessee's sole expense. The Signatory Airline shall be reimbursed for its reasonable out-of-pocket expenses incurred as part of the relocation and for the undepreciated value of its improvements that cannot be relocated or if the Signatory Airline makes improvements in the new space, the reasonable costs of such improvements minus the undepreciated value of its improvements that cannot be relocated; *provided* that in lieu of reimbursing the undepreciated value of Signatory Airline's improvements, the Lessee may replace such improvements with like improvements in the new space.

Conversely, a Signatory Airline may request to move from their Common Use Assigned Gates to available gates in the Lessee Pool without reclassification of its Common Use Assigned Gates. If the Lessee agrees to the request, the Signatory Airline shall be responsible for the cost of said move.

## **F.7 COMMON USE GATES AND ACCOMMODATION**

This section provides the Lessee and airline scheduling and operating personnel guidance on advance scheduling of flights at Common Use Gates and day-to-day assignment of flights to Common Use Gates, which may differ from those gates originally scheduled.

### **F.7.1 Operating Philosophy**

All gates are to be operated on a common use basis, including those designated as Common Use Assigned Gates. The Lessee shall have the responsibility of assigning operations to all gates, including Common Use Assigned Gates, in accordance with the provisions and protocols within this document. Scheduling protocols and procedures shall provide for:

- Optimal use of terminal gates and related facilities;
- Equitable airline access;
- Reasonable airline operating certainty, including providing the Signatory Airlines with predictability and stability regarding the use of aircraft gates at the Airport;
- Opportunities for addition of flights by incumbent and new entrant airlines;
- Maximum use of international capable gates for international arrivals; and
- Safe operating practices.

In addition, Signatory and Nonsignatory Airlines shall have the right to install proprietary equipment at a Common Use Gate for their operations, subject to approval of the Lessee. The Lessee shall not unreasonably withhold approval. However, the Lessee may require that the airline remove such equipment at the sole expense of the airline should the Common Use Gate be reassigned as a Common Use Assigned Gate.

### **F.7.2 Responsibilities**

The following responsibilities must be reasonably fulfilled for these gate scheduling procedures to be applied consistent with their intent. Airlines are responsible for:

- Participating in gate committee discussions of gate allocation issues at regularly scheduled meetings of the Airline Management Committee established under Section 3.13 of this Agreement;
- Providing timely and accurate flight and gate occupancy schedules in accordance with Template 2 (attached herein);
- Notifying promptly the Lessee of off-schedule flights;
- Complying with Lessee's gate assignments; and
- Discussing any concerns regarding application of these gate scheduling procedures with the Lessee.

The Lessee is responsible for:

- Leading discussions of gate allocation issues at regularly scheduled meetings of the Airline Management Committee established under Section 3.13 of this Agreement;
- Coordinating airline requests;
- Developing gate schedules and making assignments in accordance with these gate scheduling procedures;
- Providing clear and timely gate occupancy schedules to airlines;
- Making day-to-day gate assignments.

### **F.7.3 General Gate Assignment Considerations**

The Lessee shall consider the following when making gate assignments:

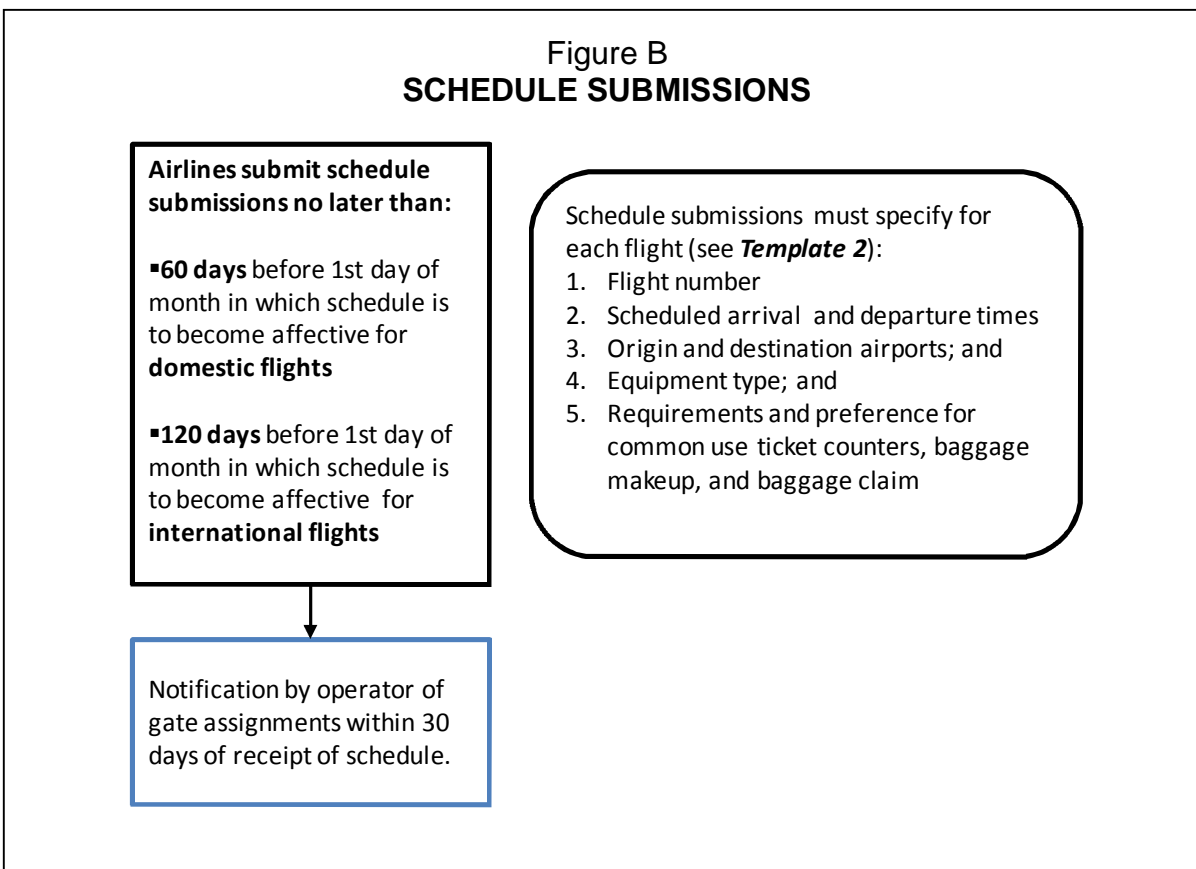
- A. Physical capabilities of the gate and related facilities;
- B. Airlines preferences and requests for specific gates;



- C. Limiting to the extent practical, the distance between gates used by the same airline and its Affiliates and Alliance Partners; and
- D. Historical operating arrangements and continuity in operations.

**F.7.4. Gate Scheduling Protocol**

- A. Airlines must submit their flight schedules to the Lessee in accordance with the specifications outlined in Figure B, including notification 60 days in advance of the schedule for domestic flights and 120 days in advance for international flights. Template 2 attached to this document specifies the format in which the submissions must be made.



- B. Scheduled flights requiring extended time-on-gate will be scheduled as a last priority and may be displaced by flights operating within these time-on-gate parameters shown in Figure C.

**Figure C**  
**TIME ON GATE PRIORITIES**

Aircraft gauge	Time on gate (minutes)						Schedule separation	
	Domestic origin <i>and</i> destination			International origin <i>or</i> destination			Flights of Same Airline (a)	Flights of Different Airline
	Departing flights	Arriving flights	Turns	Departing flights	Arriving flights	Turns		
Up to 199 seats	45	45	60	45	60	90	20	30
200 or more seats	60	60	90	60	60	120	20	30

Notes:  
(a) Also includes flights serviced by the same ground handling company.

- C. An aircraft with the first scheduled morning departure from a gate will be scheduled to position at the gate following the last terminating flight the preceding day and the last terminating flight will be scheduled to clear the gate in accordance with the maximum gate occupancy periods for terminating flights specified in Figure C.

- D. In the event that an insufficient number of Common Use gates exists to accommodate scheduled flights, the following steps will be taken:

- i. The Lessee will consult with involved airlines to seek flight schedule changes to resolve the situation, including accommodation at a Common Use Assigned Gate, in accordance with provisions in Section F.6.3;
- ii. If the consultation fails to produce a solution, the Lessee will make reasonable accommodations of airline schedules, which could require airlines to ramp hold at times (subject to adequate ramp hold positions being available) while they wait for the next available gate. In determining the airline that may use the next available gate, the Lessee will consider scheduled arrival times, airline performance in meeting

scheduled arrival times vs. actual arrival times, airline signatory status, aircraft size, international or domestic origination, and other relevant factors as appropriate.

- iii. To the extent a situation results where the Lessee cannot reasonably accommodate airline schedules and conflicts cannot be resolved, the Lessee will first give preference to Signatory Airlines, then will give preference to other factors, including scheduled arrival times, actual arrival times, equipment size and international or domestic origination. If, after taking into account the preceding factors, an aircraft cannot be accommodated at a gate, such aircraft will be accommodated at a remote position, as available.

#### **F.7.5 Gate Assignment Protocol for Off-Schedule or Non-Scheduled Flights**

- A. Flights shall be assigned to specific gates as scheduled unless the accommodation of such flights is not reasonably practicable due to off-schedule operations, nonfunctional facilities or other operational constraints.
- B. Non-scheduled operations will be gated on a space-available basis in accordance with the same priorities outlined in the preceding Section F.7.4 for international and domestic originating flights.
- C. Off-schedule flights shall be reported by airlines to the Lessee at the earliest opportunity.
- D. An off-schedule departing flight that is reasonably expected by the Lessee to clear a gate such that it would cause less than a 10-minute delay on the next scheduled arriving flight will be gated where scheduled, or if available, accommodated at an open gate convenient for that flight. If the delay is expected to be greater than 10 minutes, the arriving flight generally will be gated elsewhere.
- E. The Lessee shall seek to provide capacity in reserve to accommodate off-schedule operations.
- F. The assignment decisions of the Lessee shall be binding.
- G. Signatory Airline representatives and airline station managers shall have the right to discuss concerns regarding assignments with the Lessee
- H. Airlines shall have the right to install proprietary equipment on Common Use Gates with the Lessee's approval.

Template 1  
**HYPOTHETICAL DEDICATED GATE RECAPTURE CALCULATION**

**PART 1 - WEIGHTED GATE USAGE for average departures over six months**  
**Gates**

Gate	Capability	Airline/ Lessee	Airlines at Gate	Average Period							Total	# Gates	Average
				Sun	Mon	Tue	Wed	Thu	Fri	Sat			
1	International	Lessee	Commuter	13.31	14.44	14.15	13.90	14.38	14.50	14.81	99.49	1.00	14.21
2	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
3	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
4	International	Lessee	BA, IB	1.00	1.00	1.00	-	-	1.00	1.00	5.00	1.00	0.71
5	International	Lessee	AA	3.30	3.20	3.16	3.16	3.15	3.20	3.30	22.47	1.00	3.21
6	International	Lessee	AA	3.30	3.20	3.16	3.16	3.15	3.20	3.30	22.47	1.00	3.21
7	International	Airline	AA	3.30	3.20	3.16	3.16	3.15	3.20	3.30	22.47	1.00	3.21
8	International	Airline	AA	3.30	3.20	3.16	3.16	3.15	3.20	3.30	22.47	1.00	3.21
9	International	Airline	AA	3.30	3.20	3.16	3.16	3.15	3.20	3.30	22.47	1.00	3.21
11	International	Airline	OW	3.67	3.83	3.70	3.60	3.75	3.83	3.92	26.30	1.00	3.76
12	International	Airline	FL/WN	2.75	2.50	2.47	2.47	2.58	2.67	2.58	18.02	1.00	2.57
14	International	Airline	FL/WN	2.75	2.50	2.47	2.47	2.58	2.67	2.58	18.02	1.00	2.57
15	International	Airline	OW	3.67	3.83	3.70	3.60	3.75	3.83	3.92	26.30	1.00	3.76
16	International	Airline	FL/WN	2.75	2.50	2.47	2.47	2.58	2.67	2.58	18.02	1.00	2.57
17	International	Airline	OW	3.67	3.83	3.70	3.60	3.75	3.83	3.92	26.30	1.00	3.76
18	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
19	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
20	International	Lessee	CM	2.00	2.00	2.00	2.00	2.00	2.00	2.00	14.00	1.00	2.00
22	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
23	International	Airline	NK	3.00	3.00	3.00	3.00	3.00	3.00	3.00	21.00	1.00	3.00
24	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
25	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-

## Template 1

**HYPOTHETICAL DEDICATED GATE RECAPTURE CALCULATION** *(continued)*

Gate	Capability	Airline/ Lessee	Airlines at Gate	Average Period							Total	# Gates	Average
				Sun	Mon	Tue	Wed	Thu	Fri	Sat			
26	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
27	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
28	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
29	International	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
31A	Domestic	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
31B	Domestic	Lessee	LI, BB, TJ	4.00	3.25	3.00	3.00	3.50	3.50	4.00	24.25	1.00	3.46
32	Domestic	Lessee	AC, WS, 7I	2.50	-	1.00	-	-	1.00	1.50	6.00	1.00	0.86
33	Domestic	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
34	Domestic	Airline	UA, CO	2.00	1.50	1.50	1.50	1.50	1.50	2.38	11.88	1.00	1.70
35	Domestic	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
36	Domestic	Airline	UA, CO	2.00	1.50	1.50	1.50	1.50	1.50	2.38	11.88	1.00	1.70
37	Domestic	Airline	US	4.00	3.00	2.70	2.70	2.38	2.63	3.13	20.53	1.00	2.93
38	Domestic	Airline	US	4.00	3.00	2.70	2.70	2.38	2.63	3.13	20.53	1.00	2.93
39	Domestic	Airline	DL	2.38	2.00	2.00	1.90	2.00	2.00	2.38	14.65	1.00	2.09
40	Domestic	Lessee	-	-	-	-	-	-	-	-	-	1.00	-
41	Domestic	Airline	DL	2.38	2.00	2.00	1.90	2.00	2.00	2.38	14.65	1.00	2.09
A1	Domestic	Airline	B6	2.96	2.96	2.76	2.69	2.86	2.93	2.96	20.12	1.00	2.87
A2	Domestic	Airline	B6	2.96	2.96	2.76	2.69	2.86	2.93	2.96	20.12	1.00	2.87
A3	Domestic	Airline	B6	2.96	2.96	2.76	2.69	2.86	2.93	2.96	20.12	1.00	2.87
A4	Domestic	Airline	B6	2.96	2.96	2.76	2.69	2.86	2.93	2.96	20.12	1.00	2.87
A5	Domestic	Airline	B6	2.96	2.96	2.76	2.69	2.86	2.93	2.96	20.12	1.00	2.87
A6(48)	Domestic	Airline	B6	2.96	2.96	2.76	2.69	2.86	2.93	2.96	20.12	1.00	2.87
A7 (46)	Domestic	Airline	B6	2.96	2.96	2.76	2.69	2.86	2.93	2.96	20.12	1.00	2.87
<b>TOTAL WEIGHTED GATE USAGE</b>				99.06	92.44	90.15	86.90	89.38	93.25	98.81	649.99	45.00	2.06

Template 1  
**HYPOTHETICAL DEDICATED GATE RECAPTURE CALCULATION** *(continued)*

**PART 2 – UTILIZATION BY GATE CAPABILITY AND TYPE RECAPTURE TESTS**

Gates	Domestic / International	Average Period							Total	# Gates	Average
		Sun	Mon	Tue	Wed	Thu	Fri	Sat			
<b>Airline</b>											
	Domestic	16.75	13.00	12.40	12.20	11.75	12.25	15.75	94.10	6	2.24
	International	59.50	58.75	56.60	55.80	57.75	59.00	59.75	407.15	19	3.06
		76.25	71.75	69.00	68.00	69.50	71.25	75.50	501.25	25	2.86
	Airline average	3.05	2.87	2.76	2.72	2.78	2.85	3.02			
<b>Lessee</b>											
	Domestic	19.81	17.69	18.15	16.90	17.88	19.00	20.31	129.74	6	3.09
	International	3.00	3.00	3.00	2.00	2.00	3.00	3.00	19.00	14	0.19
		22.81	20.69	21.15	18.90	19.88	22.00	23.31	148.74	20	1.06
	Lessee average	1.14	1.03	1.06	0.95	0.99	1.10	1.17			
<b>Lessee less airline</b>											
	Domestic	3.06	4.69	5.75	4.70	6.13	6.75	4.56	35.64		0.85
	International	(56.50)	(55.75)	(53.60)	(53.80)	(55.75)	(56.00)	(56.75)	(388.15)		(2.87) <b>(a)</b>
		(53.44)	(51.06)	(47.85)	(49.10)	(49.63)	(49.25)	(52.19)	(352.51)		(2.02) <b>(b)</b>

**(a) To recapture an international gate ratio must be >=0.0**

**(b) To recapture a domestic gate ratio must be >=0.0**

SAMPLE

Template 1  
**HYPOTHETICAL DEDICATED GATE RECAPTURE CALCULATION** *(continued)*

**PART 3 – ASSUMPTIONS TABLES**

Table A  
**GATE POOL ASSUMPTIONS FOR TEMPLATE 1 CALCULATION**

Airline Pool			Lessee Pool	
Gate Designation	Concourse	Airline	Gate Designation	Concourse
5	D	AA	1	E
6	D	AA	2	D
7	D	AA	3	D
8	D	AA	4	D
9	D	AA	18	D
11	D	OW	19	D
12	D	FL/WN	20	C
14	D	FL/WN	22	C
15	D	OW	24	C
16	D	FL/WN	25	C
17	D	OW	26	C
23	C	NK	27	C
34	B	UA/CO	28	C
36	B	UA/CO	29	C
37	B	US	31A	B
38	B	US	31B	B
39	B	DL	32	B
41	B	DL	33	B
A1	A	B6	35	B
A2	A	B6	40	B
A3	A	B6		
A4	A	B6		
A5	A	B6		
A6	A	B6		
A7	A	B6		
<b>TOTALS</b>				
Airline pool gates			25	
Lessee pool gates			20	
Total gates			45	



Template 1

**HYPOTHETICAL DEDICATED GATE RECAPTURE CALCULATION** *(continued)*

Table B

**OPERATIONAL WEIGHTING ASSUMPTIONS FOR TEMPLATE 1 CALCULATION**

<u>Range of seats</u>	<u>Weighting</u>	<u>Typical aircraft</u>
Greater than or equal to 100	1.0	B737, A320
Between 99 and 40	0.5	AT7, DH3,
Less than 40	0.25	DHT, CNA

Template 2  
**REQUIRED SCHEDULE SUBMISSION FORMAT**

Flight number	Origin	Dest	Equip type	Dom / Int'l	Scheduled arrival/departure times							Preferences			Explanatory notes
					Sun	Mon	Tue	Wed	Thu	Fri	Sat	Gate	Bag Claims	Ticket ctrs	
Flight001	YYY	SJU	A321	D	15:00	15:00	15:00	15:00	15:00	15:00	15:00	X1	X1	X, Y, Z	X, Y, Z
Flight002	SJU	YYY	A321	D	15:30	15:30	15:30	15:30	15:30	15:30	15:30	X1	X1	X, Y, Z	X, Y, Z
Flight003	YYY	SJU	B737	D	22:00	22:00	22:00	22:00	22:00	22:00	22:00	X2	X1	X, Y, Z	X, Y, Z
Flight004	SJU	YYY	B777	I	13:00	13:00	13:00	13:00	13:00	13:00	13:00	X5	X1	X, Y, Z	X, Y, Z
Flight005	YYY	SJU	B777	I	14:30	14:30	14:30	14:30	14:30	14:30	14:30	X5	X1	X, Y, Z	X, Y, Z
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Template 2  
**REQUIRED SCHEDULE SUBMISSION FORMAT**

Flight number	Origin	Dest	Equip type	Dom / Int'l	Scheduled arrival/departure times							Preferences			Explanatory notes
					Sun	Mon	Tue	Wed	Thu	Fri	Sat	Gate	Bag Claims	Ticket ctrs	
Flight001	YYY	SJU	A321	D	15:00	15:00	15:00	15:00	15:00	15:00	15:00	X1	X1	X, Y, Z	X, Y, Z
Flight002	SJU	YYY	A321	D	15:30	15:30	15:30	15:30	15:30	15:30	15:30	X1	X1	X, Y, Z	X, Y, Z
Flight003	YYY	SJU	B737	D	22:00	22:00	22:00	22:00	22:00	22:00	22:00	X2	X1	X, Y, Z	X, Y, Z
Flight004	SJU	YYY	B777	I	13:00	13:00	13:00	13:00	13:00	13:00	13:00	X5	X1	X, Y, Z	X, Y, Z
Flight005	YYY	SJU	B777	I	14:30	14:30	14:30	14:30	14:30	14:30	14:30	X5	X1	X, Y, Z	X, Y, Z
.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
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**SCHEDULE G**

**INITIAL ALLOCATION OF EXCLUSIVE USE SPACE**

*[See Attached]*

## Schedule G - Initial Allocation of Space

### AIRLINE TERMINAL SPACE RENTALS FOR P3

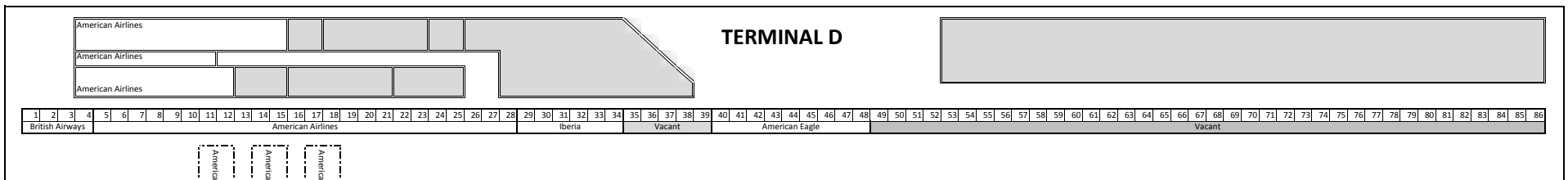
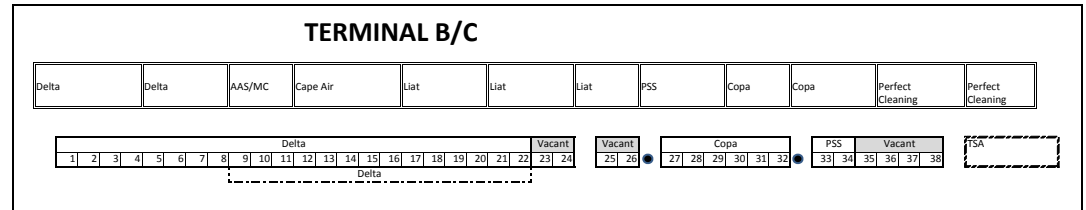
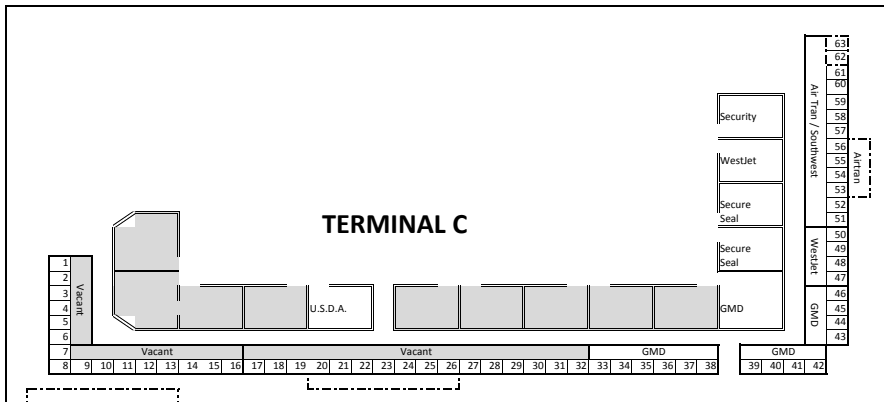
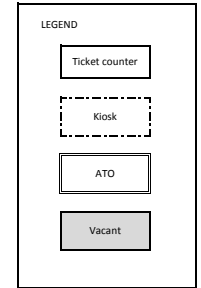
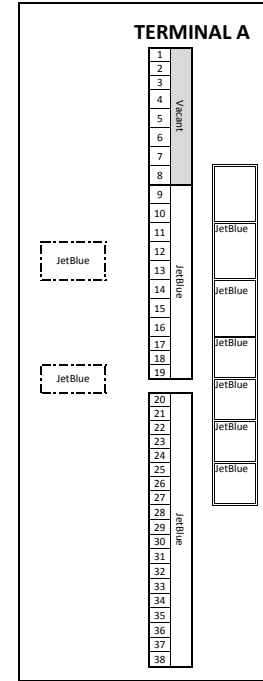
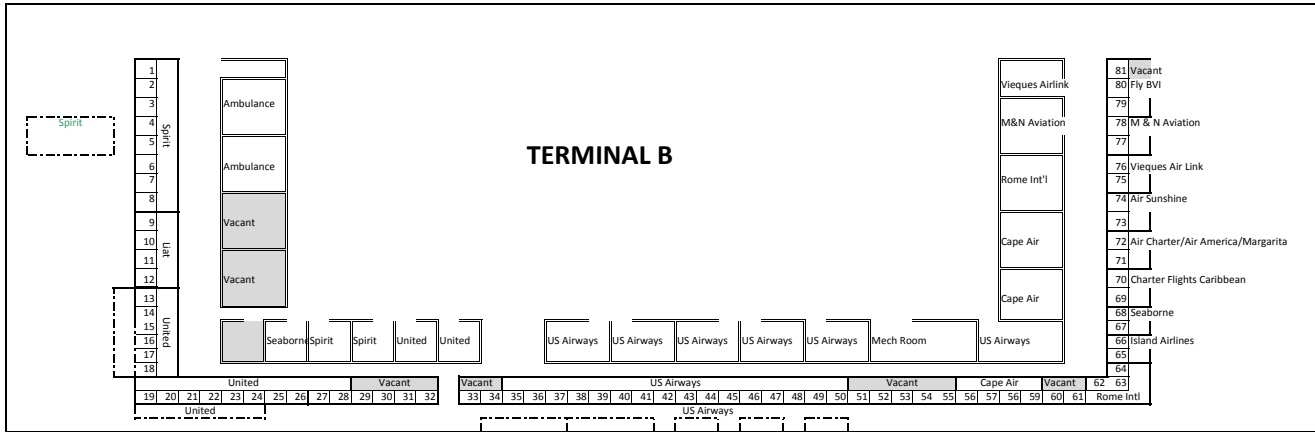
	Ticket Counters		Space (square feet)				Total
	Location	Number	Counter	Baggage Claim	Office	Other	
<b>TENANTS PARTY TO USE AGREEMENT</b>							
American	D	34	1,500	624	3,076	46,652	51,852
American Eagle	D	-	-	-	-	-	-
Air Sunshine	B	2	127	-	533	-	659
Air Charter/Air America	B	1	40	-	-	-	40
Air Margarita	B	1	40	-	-	-	40
AirTran/Southwest	C	13	493	290	610	-	1,393
British Airways (a)	D	4	-	200	-	-	200
Cape Air	B	4	528	9	676	-	1,213
Charter Flights Caribbean	B	2	84	-	-	-	84
COPA	B/C	6	345	-	587	-	932
Delta	B/C	22	525	256	5,016	-	5,797
Iberia	D	6	327	-	782	144	1,253
Island Airlines	B	2	79	-	-	-	79
JetBlue	A	30	1,792	1,097	5,081	1,662	9,632
LIAT (b)	B	4	262	-	574	-	836
M&N Aviation	B	4	191	-	183	-	375
Seaborne	B	2	440	-	238	492	1,170
Spirit	B	8	308	258	485	108	1,159
United (c)	B	16	364	254	2,165	324	3,106
US Airways	B	16	907	480	1,509	242	3,138
WestJet	C	4	180	-	250	185	615
Vieques Air Link	B	2	76	-	183	-	260
Subtotal		183	8,608	3,468	21,949	49,810	83,834
<b>TENANTS NOT PARTY TO USE AGREEMENT</b>							
GMD	C	14	354	240	430	-	1,024
Professional Security Support	B/C	2	96	-	307	-	403
Rome International	B	3	57	-	182	291	530
Sharon Travel & Tours Corp.	B/C	-	79	-	-	-	79
Turismo Tony Pérez	B/C	-	105	-	-	-	105
Subtotal		19	691	240	920	291	2,141
<b>TOTAL TERMINAL RENTABLE SPACE</b>		202	9,299	3,708	22,868	50,101	85,975
<b>VACANT TICKET COUNTERS</b>							
Terminal A		10					
Terminal B		14					
Terminal B/C		8					
Terminal C		32					
Terminal D		42					
Subtotal		106					
<b>Total</b>		308	9,299	3,708	22,868	50,101	85,975

(a) British Airways exclusive office space to be determined

(b) Airline ticket office space located on Terminal B/C.

(c) United includes Continental

Schedule G - Initial Allocation of Space  
**ILLUSTRATIVE SCHEDULE OF TICKET COUNTERS AND AIRLINE TICKET OFFICES FOR P3**

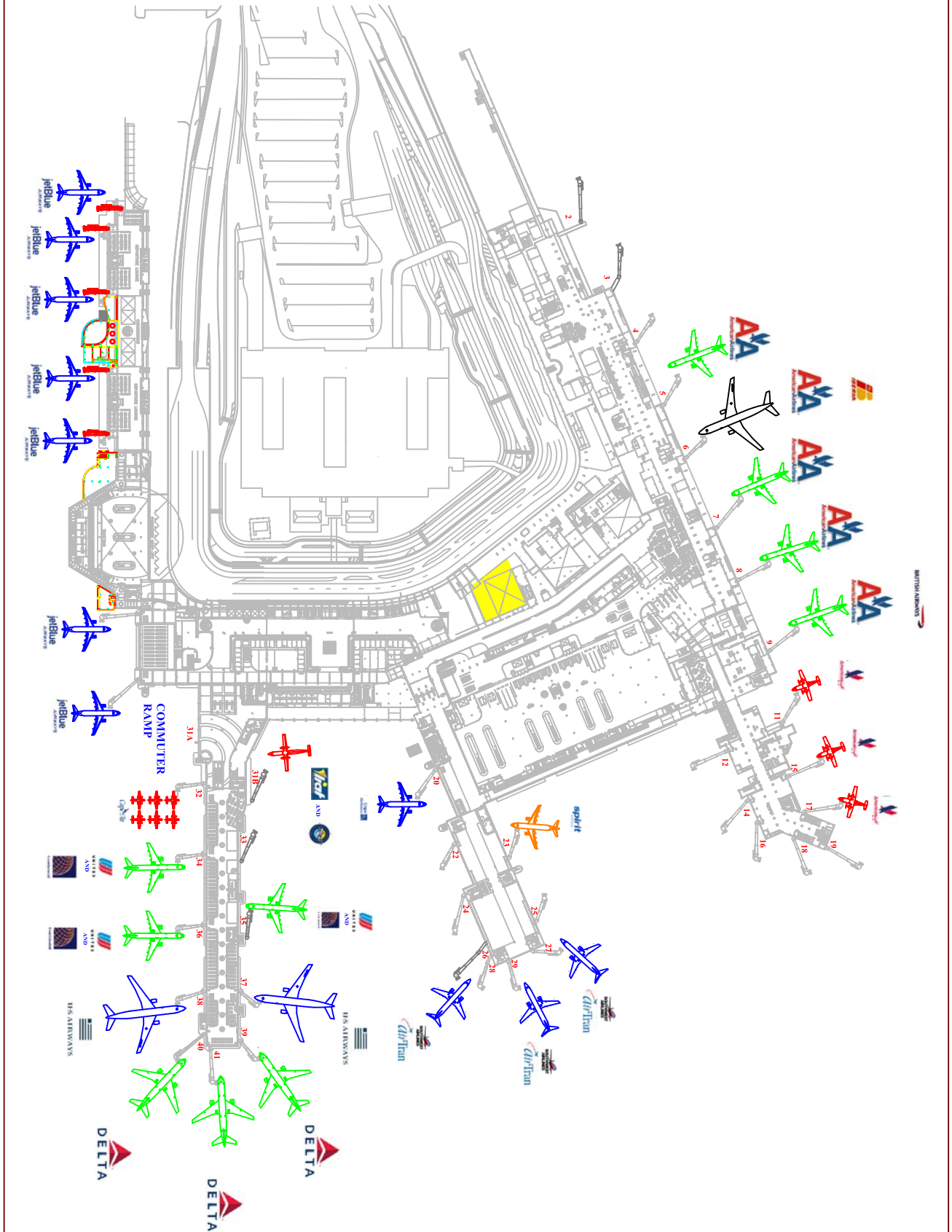


## Schedule G - Initial Allocation of Space - P3

### GATE SUMMARY

Gate Designation	Concourse	Airline	Assigned Gate (a)
1	E	-	-
2	D	-	-
3	D	-	-
4	D	-	-
5	D	AA	Assigned Gate
6	D	AA/IB	Assigned Gate
7	D	AA	Assigned Gate
8	D	AA	Assigned Gate
9	D	AA/BA	Assigned Gate
11	D	OW	Assigned Gate
12	D	-	-
14	D	-	-
15	D	OW	Assigned Gate
16	D	-	-
17	D	OW	Assigned Gate
18	D	-	-
19	D	-	-
20	C	CM	-
22	C	-	-
23	C	NK	Assigned Gate
24	C	-	-
25	C	-	-
26	C	FL/WN	Assigned Gate
27	C	FL/WN	Assigned Gate
28	C	-	-
29	C	FL/WN	Assigned Gate
32	B	9K	-
33	B	-	-
34	B	UA/CO	Assigned Gate
35	B	UA/CO/US	-
36	B	UA/CO	Assigned Gate
37	B	US	Assigned Gate
38	B	US	Assigned Gate
39	B	DL	Assigned Gate
40	B	DL	-
41	B	DL	Assigned Gate
31A	B	-	-
31B	B	LI/BB	-
A1	A	B6	Assigned Gate
A2	A	B6	Assigned Gate
A3	A	B6	Assigned Gate
A4	A	B6	Assigned Gate
A5	A	B6	Assigned Gate
A6	A	B6	Assigned Gate
A7	A	B6	Assigned Gate

(a) Assigned gate is a Common Use Assigned Gate as defined in Schedule F; these gates comprise the Airline Pool.



Architect of Record / Engineer:  
**JACOBS**  
 1000 EAST AVENUE, SUITE 200  
 ANNE ARBOR, MI 48106  
 TEL: 734.963.7800  
 WWW.JACOBS.COM

Designer:

Consultant:

**Leigh | Fisher**  
 Management Consultants

Date: \_\_\_\_\_  
 Signature and Seal

Project:

**P-3  
 GATE  
 ALIGNMENT**

DATE: 2008-12-08	DATE: 2008-12-08	DATE: 2008-12-08	DATE: 2008-12-08	DATE: 2008-12-08
BY: JACOBSON	BY: JACOBSON	BY: JACOBSON	BY: JACOBSON	BY: JACOBSON
NO: 1	NO: 2	NO: 3	NO: 4	NO: 5
DESIGNER: JACOBSON	DESIGNER: JACOBSON	DESIGNER: JACOBSON	DESIGNER: JACOBSON	DESIGNER: JACOBSON
PROJECT NO.: P-3	PROJECT NO.: P-3	PROJECT NO.: P-3	PROJECT NO.: P-3	PROJECT NO.: P-3
SCALE: AS SHOWN	SCALE: AS SHOWN	SCALE: AS SHOWN	SCALE: AS SHOWN	SCALE: AS SHOWN
SHEET TITLE:	SHEET TITLE:	SHEET TITLE:	SHEET TITLE:	SHEET TITLE:
SHEET NO.:	SHEET NO.:	SHEET NO.:	SHEET NO.:	SHEET NO.:



**SCHEDULE H**  
**MAINTENANCE AND REPAIR RESPONSIBILITIES**

*[See Attached]*

Schedule H  
**OPERATIONS, MAINTENANCE, AND SERVICE RESPONSIBILITIES**

The following matrix identifies the responsible party (either the Lessee or the Airline) who shall, at its sole cost, be responsible for the maintenance, repair, service, and/or provision of the specifically identified premises, appurtenances, or services in connection with their operation or maintenance. The Lessee shall not be responsible for any prior or subsequent installation, appurtenance or system by Airline. The Lessee shall not be responsible for any prior or subsequent Airline modification of Lessee-provided Airline Exclusive Use Space, appurtenance, system or service. Airline shall have the duty to restore the Exclusive Use Space, at its sole cost, to the original condition prior to vacating Airline's Exclusive Use Space, including the de-installation of any Airline modification and Airline appurtenance, system or service, as required by Sections 3.3 and 3.6 of the Use Agreement. If Airline is positively determined to have damaged premises or misused an Lessee-provided appurtenance or system, said Airline may be charged for maintenance and repairs in accordance with the Use Agreement.

L = Lessee  
AL = Airline

Space							
Ticket counter	Airline ticket office	Baggage service office	Departure holdrooms	Terminal curbside	Operations & maintenance space	Public space	

**OPERATIONS, MAINTENANCE AND SERVICE AREAS**

**BUILDING, Exterior**

Doors	L	L	L	L	L	L	L
Insulation and weather-stripping	L	L	L	L	L	L	L
Exterior lighting	-	-	-	-	L	-	L
Roof	L	L	L	L	L	L	L
Walls and load-bearing structures	L	L	L	L	L	L	L
Windows	L	L	L	L	L	C	L

**BUILDING, Interior**

Backwall finish and signage	AL	AL	AL	L	AL	-	-
Counter shell/exterior casement, countertops	L	AL	AL	L	L	-	L
Counter insert cabinetry	AL	AL	AL	AL	AL	-	L
Ceiling tiles	L	L	L	L	L	L	L
Doors	AL	AL	AL	L	L	AL	L
Flooring: carpet, tile, et cetera	L	L	L	L	L	L	L
Furnishings and fixtures	L	AL	AL	L	L	AL	L
HVAC: Building system maintenance and air distribution	L	L	L	L	L	L	L
Insulation and weather stripping	L	L	L	L	L	L	L
Interior wall windows	AL	AL	AL	L	L	AL	L
Paint and wall finishes	AL	AL	AL	L	L	AL	L
Passenger seating-installation and maintenance	L	-	AL	L	-	-	L

**COMMUNICATIONS (a)**

Public address system	L	L	L	L	L	L	L
Communication lines/conduit: Airline installed	AL	AL	AL	AL	AL	AL	-
Communication lines/conduit: Lessee installed	L	L	L	L	L	L	L
FIDS and BIDS	L	-	-	L	L	-	L

**EQUIPMENT AND COMPUTER SYSTEMS (b)**

Airline proprietary computer system	AL	AL	AL	AL	AL	AL	-
Airline ticketing and gate equipment	AL	AL	AL	AL	AL	AL	-
Computer room temperature control	L	L	L	L	-	L	L
Computer cabinet temperature control	AL	AL	AL	AL	-	AL	-
Radio, meteorological and aerial navigation equipment	-	AL	AL	-	-	AL	-
Ticket counter scales	AL	-	-	-	-	-	-

**FIRE ALARM SYSTEM & OTHER EQUIPMENT**

Fire alarm system	L	L	L	L	L	L	L
Fire extinguishers	L	AL	AL	L	L	AL	L

Schedule H  
OPERATIONS, MAINTENANCE, AND SERVICE RESPONSIBILITIES (continued)

	Space						
	Ticket counter	Airline ticket office	Baggage service office	Departure holdrooms	Terminal curbside	Operations & maintenance space	Public space
<b>FIXTURES, ELECTRICAL/ENERGY</b>							
Bulb and tube replacement	L	AL	AL	L	L	AL	L
Maintenance	L	AL	AL	L	L	AL	L
Circuits (amperage)	L	L	L	L	L	L	L

<b>JANITORIAL AND TRASH REMOVAL SERVICE</b>							
Recycling of paper, plastic, glass, and cardboard, etc.	L	AL	AL	L	L	AL	L
Tenant space (floors and tenant restroom areas)	L	AL	AL	-	AL	AL	L
Window cleaning - appurtenant to tenant space, int. and ext.)	L	L	L	L	L	AL	-
Trash removal (c)	L	AL	AL	L	L	L	L

<b>PLUMBING AND SEWER</b>							
Incoming water line from common use water line to fixture	L	-	-	L	-	L	L
Sanitary sewer line	L	-	-	L	-	L	L
Restrooms (fixture, repair and replacement)	L	-	-	L	-	L	L

<b>SIGNAGE</b>							
Ticket counter backwall	AL	-	-	-	-	-	-
Gate: podium backwall	AL	-	AL	AL	-	-	-
Skycap podium	-	-	-	-	AL	-	-
Terminal way finding	L	-	-	L	L	-	L

<b>MISCELLANEOUS</b>							
Pest control	L	L	L	L	L	L	L
Locks, locksets, and keys backbilled to tenant	AL	AL	AL	AL	AL	AL	-

	Space		
	Ticket counter	BHS space	Baggage claim
<b>BAGGAGE CONVEYANCE SYSTEM</b>			
Cleaning of designated areas	AL	L	L
Repair and maintenance	L	L	L

	Responsibilities					
	Ramp scrubbing	Annual pavement painting	Special requests pavement painting	Pavement maintenance	Spill cleanup	Janitorial and trash removal
<b>APRON AREAS</b>						
Passenger boarding bridges	-	-	-	-	-	L
Apron maintenance	L	L	L	L	AL / L (d)	AL

	Space	
	Disposal area	Pump room
<b>TRITURATOR SYSTEM</b>		
Trash removal	L	L
Cleaning	L	L
Repair and maintenance	L	L

Notes:

- (a) The Lessee will maintain connectivity within the terminal building complex. The Airline is responsible for their own data wiring infrastructure.
- (b) The Airline is responsible for providing power supply protection for their own computer equipment to protect in the event of voltage drops, voltage spikes, or power outages.
- (c) The Airline is responsible for safely and properly collecting and disposing of bio-hazard material and other hazardous material from their aircraft.
- (d) The party responsible for the spill is responsible for the cleanup of the spill.

**SCHEDULE I**  
**FORM OF LETTER OF CREDIT**

BENEFICIARY:

[Lessee]  
[Address]

APPLICANT:

[Airline]  
[Address]

Gentlemen:

We hereby establish an irrevocable letter of credit in favor of the Beneficiary for the account of the Applicant for a sum of \_\_\_\_\_ and 00/100 U.S. Dollars (\$\_\_\_\_\_.00) available by Beneficiary's draft(s) drawn on ourselves at sight effective \_\_\_\_\_ and expiring on \_\_\_\_\_.

Drafts must be accompanied by:

1. A statement purportedly signed by an authorized officer of the Beneficiary certifying that the Applicant has failed to faithfully perform one or more of its obligations to the Beneficiary under a certain Airport Use Agreement for the Luis Muñoz Marín International Airport (the "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_ by and between the Beneficiary and the Applicant; and
2. A statement purportedly signed by an authorized officer of the Beneficiary as to (i) the amount of damages or expenses which, in his or her determination, the Beneficiary has suffered or incurred as a result of such failure by the Applicant, and/or (ii) the amount of any fees, charges or others sums past due and remaining unpaid from the Applicant to the Beneficiary under the Agreement, together with the amount of any interest thereon to the extent required or allowed under the Agreement; and
3. The original of this credit.

Each draft must indicate the name of the issuing banks the credit number and date of this letter of credit.

If a drawing is made by the Beneficiary hereunder at or prior to 11:00 a.m. local time at our branch where such drawing is made, on a business day, payment shall be made to the Beneficiary or its designee of the amount specified, in immediately available funds, not later than 3:00 p.m., such local time, on the same business day or such later time and business day as the Beneficiary may specify. If a drawing is made by the Beneficiary after 11:00 a.m., such local time, on a

business day, payment shall be made to the Beneficiary or its designee of the amount specified, in immediately available funds, not later than 3:00 p.m., such local time, on the next business day thereafter, or such later time and business day as the Beneficiary may specify. Except so far as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce, Publication No. 400 (1983 Revision), except that, notwithstanding the provisions of Article 19 thereof to the contrary, if this letter of credit would have otherwise expired by its terms during a period when our business has been interrupted by Acts of God or other causes beyond our control, our obligations hereunder shall continue for 30 days following the date of our resumption of normal business operations.

We hereby agree with you that all drafts drawn under and in compliance with the terms of this letter of credit will be duly honored on presentation to us.

[*Bank*]

By:  
Name:  
Title:

Hereunto duly authorized

## SCHEDULE J

### INITIAL CAPITAL PROJECTS

Pursuant to Section 6.1 of this Agreement, the Lessee, in addition to and in accordance with all other requirements of this Agreement, shall fund and complete the following improvements and upgrades at the Airport, without any addition to the Total Annual Contribution; *provided, however*, that the Lessee shall not be required to complete an improvement or upgrade or portion thereof to the extent it is in an area of the Airport that is permanently closed in accordance with this Agreement.

**1. Construction of South General Aviation Access Road and Utilities.** The Lessee shall construct a new access road, all necessary utilities, sanitary sewer, lighting, marking and signage to prepare the general aviation area for construction of hangers and relocation of tenants from midfield taxiway area to allow for future expansion. It is expected that the Authority may, but is not obligated to, complete certain portions of this project prior to the Closing. The Lessee shall complete the project to the extent not completed by the Authority.

**2. Relocation of Terminal D USDA Baggage Inspection Facility.** The Lessee shall consolidate two existing Terminal D USDA baggage inspection facilities to the interior portion of the building near the existing American Airlines ticketing counter positions. It is expected that the Authority may, but is not obligated to, complete certain portions of this project prior to the Closing. The Lessee shall complete the project to the extent not completed by the Authority.

**3. Parking Garage Stairs Refurbishment.** The Lessee shall replace five existing external stairwells within the parking garage. It is expected that the Authority may, but is not obligated to, complete certain portions of this project prior to the Closing. The Lessee shall complete the project to the extent not completed by the Authority.

**4. Repair of Taxiway N Concrete Surfaces.** The Lessee shall replace failed pavement at the junction of Taxiways N, N3 and H7. The southern end of Taxiway N is used by passenger traffic moving to/from Runway 10-28 and Terminals B and C as well as by cargo aircraft. The path directly under the steel plate is typically used by cargo planes moving to and from Runway 8-26. It is expected that the Authority may, but is not obligated to, complete certain portions of this project prior to the Closing. The Lessee shall complete the project to the extent not completed by the Authority.

**5. Reconstruction of Taxiway Sierra.** The Lessee shall reconstruct the deteriorating taxiway Sierra parallel to runway 8-26. The FAA has made available AIP grants to complete this project. The local match is to be funded by the Lessee to the extent necessary. It is expected that the Authority may, but is not obligated to, complete certain portions of this project prior to the Closing. The Lessee shall complete the project to the extent not completed by the Authority.

**6. Improvement of Terminal and Roadway Signage.** The Lessee shall update Airline location signs on access roads and Terminal entrances and correct incorrect directions and Airline names. Specifically, curb signage will be updated to reflect changes to Airline locations, and Terminal signage will be updated to direct passengers to specific Airline counters in

Terminals A and B. Signage will also be updated to reflect changes to the gate numbering system that may be made by the Authority. It is expected that the Authority may, but is not obligated to, complete certain portions of this project prior to the Closing. The Lessee shall complete the project to the extent not completed by the Authority.

**7. Repair of All Terminal Roof Leaks.** The Lessee shall repair all roof leaks in all Terminal areas.

**8. Repair of Authority Maintenance Division and Motor Pool Building.** The Lessee shall repair Authority Maintenance Division and Motor Pool Building to enable the facility to be used during wet weather, including by rehabilitating the open structure and installing siding and roll-up doors.

**9. Relocation of Terminal A USDA Baggage Inspection Facility.** The Lessee shall relocate the existing USDA baggage inspection facility from the internal corridor between Terminal A and Terminal B to a new location in Terminal A. The Lessee shall consult with the Authority and the Airlines in determining the appropriate location.

**10. Repair Curbside Water Leaks.** The Lessee shall repair leaks in the road expansion joint through the installation of a mechanical joint and reconstruction of metal grates. The existing circulation roadway running in front of the passenger Terminals was built in two stages, and during heavy rain there are leaks between the longitudinal construction joint and the original roadway. This repair will stop water from pouring between the existing expansion joints and onto the arrivals level pedestrian area below the departures roadway.

**11. Construction of Pedestrian Walkway from Garage to Terminal A.** The Lessee shall construct a pedestrian walkway connecting the parking garage with the departures level of Terminal A. It is assumed that this Terminal A walkway would be similar to the existing pedestrian connection at Terminal D located on the northeast corner of parking garage. The Terminal A walkway would be similarly configured, requiring passengers to cross the existing departures roadway.

**12. Provision of Oversized Bag Drop.** Airlines in Terminals B and C require an oversized bag drop facility to prevent time consuming manual delivery of items to the bag make-up area and to alleviate security concerns with this process. The Lessee shall provide suitable oversized bag drop facilities as part of any Terminal reconfiguration, passenger flow changes or Airline relocations.

**13. Implementation of Airport Physical Vulnerabilities Security Plan, Including Airport Perimeter Security System.** The Lessee shall design and construct new fencing around the Airport perimeter, including two vehicular access points. The fencing will be 7-feet high with a three-strand barbed outrigger at the top and will include lighting at vulnerable locations. Additional new asphalt perimeter roadway will be constructed at up-land areas. The project will provide an improved security fence and perimeter road that complies with FAA requirements and standards and will significantly improve airfield security.

**14. Repair Existing Ramp, Apron and Taxiway Concrete Surfaces.** The Lessee shall replace deteriorating pavement on ramp, apron and taxiway areas north of the existing American Airlines gates.

**15. Modification to Passenger Circulation from Terminal C to Baggage Claim of Terminal B.** The Lessee shall improve access from Terminal C to the baggage claim area. The existing configuration of the inclined moving walkways does not currently meet required standards. This project requires modification or improvement through use of stairs, escalators or high capacity elevators to improve passenger flows.

**16. Provision of Ground Power, PC Air and Potable Water at Terminal B and C Gates.** The Lessee shall replace existing portable oil and gas power units with utilities systems connected to the main Terminal, including by installing ground power, PC air and potable water at Terminal B and C gates. The availability of existing electrical capacity is unclear, so considerable upgrades to Terminal utilities capabilities may be required. Additional infrastructure equipment, such as a new power plant, may also be required to provide electric services. Terminals A and D already have PC air available.

**17. Refurbishment of Air Conditioning.** The Lessee shall make improvements to and refurbish the air-conditioning system throughout the Airport Terminals to provide for a consistent, comfortable temperature for Airport users. The Lessee shall initiate a full energy audit of the Airport Terminal to review capacity, demand and the condition of existing facilities. Additional infrastructure equipment, such as a new power plant, may also be required.

**18. Terminal Bathroom Remodeling.** The Lessee shall update aging bathroom facilities throughout the passenger and Airline areas of the Terminal, giving priority to older facilities in key passenger flow areas.

**19. Terminal A FIS Capability.** The Lessee shall design, construct, and maintain U.S. Customs Federal Inspection Services (FIS) capability at three or more gates at Terminal A to meet a maximum demand of up to 400 international arriving customers per hour. Such capability may consist of a satellite FIS within existing terminal space; a satellite FIS within the new terminal space; a separate sterile connecting corridor connecting Terminal A gates to the existing FIS facility; or any other infrastructure solution or accommodation that can be mutually agreed. The separate sterile corridor or other infrastructure solution or accommodation shall only be options if U.S. Customs and Border Protection does not support a separate satellite FIS facility at the Airport.

**20. Expanded Curbside in Terminal A.** The Lessee shall make improvements to the existing Terminal A arrivals curb, the Terminal A international arrivals curb (if applicable), and the Terminal A departure curb, such that the available curb length capacity shall meet the projected curb length demand in accordance with Level of Service C or higher.

**21. Functional Public Address System.** Install a public address system throughout the concourses lacking such system and in Terminal B consistent with best practices at Comparable Public Airports.



**22. In-Line Baggage System Study.** Provide \$500,000 to fund the In-Line Baggage System Study.