SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

AIRLINE OPERATING AND LEASE AGREEMENT

July 1, 2019 – June 30, 2029

AIRLINE:
ALASKA AIRLINES, INC.

SAN DIEGO INTERNATIONAL AIRPORT
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This AIRLINE OPERATING AND LEASE AGREEMENT ("Agreement") is made and entered into on __________, 2019, by and between the San Diego County Regional Airport Authority ("Authority"), a local government entity of regional government, existing under §170000 et seq. of the California Public Utilities Code ("Authority Act") and Alaska Airlines, Inc. ("Airline"), a corporation existing under the laws of the State of Alaska and authorized to conduct business in the State of California.

RECITALS

WHEREAS, the San Diego Unified Port District ("District") is the trustee of certain tidelands owned by the State of California, including the San Diego International Airport at Lindbergh Field, located in the City and County of San Diego, California; and

WHEREAS, the Authority Act establishes Authority as a local governmental entity of regional government, with the exclusive power and authority to oversee the establishment, operation and coordination of airport facilities within the County of San Diego, as well as study, plan and implement any improvements, expansion or enhancements at San Diego International Airport and other existing or future airports within its control; and

WHEREAS, pursuant to the Authority Act, District and Authority entered into a ground lease dated December 17, 2002 bearing Lessor’s Document No. AA-0008 ("Master Lease"), whereby District leased to Authority San Diego International Airport and other related real property thereto (the "Airport"); and

WHEREAS, Authority operates the Airport, a map of which is attached to this Agreement as "Exhibit A"; and

WHEREAS, Airline desires to occupy or use certain premises and facilities on the Airport, and to acquire from Authority certain rights and privileges in connection with its use of the Airport.

WHEREAS, it is contemplated that Authority will enter into the same or substantially similar agreements, in all material respects, with other Air Carriers; and

WHEREAS, Authority and Airline acknowledge that the continued operation of the Airport as a safe, convenient and attractive facility is vital to the economic health and welfare of Authority and the San Diego region and that Authority’s right to monitor the performance of Airline under this Agreement is a valuable right incapable of quantification.

NOW, THEREFORE, for and in consideration of the covenants, terms and conditions herein contained to be kept and performed by the respective parties, and for other valuable consideration, Authority and Airline covenant and mutually agree as follows:
Article 1

DEFINITIONS AND EXHIBITS

1.1 Basic Data.

Each reference in this Agreement to any of the following subjects shall incorporate the information specified below:

Authority: San Diego County Regional Airport Authority.

Authority’s Overnight Delivery and Street Address: 3225 North Harbor Drive, 3rd Floor-Administration Bldg, San Diego CA 92101

Authority’s Post Office and Payment Address: P.O. Box 81823, San Diego CA 92138

Airline: Alaska Airlines, Inc.

Airline’s Overnight Delivery and Street Address: Corporate Real Estate – SEAPZ 19300 International Blvd.
Seattle, WA 98188

ATTN: Amy Fuller-Lyman, Manager Airport Real Estate

Agreement: This Airline Operating and Lease Agreement, together with each Premises Notice issued by Authority to Airline in accordance with Section 3.1.1.

Effective Date: 12:00 AM Pacific Daylight Saving Time, July 1, 2019.

Term: The period of time beginning on the Effective Date and ending on the Expiration Date, unless earlier terminated as provided in this Agreement; provided, however, that the Effective Date for a duly executed Agreement in this form that is delivered to Authority after July 1, 2019 by any Air Carrier shall be the first day of the next month beginning no less than sixty (60) days after the date the duly executed Agreement is delivered to Authority, and until such Effective Date any such Air Carrier shall be deemed to be a Non-Signatory Airline on and after July 1, 2019.

Expiration Date: 11:59 PM Pacific Daylight Saving Time, June 30, 2029.

Permitted Uses: As provided in Article 2.

Premises: (a) Exclusive Use Premises; (b) Shared Use Premises; (c) Joint Use Premises; (d) Common Use Premises; (e) Unenclosed Operations Premises; and (f) Aircraft Parking Premises all as further described in Article 3;
provided, however, that in the case of Shared Use Premises, Joint Use Premises, Common Use Premises, and Aircraft Parking Premises, such areas will only constitute “Premises” during the period of time for which Airline has the right to use such areas. Premises shall not include any areas leased by Airline in the Terminal Area or otherwise on the Airport pursuant to an instrument, license, permit, or agreement other than this Agreement.

1.2 Termination of 2013 AOLA.

1.2.1 Except as otherwise specifically provided in this Section 1.2, Authority and Airline hereby terminate the 2013 AOLA and Airline’s month-to-month tenancy under Section 28.01 of the 2013 AOLA in their entirety effective as of 11:59 p.m. on the day before the Effective Date, and hereby agree that this Agreement supersedes the 2013 AOLA and any month-to-month tenancy rights of Airline granted under Section 28.01 of the 2013 AOLA that Airline may have had as of 12:00 a.m. on the Effective Date; provided, however, that (a) any approvals obtained from either party under the provisions of the 2013 AOLA and (b) any obligations that the 2013 AOLA provides shall survive expiration or earlier termination of the 2013 AOLA, shall survive the termination of the 2013 AOLA and Airline’s month-to-month tenancy under Section 28.01 of the 2013 AOLA.

1.2.2 The termination and cancellation of the 2013 AOLA and Airline’s month-to-month tenancy under Section 28.01 of the 2013 AOLA shall in no way alter the validity and binding effect of other agreements executed by and between Authority and Airline, nor shall the termination of the 2013 AOLA and Airline’s month-to-month tenancy under Section 28.01 of the 2013 AOLA and the release of rights thereunder by Authority and Airline be construed as a waiver, relinquishment, or release of any claims, damage, liability, rights of action or causes of action that either Authority or Airline may have against the other under the 2013 AOLA or Airline’s month-to-month tenancy under Section 28.01 of the 2013 AOLA that first accrued prior to the date of such termination, including, without limitation the surviving approvals and rights described in this Section 1.2.

1.3 Additional Defined Terms.

The following terms shall have the following meanings wherever used in this Agreement, unless a different definition is given in the Indenture in which case the definition in the Indenture shall control:

“2013 AOLA” means the agreement titled “Airline Operating and Lease Agreement at S.D.I.A.” between Airline or other Air Carriers and Authority with an effective date of July 1, 2013.

“AAAC” means the Airline Airport Affairs Committee established by the Air Carriers operating at the Airport.

“Additional Termination Damages” means, collectively, additional damages incurred by Authority because of Airline’s default under Section 21.1 as it relates to Airline’s Exclusive Use Premises, including but not limited to the costs of removing or storing any personal property from the Airline’s Exclusive Use Premises, the cost of re-letting such Exclusive Use Premises, and the
costs of any necessary renovations or repairs and related expenses therefor, all as further described in Section 21.2.1.

“ADP” means the Airport Development Plan under development by Authority to accommodate the demand for and improve the efficiency of the Airport that is expected to include, among other elements, a new, expanded linear Terminal that will replace the existing Terminal-1, a new Taxiway A to improve airfield efficiency with the new Terminal-1 operations, a new, expanded on-airport roadway to serve both the new Terminal-1 and Terminal-2, structured parking to serve the new Terminal-1, a replacement administration building for Authority and other related projects as determined by Authority.

“Affiliate” means an Air Carrier that has been properly designated as an Affiliate by a Signatory Airline in accordance with Article 6 and is (a) flying in or out of the Airport solely for the benefit of a Signatory Airline and providing transportation of property or passengers for the Signatory Airline under the name of the Signatory Airline, (b) if flying under its own name, not selling any seats in its own name and all seats are being sold in the name of the Signatory Airline or (c) a wholly-owned subsidiary of the Signatory Airline or a subsidiary of the same corporate parent as the Signatory Airline.

“Affiliate Operating Agreement” means the agreement described in Section 6.1.1, the form of which is attached as Exhibit B.

“Air Carrier” means a carrier certificated by the Secretary of the U.S. Department of Transportation as a Passenger Carrier under 49 U.S.C. § 41102 or a Cargo Carrier under 49 U.S.C. § 41103.

“Air Transportation Business” means that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels and/or cargo.


“Aircraft Parking Premises” means those areas within the Airfield Area designated by Authority as Aircraft Parking Positions that are made available by Authority to Airline and to one or more other Air Carriers, subject to Section 3.1.7 and Article 5, as such areas may be modified and expanded from time to time by Authority.

“Airfield Area” means all (1) facilities, equipment, improvements, runways, taxiways, and control towers, for the purpose of controlling or assisting arrivals, departures and operations of aircraft, (2) all airline apron areas not leased exclusively, including without limitation Aircraft Parking Positions (3) other airport-related facilities operated and maintained by the FAA or any other federal agency, (4) security fences and service roads located on the Airport and related to the rest of the Airfield Area, (5) 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, (6) aircraft rescue and fire-fighting services, (7) aircraft fueling systems, and (8) noise monitoring/mitigation program costs, except as otherwise provided in this Agreement, and all as they may be modified and expanded from time
to time by the Authority. The location of the Airfield Area as of the Effective Date is generally depicted in Exhibit A.

“Airline” means the Air Carrier that is a party to this Agreement.

“Airline Club” means those Exclusive Use Premises used by Airline to provide services to its passengers.

“Airline Entity” means Airline’s employees, contractors, subcontractors, agents, licensees, sublessees, Affiliates, vendors, invitees (excluding passengers), and any other Air Carrier that Airline expressly authorizes to use its Premises or the Airfield Area (regardless of whether Airline enters into a sublease or license with such Air Carrier), and other parties under Airline’s direction or control that come onto the Airport in connection with Airline’s use or occupancy of the Airport, but excluding Air Carriers that Airline is compelled by Authority to accommodate within Airline’s Premises pursuant to Article 4.

“Airline Leased Premises” means those areas, if any, assigned to Passenger Carriers collectively as Exclusive Use Premises, Shared Use Premises, Joint Use Premises and Common Use Premises.

“Airline Rents, Fees and Charges” means, for any Fiscal Year, all rents, charges and fees payable by Air Carriers for such Fiscal Year as determined and adjusted pursuant to Article 10.

“Airline Terminal Support” means Passenger Loading Bridges, Baggage Handling Systems, flight information displays (“FIDS”), gate information displays (“GIDS”), baggage information displays (“BIDS”), paging, and Authority provided staffing, contractual services, facilities, equipment, and other support systems that provide security and other resources supporting Passenger Carrier operations not specifically identified in the Terminal Area. Airline Terminal Support includes the equipment and systems, but not the square footage that houses such systems. The square footage that houses such systems is included in the Terminal Area. Airline Terminal Support shall also include costs incurred by Authority under Sections 3.2.2, 4.5.6, 4.6, 5.4, 8.4.2, 8.4.4, 8.4.5, 8.5.2 and 8.5.4.

“Airport Access” means the roadways and other transit facilities, vehicles, other equipment and related services which serve the Terminal Area and Landside Area, including without limitation Off-Airport Transportation Projects.

“Airport Facility” means a facility, group of facilities, or category of facilities which constitute or are part of the Airport.

“Airport Rules and Regulations” means, collectively, all rules, procedures, requirements, standards and regulations currently effective and hereafter amended, adopted or established by Authority, all of which are incorporated into and made a part of this Agreement, provided that such Airport Rules and Regulations do not conflict with applicable provisions of state or federal law or the provisions of this Agreement and are enforced in a nondiscriminatory manner. Authority shall provide at least thirty (30) days’ advance notice of any new or amended Airport Rules and Regulations affecting Airline. Such notice may include notice by email or posting on the Authority’s website.
“Amortization Charges” means the amounts properly allocated, whether directly or indirectly, and included in the calculation of Airline Rents, Fees and Charges to repay Authority for costs incurred by Authority for a Capital Project which are not otherwise (1) being repaid in the calculation of Airline Rents, Fees and Charges as Debt Service; (2) being repaid through Passenger Facility Charges, or a federal, state, or local grant; or (3) being funded through the Major Maintenance Fund. The amount to be included in the calculation of Airline Rents, Fees and Charges for each Capital Project shall be in substantially equal annual installments of principal and interest for the term of the asset’s useful life as estimated by Authority, with interest calculated by Authority at a rate equal to the Thirty-Year Revenue Bond Index at the time the Capital Project is placed in service.

“Ancillary” means those facilities and areas associated withmail facilities, general aviation, flight kitchen, private hangar facilities, and other facilities and land not associated with other Direct Cost Centers located on property owned or leased by Authority.

“Annual Net Debt Service” means Debt Service less any Passenger Facility Charges and Federal Interest Payment Subsidy used to pay such Debt Service.

“Applicable Laws” means, collectively, all applicable present and future laws, rules, regulations, ordinances, orders, directives, notices, federal grant assurances, limitations, restrictions, or prohibitions of any federal, state or local governmental authority lawfully exercising authority over the Airport or the activities and business operations of Airline, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health, sanitation and safety; (ii) the environment, including without limitation all Environmental Laws; (iii) access for persons with disabilities, including without limitation the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.; and (iv) airport security, including without limitation the regulations of the Transportation Security Administration, 49 CFR Parts 1540, 1542, 1544 et seq.

“Authority Codes” means the Authority Codes and Policies which, as of the Effective Date, can be accessed at http://www.san.org/airport-authority/codes-policies.

“Authority-Controlled Facilities” means, collectively, those certain areas, fixtures, equipment, systems and improvements and associated space operated, managed and controlled by Authority and located throughout the Airport in furtherance and support of the Air Transportation Business and related operations of Air Carriers at the Airport, including Airline, including without limitation Common Use Premises, Passenger Loading Bridges and Common Use Systems.

“Average Minimum Use Level” means the daily average number of Departing Seats calculated by Authority based on the rolling twelve-month average of an Air Carrier’s Departing Seats at all of an Air Carrier’s Preferential Use Gates.

“Bad Debt Expenses” means any Airline Rents, Fees and Charges not remitted by any Air Carrier ninety (90) days after the payment is due to Authority. Bad Debt Expenses shall be allocated to the Airfield Area and Terminal Area Cost Centers. To the extent that Bad Debt Expenses are subsequently collected more than ninety (90) days after the payment is due to Authority, such amounts shall be credited to the applicable Cost Center.
“Baggage Handling Systems” means the baggage handling systems at Airport owned and controlled by Authority.

“Bond” or “Bonds” means any debt obligation of Authority issued under and in accordance with any Indenture involving Authority.

“Capital Project” means any project with a cost greater than One Hundred Fifty Thousand Dollars ($150,000), as adjusted by the Consumer Price Index from the Effective Date, that is undertaken and funded by Authority, with a useful life in excess of one (1) year as reasonably determined by Authority, which is acquired, purchased, or constructed to improve, maintain, or develop the Airport, including any extraordinary or substantial expenditure whose objective is to preserve, enhance or protect the Airport which can qualify as a capital expenditure.

“Cargo Carrier” means a carrier certificated by the Secretary of the U.S. Department of Transportation as a Cargo Carrier under 49 U.S.C. § 41103.

“Cargo Parking Positions” means the apron areas in the Airfield Area, shown on Exhibit H as of the Effective Date, located adjacent to Cargo Carrier facilities in the Ancillary Area and for which Cargo Carriers pay Aircraft Parking Position Rentals, as such areas may be modified and expanded from time to time by Authority.

“Claims” means any and all liability, damages, losses, expenses, claims, judgments, demands, penalties or fines, including without limitation reasonable attorneys’ fees and court costs.

“Common Use Gate” means a Gate designated by Authority in accordance with Article 4 to be used in common by Passenger Carriers operating at the Airport, and shall not be deemed to be a Preferential Use Gate.

“Common Use Systems” means information technology-based systems owned by Authority and which accesses a Passenger Airline’s proprietary passenger processing network for passenger departure or arrival processing. Common Use Systems includes, if any, such systems and related equipment installed at Common Use Premises, Gates, hold rooms, baggage claim areas, and other areas as determined by Authority. Common Use Systems includes the equipment and systems, but not the square footage that houses such systems. The square footage that houses such systems is included in the Terminal Area.

“Common Use Ticket Counter” means the Ticket Counters designated by the President/CEO to be used in common by Passenger Carriers operating at the Airport.

“Common Use Premises” means those areas within the Terminal, described in Exhibit F as of the Effective Date, related to the ticketing of passengers and equipped with Common Use Systems including, but not limited to Common Use Ticket Counters, free-standing self-service kiosks, skycap podiums, curbside positions and Queuing Space, that are made available by Authority to Airline and to one or more other Passenger Carriers, subject to Section 3.1.5, as such areas may be modified and expanded from time to time by Authority.

“Concluding Walk-Through” means a physical walk-through of the Premises or any portion thereof by a representative or consultant of Authority and Airline prior to the date that such
Premises are vacated or surrendered pursuant to this Agreement, as further specified in Section 23.10.

“Consumer Price Index” means the Consumer Price Index for All Urban Consumers, San Diego published by the United States Department of Labor, Bureau of Economic Statistics or, in the event that the United States Department of Labor ceases to publish such an index, a similar index selected in the reasonable discretion of the President/CEO after consultation with the Signatory Airlines.

“Cost Centers” means the areas, facilities, systems and services that are grouped for the purpose of accounting for and the assignment of Revenues, O&M Expenses, Debt Service, Amortization Charges, Coverage Charges, Major Maintenance Fund Deposits, Reserve Deposits and any other deposits required by the Indenture.

“Coverage Charges” shall be calculated in each Fiscal Year as:

1. one hundred and forty percent (140%) times Debt Service, plus
2. O&M Expenses, and minus

If the calculation of Coverage Charges results in a negative amount, no Coverage Charges shall be imposed for such Fiscal Year. Coverage Charges shall be allocated to the Airfield Area, Terminal Area, Common Use Systems, and Airline Terminal Support Cost Centers in proportion to the Annual Net Debt Service in each of those Cost Centers.

“Date of Beneficial Occupancy” or “DBO” means the date when a Capital Project or phased component of a Capital Project has been completed and the President/CEO determines that it is ready and available for its intended use by Air Carriers.

“Debt Service” means the aggregate amount of principal and interest becoming due and payable during the Fiscal Year for Bonds or Other Debt Service of Authority.

“Departing Seats” means the total number of seats available on all of a Signatory Airline’s and its Affiliates’ departing Scheduled Operations over a specified period of time.

“Direct Cost Centers” means those functionally or physically discrete Cost Centers established by Authority, as listed in Article 10.

“Endangered, Threatened and Sensitive Species” means any flora or fauna identified by the provisions of the California Endangered Species Act (California Fish and Game Code § 2050, et seq.), the Federal Endangered Species Act (16 U.S.C. §§ 1531-1543), and the Federal Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), including the California least tern (Sterna antillarum brownii), a seabird known to nest on the Airport.

“Enplaned Passengers” means passengers (including non-revenue passengers) boarding an aircraft at the Airport, but does not include the flight crew.
“Environmental Damages” means all Claims, fees and expenses of defense of any Claim and of any settlement or judgment, including without limitation reasonable attorneys’, consultants’, contractors’, experts’ and laboratory fees, any of which are incurred at any time as a result of the presence of Regulated Materials and Pollutants upon, about, or beneath the Premises or migrating or threatening to migrate to or from the Premises, or the existence of a violation of Environmental Laws pertaining to the Premises or Airline’s or an Airline Entity’s operations at the Airport including without limitation: (i) damages for personal or bodily injury, or injury to property or natural resources occurring upon or off the Premises, foreseeable or unforeseeable, including without limitation, interest and penalties and Claims brought on behalf of employees of an Air Carrier or Authority; (ii) interference with the Airport’s Planned Uses of the Premises; and (iii) fees incurred in connection with a Response, including but not limited to Response actions necessary for Planned Uses of the Airport, or a violation of Environmental Laws; and (iv) liability to any third person or third person or governmental agency or other governmental agency to indemnify such person or agency for fees expended in connection with the items referenced in this definition, whether on or off the Airport. Environmental Damages does not include any Claims, fees or expenses of defense of any Claim or of any settlement or judgment, including without limitation reasonable attorneys’, consultants’, contractors’, experts’ and laboratory fees, any of which are incurred at any time as a result of any Environmental Indemnitees’ sole active negligence or willful misconduct.

“Environmental Laws” means any applicable statute, ordinance, code, rule, permit, regulation, license, approval, authorization, order, directive, notice, injunction, controlling federal or state court decision, or administrative or regulatory decree, judgment or order of any governmental authority, federal, state or local lawfully exercising authority over the Airport or the activities and business operations of Airline at the Airport, or written plan required by or in response to any of the same, which pertains to the environment (including, but not limited to, ground, air, water pollution or contamination, public health, public safety, public welfare, any Regulated Materials and Pollutants, Endangered, Threatened or Sensitive Species, historic properties and underground or above-ground tanks) and shall include, without limitation, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act (“CWA”), 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f, et seq.; the Hazardous Materials Transportation Act 49 U.S.C. § 5101, et seq.; the California Hazardous Waste Control Law, California Health and Safety Code § 25100, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code § 13000, et seq. (“California CWA”); the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; and any other local, state, or federal environmental statutes, rules, regulations, orders, and decrees applicable now or hereafter promulgated under any of the foregoing, as any of the foregoing may be applicable or may be changed or amended or come into effect in the future. Nothing in these provisions shall preclude Airline from raising reasonable defenses including without limitation federal preemption, to the application of Environmental Laws to Airline.
“Exclusive Use Premises” means those areas described in Exhibit C, used exclusively by Airline except as otherwise provided in this Agreement, including, but not limited to (a) certain Ticket Counters, free-standing self-service kiosks, skycap podiums, curbside positions, and associated Queuing Space in Terminal 1 on a transitional basis until the DBO of new Terminal facilities to be constructed in the ADP; and (b) certain ticket offices and baggage service offices, Airline Clubs and operational support areas.

“FAA” means the Federal Aviation Administration or its successor.

“Federal Interest Payment Subsidy” means subsidies provided by the Federal Government for the payment of Debt Service.

“Filed Schedule” means a Passenger Carrier’s flight schedule submitted in the form required by Authority prior to, or on, the designated due date in the Gate, Ticket Counter and Aircraft Parking Position Rules.

“FIS” means the federal inspection services facilities located in the Terminal.

“Fiscal Year” means a year beginning July 1 and ending June 30, as may be amended or changed by Authority from time to time.

“Fuel System” means, collectively, all fuel (including motor fuel) receipt, storage, transmission, delivery and dispensing systems, including without limitation hydrant systems, and related facilities, fixtures, equipment and other real and personal property, whether permanent, temporary or mobile, including but not limited to underground delivery pipelines, storage tanks, fuel pumps or load racks, and underground hydrant pipes and pumps, located at the Airport or otherwise that are leased, acquired or controlled at any time during the Term by Air Carriers, either directly or indirectly through or a limited liability company, consortium or committee composed primarily of Air Carriers.

“Fuel System Costs” means any costs incurred by Authority that are attributable to the Fuel System, including without limitation direct and indirect costs, Authority in-house costs (including Authority employees’ time attributable to the administration and management of the Fuel System), consulting and engineering fees, attorneys’ fees, insurance and premium costs, insurance deductibles and self-retention for property insurance, Capital Project costs, operation and maintenance costs, repair and construction costs, any other costs incurred in connection with capital improvements, the demolition, removal or decommissioning of any portion of the Fuel System, security expenses, entry and inspection costs, costs arising, costs related to a Response to the Release of any Regulated Materials and Pollutants and any other costs incurred by Authority to comply with Environmental Laws that are not directly reimbursed to Authority by Air Carriers or a limited liability company, consortium or committee composed primarily of Air Carriers.

“Future Charges” means, collectively, the amounts of all Airline Rent, Fees and Charges which, but for termination of the Agreement pursuant to Section 21.2.1, would have become due over the remainder of the Agreement, as all further described in Section 21.2.1.

“Gate” or “Gates” means the area(s) on the secure side of the Airport Facilities that transition the passenger from the Terminal to a Passenger Carrier’s aircraft parked in a Terminal
Parking Position, which are controlled, operated or assigned to a Passenger Carrier by Authority as set forth in Article 4.

“Gate Requesting Airline” means a Scheduled Airline seeking to operate at a Preferential Use Gate assigned to a Signatory Airline, in accordance with the procedures specified in Article 4.

“Gate, Ticket Counter and Aircraft Parking Position Rules” means Authority’s reasonable policies, rules and protocols, as they shall be developed and may be amended from time to time by the President/CEO after consultation with the Gate, Ticket Counter and Aircraft Parking Position Rules Committee and the Signatory Airlines at a AAAC meeting, governing priorities, procedures and requirements for the assignment and use of Gates, Ticket Counters and Aircraft Parking Positions; provided, however, that the Gate, Ticket Counter and Aircraft Parking Position Rules shall not conflict with the express terms of this Agreement.

“Gate, Ticket Counter and Aircraft Parking Position Rules Committee” means a committee comprised of representatives of Authority and the Signatory Airlines that shall make recommendations to the President/CEO on the Gate, Ticket Counter and Aircraft Parking Position Rules. The Gate, Ticket Counter and Aircraft Parking Position Rules Committee shall include at least two (2) Signatory Airlines that are selected by the AAAC.

“General and Administrative Cost Center” means all facilities and functions associated with the general management and administration of Authority.

“Indenture” means, collectively, the Master Trust Indenture, dated as of November 1, 2005, by and between Authority and the trustee thereto, together with all amendments and supplemental indentures thereto, and the Master Subordinate Trust Indenture, dated as of September 1, 2007 by and between Authority and the trustee thereto, together with any amendments and supplemental indentures thereto, or any other indenture or financial instrument of Authority which creates a debt obligation of Authority.

“Indirect Cost Centers” means those Cost Centers established by Authority that are not generally revenue producing and for which costs are not assigned to any Direct Cost Center under Authority’s accounting system, as listed in Article 10.

“Initial Walk-Through” means a physical walk-through of the Premises prior to Airline’s initial occupancy (as of the Effective Date or later) of, use of, or operations at the Premises as further specified in Section 23.9.

“Irregular Operation” means an off-schedule arrival or departure of a Scheduled Operation at a particular Gate or any flight that is not a Scheduled Operation at a particular Gate, but needs to operate at that Gate for reasons outside an Passenger Carrier’s control or for other commercially reasonable purposes.

“Joint Use Premises” means those areas used by one or more Passenger Carriers and described in Exhibit D as of the Effective Date, including but not limited to hold rooms, passenger screening areas and baggage claim areas, as such areas may be modified and expanded from time to time by Authority.
“Landside Area” means those services, facilities, and areas associated with auto parking facilities (both public and employee); commercial vehicle operations; and rental car leasing, storage, or operations. For the purposes of calculating Airline Rates, Fees, and Charges, costs associated with providing shuttle bus transportation between the terminal buildings, and between employee parking and the terminal buildings are assigned to the Terminal Area.

“Leasable Premises” means those areas and spaces within the Terminal Area that are (1) available for lease to or use by Passenger Carriers as Exclusive Use Premises, Shared Use Premises, Joint Use Premises or Common Use Premises or (2) available for lease to other tenants.

“Maximum Gross Landing Weight” (“MGLW”) means the maximum certificated weight, in one thousand (1,000) pound units, of an aircraft authorized by the FAA to land at an airport, as specified in the flight manual governing that aircraft type.

“Major Maintenance Fund” means an account established under Article 10.

“Major Maintenance Fund Deposit” means the amounts deposited into the Major Maintenance Fund in accordance with Article 10.

“Majority-in-Interest” means, for any Fiscal Year, at least two (2) Signatory Airlines that together paid at least fifty percent (50%) of all Airline Rents, Fees and Charges paid by all Air Carriers during the immediately preceding Fiscal Year.

“Minimum Daily Average Utilization” means (a) for a Signatory Airline assigned only one (1) Preferential Use Gate, six hundred and twenty five (625) Scheduled Departing Seats Per Day over the most recent sixty (60) day period or (b) for a Signatory Airline assigned more than one (1) Preferential Use Gate, seven hundred and fifty (750) Scheduled Departing Seats Per Day over the most recent sixty (60) day period, subject to being adjusted by Authority, after consultation with the Signatory Airlines, from time to time to accommodate Airport operations and promote equity.

“NPDES” means National Pollutant Discharge Elimination System.

“Non-Signatory Airline” means any Air Carrier that is not a Signatory Airline.

“Off-Airport Public Transportation Projects” means roadway, intersection improvement, fixed-guideway, railway, transit station and other Capital Projects related to public transportation to or from the Airport that include physical components that are located outside of the boundary of the Airport, including on-Airport transportation Capital Projects that link to off-Airport Capital Projects, but excluding the following Capital Projects associated with the ADP: Harbor Drive modifications to integrate the Inbound Roadway Project; elevated departure roadway/departures curb; commercial ground transportation plaza for buses, shuttles and taxis; recirculation roads related to the ADP, including return roadway to parking, terminal, and/or Airport exit; bicycle and pedestrian access facilities; vehicle security screening area; and MTS bus stops and ticket dispensers.

“Operation” means the arrival and departure of an aircraft at the Airport.
“Operation and Maintenance Expenses” or “O&M Expenses” means all reasonable and necessary current expenses of Authority, paid or accrued, for operating, maintaining, and repairing the Airport, including administrative expenses and other Authority expenses reasonably allocated to the Airport, as more specifically defined in the Indenture.

“Other Debt Service” means any debt obligation of Authority other than Bonds, including commercial paper, other indebtedness of Authority, and all other related requirements.

“Passenger Carrier” means an Air Carrier certificated by the Secretary of the U.S. Department of Transportation under 49 U.S.C. § 41102.

“Passenger Facility Charges” or “PFCs” means charges authorized by 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, as they may be amended from time to time.

“Passenger Loading Bridge” or “PLB” means a passenger loading bridge at the Airport owned and controlled by Authority.

“Period of Use” means the period of time during which Airline and other Signatory Airlines shall have a scheduling preference on a Preferential Use Gate for a Scheduled Operation, as defined in the Gate, Ticket Counter and Aircraft Parking Position Rules.

“PFC Regulations” means, collectively, 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Part 158, as they may be amended from time to time.

“Planned Uses” means commercial, industrial or aviation related land uses reasonably contemplated or anticipated by Authority, except for the following activities: child care, residential, general primary and secondary education facilities and health care uses.

“Preferential Use Gate” means a Gate assigned by Authority to Airline or another Passenger Carrier and to which Airline has a higher priority of use over all other Passenger Carriers, in accordance with and subject to Article 4 and the Gate, Ticket Counter and Aircraft Parking Position Rules.

“Preferential Use FIS Gate” means a Preferential Use Gate with direct access to the FIS facilities.

“Premises Notice” means the notice described in Section 3.1.1 and attached as Exhibits C, D, E, F and I.

“President/CEO” means the President/CEO of the Airport or his/her successor or designee, or the person, division, department, bureau, or agency designated by Authority to exercise functions equivalent to those now exercised by the President/CEO or his/her successor.

“Process Water” means water that contains Regulated Materials and Pollutants from any point or non-point source subject to the CWA or the State of California Porter-Cologne Water Quality Control Act requirements.
“Public Areas” means sidewalks, concourses, corridors, lobbies, passageways, restrooms, elevators, escalators and other similar space made available by Authority from time to time for use by passengers, Authority employees, Airline employees and agents, other Air Carrier employees and agents and other members of the public, as such areas presently exist or may hereafter be expanded, modified, constructed, or relocated.

“Queuing Space” means the queuing areas associated with Ticket Counters, curbside positions, and Common Use System-equipped terminals, all as may be reasonably determined by Authority from time to time. Queuing Space as of the Effective Date is shown on Exhibit F.

“Regulated Materials and Pollutants” means (a) any material that, because of its quantity, concentration or physical or chemical characteristics, has been determined by any applicable federal, State or local governmental authority to pose a hazard to human health or safety or to the air, water, soil or environment; (b) any materials, substances, products, by products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by products, or waste may give rise to liability under any Environmental Law and (c) any Process Water or Solid Waste. “Regulated Materials and Pollutants” includes, without limitation, any material or substance identified, listed, or defined as a “hazardous waste,” “hazardous substance,” “pollutant,” “contaminant” or term of similar import, or which is otherwise regulated pursuant to Environmental Laws; any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof; natural gas or natural gas liquids; polychlorinated biphenyls or lead-based paint.

“Regulated Waste Removal” has the meaning set forth in Section 23.8.

“Release” when used for Regulated Materials and Pollutants shall include any actual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or on any property or the environment, and includes any threat of Release to the extent regulated under Environmental Laws.

“Remote Parking Position” means a location at the Airport, shown on Exhibit H as of the Effective Date, designated for parking an aircraft, including use as a hardstand operation, temporary aircraft parking location, or the overnight storage of aircraft, but excluding Terminal Parking Positions and Cargo Parking Positions, as they may be modified from time to time by the Authority.

“Reserve Deposits” means any amounts required for (1) any fund established pursuant to the Indenture or any supplemental Indenture, or (2) any deposit for self-insurance or other purposes, upon notice to the Signatory Airlines, whose object is to preserve or protect the Airport in the event of an extraordinary or substantial expenditure event. Reserve Deposits shall be allocated twenty five percent (25%) to the Airfield Area, fifty percent (50%) to the Terminal Area, twenty percent (20%) to the Landside Area, and five percent (5%) to the Ancillary Area.

“Response” or “Respond” means action taken in compliance with Environmental Laws to correct, remove, remediate, clean-up, prevent, mitigate, treat, monitor, evaluate, investigate, assess or abate the Release of any Regulated Materials and Pollutants, or to prevent or abate any public nuisance.
“Revenues” means “Revenues” as defined in the Indenture.

“Scheduled Airline” means a Passenger Carrier performing scheduled passenger service operations at the Airport.

“Scheduled Departing Seats Per Day” means (a) the Departing Seats of a Signatory Airline during a specified period of time, (b) divided by the number of days in that period of time. In determining Scheduled Departing Seats Per Day, a Signatory Airline may include the Departing Seats of its Affiliates.

“Scheduled Operation” means a Scheduled Airline’s operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication sixty (60) days prior to the first day of the month in which a Signatory Airline’s schedule would take effect, and that is also submitted to Authority in a Filed Schedule as required in Article 4 and the Gate, Ticket Counter and Aircraft Parking Position Rules, subject to Airline’s right to amend its Filed Schedule in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules.

“Shared Use Premises” means those areas used by one or more Passenger Carriers and described in Exhibit E as of the Effective Date, including but not limited to baggage make up areas and baggage screening areas, as such areas may be modified and expanded from time to time by Authority.

“Signatory Airline” means an Air Carrier that has executed an airline operating and lease agreement with Authority substantially similar to this Agreement. An Affiliate of a Signatory Airline shall not be a Signatory Airline.

“Solid Waste” shall have the same meaning as that term is given under RCRA.

“Temporary Space” means a portion of Airline’s Exclusive Use Premises, as depicted on Exhibit C, that is assigned in Authority’s sole discretion to Airline for (i) subletting to a ground handler or other vendor of Airline, subject to Sections 3.1.2 and 3.3 or (ii) Airline’s use for a term determined in Authority’s sole discretion provided that it is less than the remaining Term of the Agreement.

“Terminal” means all of the airline passenger terminal buildings at the Airport, as they may be modified and expanded from time to time by the Authority, including but not limited to Terminal 1 and Terminal 2.

“Terminal Areas” means all airline passenger terminal buildings at the Airport, including the central plant and related areas, public walkways and grounds immediately outside the passenger terminal buildings, the locations of which are generally illustrated on Exhibit A as of the Effective Date and as may be modified and expanded from time to time by the Authority. The square footage that houses the Common Use Systems and Airline Terminal Support equipment and systems is included in the Terminal Area. For the purposes of calculating Airline Rates, Fees, and Charges, costs associated with providing (1) emergency medical service and (2) shuttle bus transportation between the terminal buildings and between employee parking and the terminal buildings are assigned to the Terminal Area.
“Terminal Parking Position” means the apron areas, shown on Exhibit H as of the Effective Date, located adjacent to the Terminal and not separated from the Terminal by a taxiway or aircraft maneuvering area, as they may be modified from time to time by the Authority.

“Termination Damages” means, collectively, all unpaid Airline Rent, Fees and Charges and damages incurred by Authority due to Airline’s default of this Agreement under Section 21.1, including, but not limited to, attorneys’ fees and costs, that Authority is entitled to recover from Airline, as all further described in Section 21.2.1.

“Ticket Counter” means those areas in the Terminal Building designated by the President/CEO for use by Passenger Carriers for ticketing and processing passengers and their baggage, and similar activities.

“Unenclosed Operations Premises” means those areas below the dripline between the terminal building and the apron that are not equipped with utility services and that are assigned to Airline in accordance with Section 3.1.6 and shown in Exhibit I.

1.4 Interpretation

1.4.1 The language of this Agreement shall be construed according to its fair meaning and not strictly for or against either Authority or Airline.

1.4.2 The term “including” shall be construed to mean “including, without limitation.”

1.4.3 All references in this Agreement to Articles, Sections, subsections, clauses, provisions, sentences or Exhibits, unless otherwise expressly stated, are to Articles, Sections, subsections, clauses, provisions, sentences or Exhibits of this Agreement.

1.4.4 Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents, 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.

1.4.5 All references to a number of days mean calendar days, unless otherwise expressly indicated.

1.4.6 The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires.

1.4.7 The singular number includes the plural whenever the context so requires.

1.5 Exhibits. The following Exhibits are attached and incorporated into this Agreement:

   Exhibit A: Map of the Airport, Airfield Area and Terminal Area
Exhibit B: Affiliate Operating Agreement
Exhibit C: Exclusive Use Premises
Exhibit D: Joint Use Premises
Exhibit E: Shared Use Premises
Exhibit F: Common Use Premises
Exhibit G: Indirect Cost Center Allocations
Exhibit H: Airport Parking Positions
Exhibit I: Unenclosed Operations Premises
Exhibit J: Airport Rules and Regulations Applicable to Tenant Improvements
Exhibit K: Preferential Use Gate Assignments
Exhibit L: Maintenance and Repair Obligations
Exhibit M: Illustrative calculations of Airline Rents, Fees, and Charges
Exhibit N: [Reserved]
Exhibit O: Insurance Requirements
Exhibit P: Sustainability Policy
Exhibit Q: MOU with the California Attorney General
Exhibit R: Form of Third-Party Use and Lease Agreement

Article 2

USE OF AIRPORT

2.1 Grant of Rights to Use the Airport. Authority grants to Airline the rights of occupancy and use in certain areas located within the Airport during the Term as specifically provided in this Article 2, subject to the terms of this Agreement.

2.1.1 Rights to Use Airfield Area. Authority grants to Airline a nonexclusive license to use the Airfield Area, in common with others, for the purposes described in Section 2.5, subject at all times to Authority’s exclusive control and management of the Airfield Area.

2.1.2 Rights to Use Public Areas. Authority grants to Airline a nonexclusive license to use the Public Areas within the Terminal, in common with others, subject at all times to Authority’s exclusive control and management of the Public Areas. Authority shall have the right,
in its sole and complete discretion, to relocate, change, or discontinue the use of one or more Public Areas from time to time during the Term after taking into account possible disruption of Air Carrier operations and the impact on convenience to passengers.

2.1.3 Rights to Use Premises. Authority grants to Airline the right to use or lease, as applicable, the Premises as further defined and conditioned in Article 3.

2.1.4 Authority-Controlled Facilities. Authority grants to Airline a non-exclusive license to use, subject to Authority’s control thereof, Authority-Controlled Facilities in the ordinary course of its business at the Airport and otherwise in accordance with this Agreement and Airport Rules and Regulations. Except as expressly set forth in this Agreement, including any repair and maintenance obligations of Authority, Airline agrees to accept and use Authority-Controlled Facilities in their “as is” condition, without any representations or warranties of any kind whatsoever, express or implied, from Authority as to any matters concerning Authority-Controlled Facilities, and further agrees to assume all risk of loss, damage and injury arising out of, or alleged to have arisen out of, Airline’s use of Authority-Controlled Facilities.

2.2 Airline Rights, Privileges, Limitations and Prohibitions on Use.

Subject to the terms of this Agreement, Airline shall have the right to conduct its Air Transportation Business at the Airport and to perform all operations and functions in connection with the conduct and operation of such business at the Airport. Airline shall not use the Premises or Airfield Area, and shall not cause or permit any Airline Entity to use the Premises or Airfield Area, for any purpose other than as specified in this Agreement.

2.3 Terminal.

Airline’s use of the Terminal shall be limited to the following activities:

2.3.1 Airline’s operation of an Air Transportation Business for the carriage and movement of persons, property, baggage, cargo, express packages and mail by means of aircraft, including but not limited to the following categories of flights: revenue, training, test, inspection, emergency, charter and sightseeing. Airline shall not conduct any non-Air Transportation Business on Airport without the prior written consent of Authority. Airline is expressly prohibited from using the Premises for commercial advertising, duty free sales, or retail operations, sales, and services, whether it is purported to be in addition to or in lieu of the uses expressed in this Section 2.3, without the prior written consent of Authority and shall not sell or offer for sale any product or service other than one directly related to its Air Transportation Business. Airline shall not place or allow any signs, posters, or advertising whatsoever on, within, or about the Airport or the Terminal without the prior written approval of the President/CEO or her or his authorized representative.

2.3.2 Airline’s loading and unloading of persons, property, baggage, cargo, and express packages and mail at the Terminal by vehicles or other means of conveyance as Airline may require in the operation of an Air Transportation Business; provided that Airline may designate the particular carrier or carriers to transport Airline’s employees, passengers, and their luggage if such transportation is provided at the expense of Airline; and provided, further, that Airline shall not operate commercial ground transportation for the general public. If such
transportation is not provided at Airline’s expense, Authority may charge operators of vehicles carrying passengers for hire reasonable fees for the privilege of entering upon the Airport, using the streets, highways and public roads within the Airport, soliciting passengers upon the Airport, and otherwise operating on the Airport.

2.3.3 Airline’s hiring, employment, and training of personnel in the current or future employ of Airline, and training of Airline’s contractors.

2.3.4 Airline’s use, alone or with other Air Carriers, for any and all purposes in connection with or incidental to the operation of an Air Transportation Business, including: the handling of reservations; the handling, ticketing and billing of passengers; providing sky cap services; the operation of break rooms for Airline’s employees only and, to the extent permitted by law, the serving of food and beverages in such employee break rooms; and the operation of one or more Airline Clubs and, to the extent permitted by law the serving of food and beverages in such Airline Clubs, subject to any agreement between Airline and Authority concerning any such Airline Clubs. Airline shall not otherwise be allowed to provide food or beverage in the Terminal Area, except that Airline may offer food and beverage and other amenities free of charge to passengers inconvenienced by an Irregular Operation.

2.3.5 Airline and Authority acknowledge and agree that all passenger terminal facilities and related amenities shall be located within the Terminal, and that no passenger terminal functions shall be conducted elsewhere on the Airport, except for Part 135 air charter operations that may be conducted by Air Carriers from the Airport’s general aviation aprons and terminals and hard-stand operations that may be conducted in areas designated by the President/CEO. In the event that Authority elects to conduct hard-stand operations at the Airport, Authority shall establish rules and reasonable, non-discriminatory fees for such operations in the Gate, Ticket Counter and Aircraft Parking Position Rules. The term “passenger terminal functions” as used in this Section 2.3.5 includes the reception, ticketing, loading, unloading, collection, or transfer of all persons and their baggage being transported by air, or by ground transport incidental to such transportation. The term specifically includes, without limitation, persons and their baggage being transported by Air Carriers and, except as otherwise provided in this Agreement, all other aircraft operators, including operators of corporate and private aircraft. Notwithstanding the foregoing, Authority reserves the right to permit fixed-base operators to operate passenger lounges and facilities within facilities leased by such operators on an exclusive use basis to accommodate passengers and baggage being transported on private Air Carrier charter and corporate aircraft.

2.3.6 Airline shall not be allowed to install Airline-owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment in areas other than its Exclusive Use Premises without the written approval of Authority and provided that any such equipment shall be removed by Airline at Airline’s sole cost within thirty (30) days of receiving notice from Authority. Further, Airline shall not make any modification whatsoever to Authority’s Common Use Systems, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by Airline shall be remedied by Airline, to the sole satisfaction of Authority, at the sole cost of Airline. In the event that the damage is repaired by Authority, Airline will reimburse Authority for both
the fully-allocated cost of time and materials pertaining to the repairs plus a fifteen percent (15%) administrative fee.

2.4  Gates and Terminal Parking Positions.

Subject to Article 4 and Article 5 of this Agreement and the Airport Rules and Regulations, Airline’s use of Gates and Terminal Parking Positions shall be limited to:

2.4.1  Airline’s ticketing, boarding, deplaning, and billing of passengers at the Gate; and use of the PLB and Terminal Parking Position during Airline’s use of such Gate or as otherwise provided in the Gate, Ticket Counter and Aircraft Parking Position Rules.

2.4.2  Airline’s operational staging of equipment for fueling, servicing, loading, unloading, and regular line maintenance of aircraft that can be completed during Airline’s use of such Gate and Terminal Parking Position, including without limitation routine inspections, servicing, troubleshooting and maintenance corrective action, to include checks commonly known as “A Checks,” typically performed within thirty (30) minutes; provided, however, that:

(a) no maintenance of aircraft in a Terminal Parking Position adjacent to a Common Use Gate shall be permitted beyond the Period of Use for that aircraft operation without the approval of Authority, which shall not be unreasonably withheld;

(b) regular line maintenance and emergency line maintenance of aircraft in a Terminal Parking Position adjacent to a Preferential Use Gate assigned to Airline shall be permitted beyond the Period of Use for that aircraft operation unless the Gate is scheduled to be used to accommodate the Scheduled Operation of another Passenger Carrier or the Authority determines in its sole discretion that the Gate is needed for an Irregular Operation;

(c) notwithstanding anything to the contrary in this Agreement, Airline is not permitted to store maintenance parts and supplies or any other items unrelated to ramp servicing or loading of aircraft on the Airfield Area except as otherwise authorized in the Airport Rules and Regulations.

(d) Airline may park or store its ground service equipment on a Terminal Parking Position adjacent to its Preferential Use Gate, subject to Section 4.5 and any applicable Airport Rules and Regulations;

(e) Nothing in this Section 2.4.2 shall be implied or construed to grant to Airline the right to store or park equipment at a Terminal Parking Position at a Common Use Gate other than as required for the regular servicing of aircraft parked at such Gate during Airline’s use of such Common Use Gate, unless the Authority approves a longer period of time;

(f) Airline shall keep the ramp areas free of debris and surplus material that may generate foreign object debris and shall, upon reasonable advanced notice, actively participate in facilitation of scheduled ramp pavement cleaning by Authority. Failure to comply with this requirement may result in financial penalties sufficient to incentivize compliance, as determined by Authority, but such penalties shall not exceed $1,000 per violation.
2.4.3 Airline’s loading, unloading and transporting of any persons, property, baggage, express packages and mail, and carriage, in properly designated facilities by such vehicles or other means of conveyance as Airline may reasonably require in the operation of an Air Transportation Business, all in accordance with Section 2.3.2.

2.4.4 Airline’s installation, maintenance and operation of its aircrafts’ air-conditioning equipment, auxiliary power, start-up and miscellaneous support equipment as reasonably necessary or incidental for Airline’s operation of its Air Transportation Business and not otherwise provided by Authority. Airline shall promptly remove any such equipment that is not reasonably necessary or incidental for Airline’s operation of its Air Transportation Business.

2.4.5 Ground handling services shall include passenger processing functions and aircraft supporting activities for airlines whether occurring in the Terminals, in, on or around the aircraft, or elsewhere to enable airlines to conduct their Air Transportation Business at the Airport. Airline agrees to use only ground handling companies that meet the minimum standards set by Authority for all ground handling companies providing services at the Airport. Airline shall not perform ground-handling services, except:

(a) for its own aircraft or those of its Affiliates; or

(b) for the aircraft of other Air Carriers, provided Airline holds a separate ground-handling services agreement approved by Authority.

2.4.6 Airline shall not perform in-flight catering except for its own aircraft or those of its Affiliates without a license agreement with Authority for such activities.

2.4.7 Any restrictions or requirements on Gate use due to facial recognition or other security requirements shall be addressed by Authority in the Gate, Ticket Counter and Aircraft Parking Position Rules.

2.5 Airfield Area. Airline’s use of the Airfield Area and related facilities shall be limited to take-off, landing, flying, taxing, towing, maneuvering, parking, loading and unloading of Airline’s aircraft by such vehicles, ground service equipment, or other equipment or means of conveyance as Airline may require, subject to the terms of this Agreement.

2.6 Removal of Disabled Aircraft and Equipment. As soon as reasonably possible after release from proper authorities, Airline shall remove from the Airport any disabled aircraft owned or operated by Airline, unless the President/CEO provides written authorization for Airline to place or store such disabled aircraft in an approved storage area reasonably designated by the President/CEO and upon such terms and conditions reasonably established by Authority. In the event Airline shall fail to remove its disabled aircraft as soon as reasonably possible, Authority may, but shall not be obligated to, cause the removal of such disabled aircraft after written notification and a reasonable period of time in which to remove the disabled aircraft. In the event of an emergency that prevents airport operations, Authority reserves the right to immediately move a disabled aircraft. Airline shall also, upon request by Authority, promptly remove from the Airfield Area any equipment owned or operated by Airline or its Affiliate that is not, as determined by Authority, regularly used in the maintenance and servicing of aircraft, at Airline’s sole cost, or Authority may remove and dispose of the equipment. Airline shall pay to Authority, upon receipt
of an invoice, the costs incurred for any removal and disposal of aircraft or equipment, plus fifteen percent (15%). Nonpayment of such invoice shall be deemed a default of this Agreement.

2.7 **Airline Employee Parking.** Authority will make reasonable efforts, but shall not have the duty, to make available one or more areas at the Airport for vehicular parking for Airline's personnel that work primarily at the Airport; provided, however, such areas shall not be used for: (a) vehicle parking or storage for any period other than such personnel’s performance of employment for Airline or (b) parking or storage of trailers, recreational vehicles (“RVs”) or other oversized vehicles at any time. Usage of any parking areas made available by Authority at the Airport is subject to Airport Rules and Regulations. Authority may establish and impose parking fees for any such employee parking and may amend the fees from time to time.

2.8 **Deliveries.** All commercial deliveries must be made through the air freight buildings or, if directed by Authority, the San Diego International Airport Central Receiving and Distribution Center (“CRDC”). Terminal curbside commercial deliveries are not allowed unless prior written approval is given by Authority.

2.9 **Federal Inspection Facilities (“FIS”).** Authority may designate areas in the Terminal, or elsewhere on the Airport, to be used by agencies of the United States for the inspection of international passengers and their baggage and for the exercise of the responsibilities of said agencies with respect to the movement of persons, property, and cargo to and from the United States.

2.10 **Other.**

2.10.1 Airline shall have the right to (a) purchase fuels, lubricants and any other goods and services required by Airline for the conduct of its Air Transportation Business at the Airport, from any approved supplier, contractor or other Air Carrier holding an agreement from Authority to provide such services to others at the Airport, subject to the provisions of this Agreement and provided that Authority shall not impose discriminatory limitations or restrictions that interfere with such purchases; and (b) operate radio equipment necessary to conduct its Air Transportation Business. Notwithstanding anything to the contrary in this Article 2, Airline shall not do or permit an Airline Entity to do anything that may interfere with the safe and efficient operation of any of the systems installed on or serving any portion of the Airport, including, but not limited to, drainage, water, sewer, fire protection, communications, electrical, plumbing, heating, ventilation, air conditioning, Common Use Systems and natural gas.

**Article 3**

**AIRLINE’S PREMISES**

3.1 **Rights to Use Premises.**

3.1.1 **Premises Notice.** On or before the Effective Date, Authority will issue to Airline a Premises Notice, attached hereto as Exhibits C, D, E, F and I, that will designate which areas of the Airport, if any, that Authority will make available for Airline’s use as: (a) Exclusive Use Premises; (b) Shared Use Premises; (c) Joint Use Premises; (d) Common Use Premises; (e) Unenclosed Operations Premises and (f) Aircraft Parking Premises. Subject to the terms of this
Agreement, Airline acknowledges and agrees that the Premises Notice will be revised by Authority and issued to Airline from time to time during the Term to reflect the reassignment and reallocation of the Premises and rights therein pursuant to this Agreement. Authority and Airline agree that, upon issuance by Authority, each revised Premises Notice, or portion thereof, shall be deemed attached to and incorporated into this Agreement, and shall supersede and replace the last issued Premises Notice, or portion thereof, deemed attached to and incorporated into this Agreement without the need for a written amendment of the Agreement signed by Authority and Airline.

3.1.2 Exclusive Use Premises. Authority leases to Airline and Airline agrees to lease through the Term of the Agreement on an exclusive use basis the Exclusive Use Premises identified in the Premises Notice, subject to this Agreement and Airport Rules and Regulations; provided, however, that the lease of any Exclusive Use Space that is assigned by Authority to Airline as Temporary Space for subleasing to a ground handler or other vendor of Airline may be terminated, in whole or in part, by either Authority or Airline after ninety (90) days’ written notice.

3.1.3 Shared Use Premises. Authority grants to airline, subject to this Agreement and Airport Rules and Regulations, the right to use, on a shared use basis with one or more Passenger Carriers, the Shared Use Premises identified in the Premises Notice provided, however, that Authority shall at all times have exclusive control and management of the Shared Use Premises.

3.1.4 Joint Use Premises. Authority grants to Airline, subject to this Agreement, Airport Rules and Regulations and the Gate, Ticket Counter and Aircraft Parking Position Rules, the right to use, on a joint use basis with one or more Passenger Carriers, the Joint Use Premises identified in the Premises Notice provided, however, that Authority shall at all times have exclusive control and management of the Joint Use Premises other than Preferential Use Gates.

3.1.5 Common Use Premises. Authority grants to Airline, subject to this Agreement, Airport Rules and Regulations and the Gate, Ticket Counter and Aircraft Parking Position Rules, the right to use, on a common use basis with other Passenger Carriers using the Airport, the Common Use Premises identified in the Premises Notice; provided, however, that Authority shall at all times have exclusive control and management of the Common Use Premises.

3.1.6 Unenclosed Operations Premises. Authority grants to Airline, subject to this Agreement and Airport Rules and Regulations, the right to use the Unenclosed Operations Premises identified in the Premises Notice; provided, however, that any use of Unenclosed Operations Premises must be approved by the Authority in writing and that Authority shall have the right to reassign any Unenclosed Operations Premises to another Air Carrier after thirty (30) days’ notice. Airline’s storage or placement of material on Unenclosed Operations Premises shall be limited to operational material that either cannot be stored within enclosed Exclusive Use Premises in the Terminal or for which there are no enclosed Exclusive Use Premises in the Terminal available for lease. Airline shall have priority over another Air Carrier to lease Unenclosed Operations Premises adjacent to any Preferential Use Gate assigned to Airline or to Airline’s Exclusive Use Premises. Any area of Unenclosed Operations Premises that becomes supplied with utilities shall be considered Exclusive Use Premises and shall be subject to the full Terminal Rental Rate.
3.1.7 Aircraft Parking Premises. Authority grants to Airline, subject to this Agreement, Airport Rules and Regulations and the Gate, Ticket Counter and Aircraft Parking Position Rules, the right to use, on a common use basis with one or more Air Carriers, the Aircraft Parking Premises identified in the Premises Notice provided, however, that Authority shall at all times have exclusive control and management of the Aircraft Premises other than the Terminal Parking Positions associated with Preferential Use Gates.

3.1.8 Condition of Premises. Except as otherwise expressly provided in this Agreement, Airline specifically acknowledges and agrees that Authority is permitting Airline’s use of the Premises on an “as is with all faults” basis and Authority makes no warranties, either express or implied, as to the condition of the Premises or that the Premises are suitable for Airline’s purposes or needs. Authority shall not be responsible for any latent defect and, subject to Article 20, Airline shall not under any circumstances withhold any Airline Rents, Fees and Charges or other amounts payable to Authority hereunder on account of any defect in the Premises. By its entry upon the Premises, Airline accepts the Premises as being free and clear from all defects and in good, safe, clean and orderly condition and repair.

3.2 Demolition, Reconstruction, Relocation or Reallocation of Exclusive Premises Required by Authority.

3.2.1 From time to time during the Term of this Agreement, part or all of the Premises may be required (1) for implementation of improvements at the Airport; (2) for accommodation of the traveling public; or (3) in order to maximize the use of the Terminal and related facilities by Passenger Carriers (including Airline) and other tenants, Airlines, permittees, and users thereof. In said event, Authority may, in the sole discretion of the President/CEO and upon ninety (90) days’ advance written notice, require the demolition or reconstruction of certain portions of the Exclusive Use Premises, or the reallocation or relocation, in whole or part, of Airline from its Exclusive Use Premises. In the event of any reallocation or relocation, Authority will provide, to the extent available and requested by Airline, a comparable location and facility in terms of size, condition and proximity to Airline’s operations at the Airport. In the event of a partial reallocation or relocation, Authority shall, to the extent available and requested by Airline, provide a location adjacent to or within reasonable proximity to Airline’s remaining Exclusive Use Premises. Authority shall consult with Airline regarding the exact number of square feet of Airline’s Exclusive Use Premises to be demolished, reconstructed, reallocated or relocated. The Premises Notice shall be revised immediately upon the completion of any reallocation or relocation from or modification to Airline’s Exclusive Use Premises and Authority shall reimburse Airline for Airline’s costs to relocate or construct and install improvements in its new Exclusive Use Premises; provided, however, that with respect to any Airline trade fixture and other movable property, if removal from the existing Exclusive Use Premises and reinstallation at Airline's new Exclusive Use Premises is possible and not unreasonable, Airline shall not be entitled to a new fixture or to new property. Airline shall, however, remove all trade fixtures and other movable property of Airline from its existing Exclusive Use Premises whether or not reinstallation is possible. In the event that comparable replacement facilities are not available, Authority shall reimburse Airline for the unamortized costs of facilities within the Exclusive Use Space to be demolished, reconstructed, reallocated or relocated that were paid for by Airline.
3.2.2 In the event Authority exercises its rights under Section 3.2.1, Authority shall reimburse Airline through a one-time rent credit for (a) any actual, documented costs incurred by Airline to relocate to new Exclusive Use Premises or to construct and install “like-for-like” improvements in new Exclusive Use Premises that are necessary to conduct the same activities conducted by Airline in the vacated Exclusive Use Premises and (b) the unamortized costs of facilities paid for Airline that are not replaced by Authority, as specified in Section 3.2.1. To qualify for reimbursement, Airline must submit to Authority within one hundred eighty (180) days following substantial completion of construction “as-built” plans for all construction and improvements, documentation of costs and paid receipts for the “like-for-like” improvements. Upon receipt of this documentation and verification by Authority, Authority shall issue the rent credit within ninety (90) days. Reimbursement under this Section 3.2.2 shall be Airline's sole and exclusive remedy and only form of compensation for costs or damages, including relocation assistance benefits (Cal. Gov. Code § 7260 et seq.), due to termination, re-entry, condemnation, acquisition, or reacquisition by Authority under Section 3.2.1. Authority shall allocate the costs of any reimbursements issued under this Section 3.2.2 to the appropriate Cost Center(s).

3.2.3 Airline Initiated Reallocations. If during the Term of this Agreement Airline requires a reallocation of part or all of Airline’s Exclusive Use Premises to facilitate its operations at the Airport, Airline may request such a reallocation by submitting a written request to the President/CEO, and the President/CEO may approve or deny any such request in the President/CEO’s sole discretion. Except as otherwise provided in Section 3.2.4, any such request for reallocation may not include a request for a reduction in the size of Airline’s Exclusive Use Premises, unless another Air Carrier has agreed, in writing, to lease such premises for the remainder of the Term. All costs associated with any reallocation requested by Airline, including without limitation the costs of Authority, shall be funded by Airline.

3.2.4 Airline Relocations, Accommodations and Right-Sizing Related to the ADP.

(a) Relocations of Space During Construction of the ADP. Airline acknowledges that during construction of the ADP, in order to facilitate the continued operations of all Passenger Carriers at the Airport and to serve the traveling public, it will be necessary for Authority, from time to time, to relocate one or more Signatory Airlines in accordance with Section 3.2 on an interim, transitional basis pending completion of the ADP.

(b) Accommodations. Airline acknowledges that during construction of the ADP, in order to accommodate the needs of all Passenger Carriers for reasonable access to required Terminal facilities, it is likely that Airline will be required to accommodate other Passenger Carriers at its Exclusive Use Premises, where practicable, and on its Preferential Use Gates. If such accommodations are necessary, Authority will coordinate with Airline to allow
Airline to address legitimate concerns over labor rights and proprietary information and Authority will apportion the Airline Rents, Fees and Charges fairly between Airline and the accommodated Passenger Carrier.

(c) Airline Right-Sizing Options. Airline may request and Authority shall grant a reduction in the size of Airline’s Exclusive Use Premises or, to the extent there is available space, an increase in the size of Airline’s Exclusive Use Premises as follows:

(i) On or before January 1, 2024, Airline may make a written request to be effective July 1, 2024; and

(ii) At least six (6) months prior to the DBO of new Terminal facilities to be constructed in the ADP, Airline may make a written request to be effective as of the DBO of such facilities.

Authority shall not be obligated to grant requests for reductions in Airline’s Exclusive Use Premises that cumulatively exceed fifteen percent (15%) of Airline’s Exclusive Use Premises (net any Ticket Counters, free-standing self-service kiosks, skycap podiums, curbside positions, and associated Queuing Space in Terminal 1 assigned to Airline as part of its Exclusive Use Premises on a transitional basis until the DBO of new Terminal facilities to be constructed in the ADP) as measured on the date that Airline makes its first request under this Section 3.2.4(c). Additionally, Authority shall not be obligated to grant a request for a reduction in Airline’s Exclusive Use Premises if the space requested by Airline is not, in the reasonable judgment of the President/CEO, suitable for lease to another Air Carrier based on location, size and condition of the space. Subject to the reallocations under this Section 3.2.4(c) and any reallocations by Authority under Section 3.2.1, Airline shall be obligated to pay throughout the Term for all Exclusive Use Premises assigned to Airline after any such reductions or increases have been made.

3.3 Assignment and Sublease of Premises.

3.3.1 Airline shall not assign, sublet, transfer, convey, sell, mortgage, pledge or encumber, in whole or in part, (“Transfer”) this Agreement or the Premises, nor will Airline allow the use of such Premises by any other entity or person, without in each instance having first obtained the prior written consent of Authority; provided that (a) if Airline requests Authority’s consent for the sublease of Temporary Space to a ground handler or other vendor of Airline, Authority’s consent shall not be unreasonably withheld, conditioned or delayed and (b) a sublease by Airline to an Affiliate shall not require Authority’s consent, but shall be required to meet the conditions of Section 3.3.2 and be subject to the requirements and obligations of Section 3.3.5. The consent of Authority shall be required for any and each Transfer and such consent by Authority shall not be construed as a waiver of the obligation to obtain consent from Authority for any subsequent Transfer. Airline further agrees that this Agreement or any interest therein shall not be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without Authority’s prior written consent, which consent shall not be unreasonably withheld. Airline further agrees that, if at any time during the Term, more than one-half (1/2) of the outstanding shares of any class of stock of Airline’s corporation shall belong to any stockholder or group of stockholders that are immediate family members other than a stockholder or group of stockholders that are immediate family members who own more than one-half (1/2) of the
outstanding shares of that class of stock at the time of the execution of this Agreement, such change
in ownership of Airline’s stock shall be deemed an assignment of this Agreement within the
meaning of this Section 3.3 (unless Airline is a corporation whose stock is listed on the New York
Stock Exchange or other major stock exchange, in which case such an event shall not be deemed
an assignment of this Agreement).

3.3.2 As a condition to Authority's consent to any proposed Transfer, the
proposed sub-lessee, assignee, user or other party shall execute a license agreement, sublease, or
other written document in a form consistent with the terms and conditions of this Agreement
acceptable to and approved by Authority and shall require the sub-lessee or the assignee to be
bound by all of the applicable terms and provisions of this Agreement. Any sublease or assignment
under this Section 3.3.2 must (i) expressly name Authority as a third-party beneficiary of the sub-
lessee's or the assignee's obligations under the sublease or assignment, and (ii) grant a direct right
of enforcement to Authority.

3.3.3 In the event Airline subleases all or any portion of its Premises, Airline
shall charge the sub-lessee no more than one hundred fifteen percent (115%) of Airline’s pro-rata
share of the direct costs of Airline attributable to the space, including a reasonable allocation of
tenant improvement costs, operations and maintenance costs and equipment costs for property and
equipment owned by Airline.

3.3.4 Airline recognizes that, subject to certain rights conveyed to Airline under
this Agreement, Authority retains the exclusive right to manage and control Aircraft Parking
Positions and Airline may not sublease these areas.

3.3.5 Notwithstanding any Transfer, Airline shall remain responsible and fully
liable for all of its obligations under this Agreement, including without limitation the payment of
Airline Rents, Fees and Charges, unless expressly released in writing by Authority. Requests by
Airline for consent under this Section 3.3 shall be made in writing by certified mail to Authority
and shall include copies of the proposed Transfer documents. The Transfer documents shall
completely disclose any and all considerations made or to be made to Airline for the Transfer.

3.4 Airline Improvements to the Premises.

3.4.1 Consent for Construction.

(a) Airline shall not construct any improvements, structures, facilities
or appurtenances upon the Airport or the Premises without the prior written consent of Authority.
All such improvements or facilities shall comply with Applicable Laws and Airport Rules and
Regulations, including without limitation the Airport Rules and Regulations listed in Exhibit J.
Airline shall be responsible for obtaining and complying with any necessary local, state or federal
permits required for the construction or use of the improvements or facilities. Authority shall
reasonably cooperate with Airline in obtaining any such permits.

(b) Airline shall be prohibited from purchasing, constructing or
otherwise putting to use, any building components at the Airport or the Premises that contain
detectable concentrations (>0.1%) of asbestos. Compliance shall be demonstrated by providing
an approved Safety Data Sheet (SDS) that shows that the material is “asbestos free” (no asbestos
by any name > 0.1% asbestos). In the event that the SDS does not contain such language, Airline shall provide supportive analytical data from an NIST certified and NVLAP accredited analytical laboratory.

(c) Airline shall be prohibited from purchasing, constructing or otherwise putting to use, any building components that contain concentrations of lead at or above the current lead limit as established by the Consumer Product Safety Commission (CPSC) at the Airport. Compliance shall be demonstrated by providing an approved Safety Data Sheet that states that the material does not contain lead above the current CPSC threshold (currently 0.009% lead). In the event that the SDS does not contain such language, Airline shall provide supportive analytical data from an NIST certified and California Department of Public Health accredited analytical laboratory.

(d) When contemplating improvements, Airline shall consider and make reasonable efforts to perform the work in a manner consistent with (1) the Authority’s adopted Sustainability Policy, attached as Exhibit P, and (2) the Memorandum of Understanding ("MOU") with the State of California Attorney General, attached as Exhibit Q.

3.4.2 Performance and Payment Bonds for Construction. Airline shall not commence construction upon the Premises until Airline demonstrates compliance with all performance and payment bond requirements under Applicable Laws and Airport Rules and Regulations, including without limitation the applicable provisions of California Civil Code Section 9550. In lieu of said bonds, the President/CEO may at the President/CEO’s reasonable discretion accept the performance and labor and material bonds supplied by Airline’s contractors or subcontractors. Whether secured by Airline or its contractors or subcontractors, all bonds must be issued by a company qualified to do business in the State of California, be in a form acceptable to Authority, and comply with the requirements of California law.

3.4.3 Waiver of Visual Artists Rights. Airline shall not install or allow the installation of any object in the Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 (VARA) unless and until Airline has (a) obtained the prior written approval of the President/CEO, and (b) provided Authority with a written waiver from the author or artist of such work of visual art, in form and substance reasonably satisfactory to Authority, which waiver shall identify specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. §106A(e)(1). Airline shall also provide Authority with a similar written waiver that is effective to bar any claim by an artist with respect to a work of fine art under the California Art Preservation Act, Cal. Civil Code §§ 987-989.

3.4.4 Repair and Maintenance of Airline Improvements. Any improvements, structures, facilities or appurtenances constructed or installed upon the Airport or the Premises by or on behalf of Airline shall be maintained by Airline in a clean, safe, structurally sound, and presentable condition at all times. Such maintenance shall include, but not be limited to, repair, replacement, and refinishing of interior walls, ceilings, and floors.

3.4.5 Airfield Area Improvements or Maintenance by Airline. Airline shall not commence any Airfield Area improvement or maintenance without the prior written approval of the President/CEO.
3.5 Removal of Airline Improvements on Expiration or Earlier Termination of Agreement. Any structures, installations, improvements of any kind, machines, equipment (including telecommunications equipment), and baggage handling systems placed on the Premises by Airline, including without limitation, walls, partitions, ceilings, built-in counters and cabinets, carpeting, and permanently attached electrical installations and lighting fixtures (“Airline Improvements”), shall be removed by Airline, if requested by Authority at Authority’s sole option (unless the parties had previously agreed in writing that removal would not be required), within thirty (30) days after the expiration or earlier termination of this Agreement. Airline further agrees to repair any and all damage occasioned by the removal of Airline Improvements. In the event of termination by either Airline or Authority, Airline and Authority shall meet, if practicable, within ten (10) days of issuance of the termination notice to determine which Airline Improvements, if any, Authority shall request to be removed. Authority shall provide Airline written notice of its determination within ten (10) days of such meeting. If no such meeting occurs, Authority shall provide Airline written notice of any request to remove Airline Improvements prior to the date of expiration or earlier termination of this Agreement.

3.5.1 Authority’s Option. If Authority exercises its option to request removal of Airline Improvements under this Section 3.5, and Airline fails or refuses to undertake the requested removal within thirty (30) days after the expiration or earlier termination of this Agreement, Authority may: (1) consider the property abandoned and take ownership of the Airline Improvements without cost to Authority and without any payment to Airline, or (2) remove or cause the removal of the Airline Improvements at the sole expense of Airline and Airline shall reimburse Authority within thirty (30) days of receiving an invoice for the cost of any such removal and related repairs to the Premises, if any, including administrative costs of fifteen percent (15%).

3.5.2 Rent. During any period of time after the expiration or earlier termination of this Agreement that Airline undertakes the removal of Airline Improvements, Airline shall pay applicable Airline Rents, Fees and Charges to Authority, prorated daily.

3.6 Quiet Enjoyment. Authority covenants that if Airline performs all of its obligations and makes all payments as required in this Agreement, Airline shall peaceably have and enjoy the Premises and all the rights, privileges, appurtenances and facilities granted in this Agreement.

3.7 Authority’s Title. Authority’s title to the Premises and the Airport is derived from the provisions of the Authority Act and the Master Lease. This Agreement is granted subject to the terms and conditions of the Authority Act and the Master Lease. Subject to the provisions of this Article 3, Authority's title to the Premises and Airport is and always shall be paramount to the interests of Airline. Nothing herein empowers Airline to commit or engage in any act which can, shall or may encumber the title and interest of Authority, the San Diego Unified Port District, or the State of California.

3.8 Authority's Right of Entry. Authority, its officers, employees, agents, representatives, contractors and service providers shall have the right during normal business hours and upon at least twenty-four (24) hours’ notice (or, in the case of an emergency or request by a governmental authority, at any time and upon only such notice as is practicable under the circumstances) to enter the Premises for the purposes of inspection, emergency repairs to utility
systems, environmental testing, remedying health or safety issues, and for any other purpose necessary or incidental to or connected with the performance of Authority’s contractual obligations, exercise of its governmental functions, or its responsibilities as Airport proprietor. Authority’s activities may include, without limitation, erecting scaffolding, columns, and supports and/or using any necessary equipment. Any such entry and the resulting activities shall not be deemed to constitute an interference with possession of the Premises and shall be without abatement of rent; provided, however, Authority shall use commercially reasonable efforts to ensure as little interruption to Airline’s operations as possible. Furthermore, Airline shall not claim or be entitled to damages for loss of business or profits or any other injury or inconvenience resulting directly or indirectly from any such entry or activities; provided, however, Authority shall repair any damage to the Premises or to Airline’s property and indemnify and hold Airline harmless from any damage to person or property or injury to person caused by Authority during such inspections, repairs, additions, modifications, and/or alterations. To the extent permitted under applicable law, Authority shall preserve the confidentiality of all confidential or privileged information obtained through such inspections, unless Airline has consented, in writing, to disclosure or has publicly released such information.

Article 4

THE ASSIGNMENT OF GATES AND TICKET COUNTERS

4.1 General Provisions.

4.1.1 Applicability. Authority and Airline intend by this Article 4 and Article 5 to ensure open access and balanced utilization of Joint Use Premises, including Gates, Shared Use Premises, and Common Use Premises. Authority shall, at all times, have exclusive possession and control of all Joint Use Premises, subject to Preferential Use Gate rights granted to Signatory Airlines in accordance with this Article 4, Shared Use Premises, and Common Use Premises. Joint Use Premises, Shared Use Premises, and Common Use Premises shall at all times be subject to this Article and the Airport Rules and Regulations, which may be amended from time to time by Authority after consultation with the Signatory Airlines.

4.1.2 No Exclusive Use. No Gate, Ticket Counter, Terminal Parking Position or Remote Parking Position may be assigned for any Air Carrier’s exclusive use, except as provided in Section 4.9. Each Gate shall be designated by Authority for either common use or preferential use in accordance with this Article 4. All Terminal Parking Positions and Remote Parking Positions shall be designated for common use in accordance with this Article 4, Article 5 and the Gate, Ticket Counter and Aircraft Parking Position Rules.

4.1.3 Discretion of President/CEO. Provided the procedures of Article 4 and Article 5 are followed, the use, location and status of Preferential Use Gates, Common Use Gates and Aircraft Parking Positions, scheduling on Common Use Gates, Aircraft Parking Positions and Common Use Ticket Counters, accommodation on Preferential Use Gates and Aircraft Parking Positions shall be determined in the sole discretion of Authority by its President/CEO after consultation with the Gate, Ticket Counter and Airport Parking Position Committee. Authority shall establish and revise from time to time the Gate, Ticket Counter and Airport Parking Position Rules, after consultation with the Gate, Ticket Counter and Airport Parking Position Rules.
Committee, to set rules, priorities and protocols for the assignment and use of Gates, Aircraft Parking Positions and Ticket Counters.

4.1.4 Common Use Systems and Other Authority-Controlled Facilities. Authority shall have the right to provide and install standardized podia shells, inserts and Common Use Systems at Gates, flight information display systems (FIDS), gate information display systems (GIDS), Ticket Counters, and curbside check-in positions throughout the Terminal. In the locations where these Authority-Controlled Facilities are installed and available for use, Air Carriers shall exclusively use the Authority-Controlled Facilities, without any modification, unless such modification is approved in writing by Authority.

4.1.5 Unavailability of Gate or Ticket Counter. If no Gate, Ticket Counter or other Airport Facility is available at the desired time period and day requested by Airline and in accordance with the accommodation provisions of this Agreement, Authority shall not be obligated to provide a Gate, Ticket Counter or other Airport Facility, except as otherwise required under the Gate, Ticket Counter and Aircraft Parking Position Rules.

4.2 Designation of Gates.

4.2.1 Minimum Number of Common Use Gates. Authority shall throughout the Term designate, at a minimum, nine (9) Common Use Gates in the Terminals.

4.2.2 The assignments of Preferential Use Gates as of the Effective Date and through June 30, 2020 are provided in Exhibit K.

4.2.3 Assignment of Preferential Use Gates. By May 1 of each Fiscal Year following the Effective Date, the President/CEO shall, in her or his sole discretion after taking into consideration any recommendations by the Signatory Airlines, determine the total number of Gates to be made available as Common Use Gates and Preferential Use Gates for the next Fiscal Year and assign such Preferential Use Gates to Signatory Airlines in accordance with Section 4.2.4.

4.2.4 By June 1 of each Fiscal Year following the Effective Date, Authority shall assign the Preferential Use Gates to the Signatory Airlines to be effective on July 1 as follows:

(a) Each Signatory Airline shall be assigned one (1) Preferential Use Gate for its first 625 Scheduled Departing Seats Per Day over the most recent twelve (12) month period for which data is available and one additional Preferential Use Gate for every additional 750 Scheduled Departing Seats Per Day over the most recent twelve (12) month period for which data is available; provided, however, that (i) Authority shall not assign more than six (6) Preferential Use Gates to any Signatory Airline; (ii) Authority shall not assign more Preferential Use Gates than the total amount determined in Section 4.2.3; and (iii) the number of Common Use Gates remaining meets the minimum specified in Section 4.2.1. Authority shall adjust the minimum number of Scheduled Departing Seats Per Day to ensure that Authority meets conditions (ii) and (iii) above.

(b) If a Signatory Airline does not accept the assignment of a Preferential Use Gate, Authority may either designate that Gate as a Common Use Gate or reassign it to another Signatory Airline as a Preferential Use Gate, subject to Section 4.2.4(a).
(c) Only Signatory Airlines shall qualify for the assignment of Preferential Use Gates.

(d) A Signatory Airline that only operates flights requiring the use of FIS facilities shall not qualify for assignment of a Preferential Use Gate. Authority shall schedule such Signatory Airline’s flights in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules.

(e) A Signatory Airline that is assigned a Preferential Use FIS Gate shall not have scheduling priority at such Gate for its domestic Scheduled Operations over the international Scheduled Operations of other Passenger Carriers on such Gate.

(f) Authority shall determine the location of all Common Use Gates and Preferential Use Gate assignments; provided, however, that it shall take into account each Passenger Carrier’s operations and current locations when making such assignments.

(g) Airline shall have the right to use the Joint Use Premises in the Terminal where its assigned Preferential Use Gate is located, subject to this Agreement, Airport Rules and Regulations and the Gate, Ticket Counter and Aircraft Parking Position Rules.

4.3 Reassignment and Use of Preferential Use Gates.

Airline must meet and maintain the Minimum Daily Average Utilization for each assigned Preferential Use Gate. In the event Airline fails to meet this obligation, Airline shall have thirty (30) days after written notification from Authority to add operations to meet the Minimum Daily Average Utilization within one hundred twenty (120) days after the written notification from Authority. Should Airline fail to increase its scheduled operations to meet the Minimum Daily Average Utilization within the thirty (30)-day period, the President/CEO may thereafter reassign the Preferential Use Gate as a Common Use Gate or as a Preferential Use Gate of another Signatory Airline, subject to Sections 4.2.4(a)-4.2.4(c).

4.4 Loss of a Preferential Use Gate Assignment. Upon the loss of a Preferential Use Gate assignment due to an annual reallocation under Section 4.2 or reassignment under Section 4.3, Airline’s Scheduled Operations on the Gate shall be accommodated on that Gate or another Gate in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules.

4.5 Accommodation on Preferential Use Gates.

4.5.1 Objectives. Airline and Authority acknowledge that the objective of Authority is to offer Air Carriers desiring to serve the Airport access to the Airport, and to provide adequate Gate positions and space in its facilities. Authority intends to pursue the objective of achieving an optimum balance in the overall utilization of Gates and other Airport facilities to be achieved, if necessary, through sharing, of Gates and other passenger handling facilities subject to and in accordance with this Agreement. In furthering the objectives of providing access to the Airport, including the accommodation of new entrants, Authority seeks to (1) provide Signatory Airlines with predictability and stability regarding the use of operational space at the Airport, (2) provide reasonable accommodation to Passenger Carriers seeking to serve the Airport, and (3) achieve a reasonable balance in the overall utilization of the Terminal and Gates, taking into
account possible disruption of existing Signatory Airline operations and maximizing convenience to passengers.

4.5.2 Airline’s Scheduling Priority and Authority’s Right to Accommodate. In furtherance of these objectives: (a) Airline shall have scheduling priority at all of its Preferential Use Gates for all of its Periods of Use with respect to its Scheduled Operations, subject to the terms of this Section 4.5; (b) Authority shall have the right, upon reasonable notice to and in consultation with Airline, to schedule at a Preferential Use Gate arrivals and departures by a Gate Requesting Airline at all periods of time other than Airline’s Periods of Use for its Scheduled Operations on its Preferential Use Gates in accordance with the procedures in this Section 4.5 and the Gate, Ticket Counter and Aircraft Parking Position Rules.

4.5.3 Submission of Advanced Schedules.

(a) Airline shall submit to Authority Filed Schedules in a format and at the times specified in the Gate, Ticket Counter and Aircraft Parking Position Rules.

(b) Notwithstanding anything to the contrary set forth in this Agreement, Airline shall have a scheduling priority for a Period of Use at its Preferential Use Gate under this Article 4 with respect to a Scheduled Operation only if Airline has complied with the Filed Schedule requirements with respect to such Scheduled Operation.

4.5.4 Form and Timing of Request for Accommodation.

(a) At least sixty (60) days prior to commencing a flight that the Gate Requesting Airline cannot accommodate on its own Preferential Use Gates, if any, a Gate Requesting Airline shall submit a written request to Authority with the following information: name of airline, type of aircraft, desired time of day and day of week for the Scheduled Operation and whether the Scheduled Operation requires access to the FIS.

(b) Authority will make diligent efforts to process each request submitted under Section 4.5.4(a) in accordance with this Section 4.5 and the Gate, Ticket Counter and Aircraft Parking Position Rules. Authority reserves the right to void any request deemed to be made in bad faith or without the intention to conduct the requested Scheduled Operation. Before taking such action, Authority will provide the Gate Requesting Airline an opportunity to prove the request was made in good faith.

4.5.5 Selection of the Gate for Accommodation.

(a) If a Common Use Gate is available to accommodate the Gate Requesting Airline’s flight, Authority shall accommodate the flight on a Common Use Gate determined by Authority in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules.

(b) If a Common Use Gate is not available at the requested time, Authority shall attempt to find an alternative time or day (as applicable) to accommodate the request on a Common Use Gate.
(c) If a Common Use Gate is not available, Authority shall determine, based on Filed Schedules at the time Authority receives a request under 4.5.4, whether the Gate Requesting Airline’s flight can be accommodated on a Preferential Use Gate. If more than one Signatory Airline can accommodate the flight, Authority shall select the Signatory Airline with the lowest Average Minimum Use Level to accommodate the Gate Requesting Airline on its Preferential Use Gates (the “Gate Accommodating Airline”).

(d) Authority shall allow the Gate Accommodating Airline to select the specific Preferential Use Gate at which such accommodation will occur; provided, however, that the Preferential Use Gate selected by the Gate Accommodating Airline shall be able to accommodate the size of the Gate Requesting Airline’s aircraft and, if necessary, shall be a Preferential Use FIS Gate; and further provided, that Authority shall have the right to select a Preferential Use Gate other than that selected by the Gate Accommodating Airline if Authority determines, in its reasonable discretion, that a different selection is warranted under the circumstances.

(e) In accommodating Authority in its right to schedule such operations, the Gate Accommodating Airline shall allow and provide for use of its facilities at the Preferential Use Gate, or alternatively permit use of Common Use Systems, as may be required for the Gate Requesting Airline’s efficient use of the Preferential Use Gate; provided, however, that the Gate Requesting Airline shall leave the associated facilities and holdrooms in as good as condition as it when it began using the Preferential Use Gate.

4.5.6 Duration of the Accommodation. A Gate Requesting Airline shall be accommodated at the Gate Accommodating Airline’s Preferential Use Gate until:

(a) the Gate Requesting Airline discontinues the flight(s) for which it sought accommodation; or

(b) the Gate Accommodating Airline makes a written request, in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules demonstrating to Authority that it is necessary to move the Gate Requesting Airline’s flight in order to schedule a new flight by the Gate Accommodating Airline or its Affiliate on its Preferential Use Gates and either

(i) a Common Use Gate becomes available during a time that will accommodate the Gate Requesting Airline’s requested Period of Use; or

(ii) another Signatory Airline can accommodate the Gate Requesting Airline’s flight and aircraft without, in the sole discretion of Authority, unduly affecting the Gate Requesting Airline’s operations.

(iii) In the event of either Section 4.5.6(b)(i) or 4.5.6(b)(ii), the Gate Requesting Airline shall be relocated within thirty (30) days’ written notice from Authority. Authority shall add any costs incurred by the Gate Requesting Airline to the Airline Terminal Support Cost Center and recover it through the Joint Use Charges.
4.5.7 Irregular Operations. If the Gate Accommodating Airline’s or the Gate Requesting Airline’s Irregular Operation exceed the Period of Use on Airline’s Preferential Use Gate, then that Passenger Carrier may be required by Authority to immediately vacate the Preferential Use Gate, at its sole expense. The Passenger Carrier vacating may be reassigned to any available Gate or Remote Parking Position to complete its operation.

4.5.8 No Actual Use by Airline During a Particular Time. Notwithstanding anything to the contrary set forth in this Agreement, Authority shall have the right on a day-to-day basis to schedule arrivals and departures on Airline’s Preferential Use Gate if Airline is not actually utilizing that Preferential Use Gate during its Period of Use for a Scheduled Operation, and if no Common Use Gate is available.

4.5.9 Additional Obligations of Gate Requesting Airline. As a condition of accommodation on any of Airline’s Preferential Use Gates, the Gate Requesting Airline shall have executed an agreement through which the Gate Requesting Airline is bound by insurance and indemnification obligations that are substantially similar to the insurance and indemnification obligations of Airline under this Agreement. These insurance and indemnification obligations shall inure to the benefit of Airline as a third-party beneficiary for any period of accommodation, and Airline shall not be required to accommodate a Gate Requesting Airline at its Preferential Use Gates if the Gate Requesting Airline’s insurance and indemnification obligations are not satisfied.

4.6 Rights to Use Premises Associated with a Gate. When Airline is assigned a Gate, Airline shall have the right to use the adjacent Common Use Systems and Joint Use Premises with the condition that such use not interfere with the rights of other Passenger Carriers. Subject to the terms and conditions of this Agreement, Authority shall have the exclusive right and control, after reasonable prior notice to affected Passenger Carriers, to assign and move Gate locations to ensure the balanced use of Airport Facilities, and Authority may require a Passenger Carrier using Common Use Systems to relocate to an alternative Gate, the cost of which shall be reimbursed by Authority to the relocating Passenger Carrier and added to the Airline Terminal Support Cost Center and recover it through the Joint Use Charges.

4.7 Non-scheduled and Charter Operations. Non-scheduled and charter operations will be assigned Gates on a temporary use basis in accordance with Section 5.5.

4.8 Authority’s Control of Common Use Gates. Authority shall retain exclusive control of the use of all Common Use Gates, subject to the terms of this Agreement. Scheduling on and the use of Common Use Gates shall be governed by the Gate, Ticket Counter and Aircraft Parking Position Rules.

4.9 Ticket Counters. All Ticket Counters at the Airport shall be Common Use Ticket Counters and assigned in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules, with the exception of the Ticket Counters in Terminal 1 that are specified in Exhibit C, which shall continue to be Exclusive Use Premises until they are removed as part of the ADP.

4.10 Revisions to the Premises Notice. Revisions to the Premises or the assignment of Preferential Use Gates pursuant to this Article 4 shall be reflected in a revision to the Premises Notice.
Article 5

TERMINAL PARKING POSITIONS, REMOTE PARKING POSITIONS AND OTHER AUTHORITY CONTROLLED FACILITIES

5.1 Terminal Parking Positions.

5.1.1 Signatory Airlines assigned Preferential Use Gates shall have the right to use the Terminal Parking Positions adjacent to their Preferential Use Gates during the Periods of Use of their Scheduled Operations. At all other times, scheduling on and the use of all Terminal Parking Positions adjacent to Preferential Use Gates shall be controlled and managed exclusively by Authority, as further specified in this Agreement, the Gate, Ticket Counter and Aircraft Parking Position Rules and any other applicable Airport Rules and Regulations.

5.1.2 In addition to the rights in Section 5.1.1, Airline shall have priority to utilize the Terminal Parking Positions adjacent to its Preferential Use Gates for the overnight parking of its Scheduled Operations; provided, however, that Authority shall have the right to require Airline to temporarily relocate any such aircraft parking overnight in order to accommodate a Scheduled Operation or Irregular Operation of another Passenger Carrier that will not interfere with the Scheduled Operation of Airline. If Airline does not have a Scheduled Operation that requires overnight parking on its Preferential Use Gate, Authority shall assign overnight parking on that Preferential Use Gate in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules.

5.1.3 Scheduling on and the use of the Terminal Parking Positions adjacent to Common Use Gates, including overnight parking, shall be controlled and managed exclusively by Authority, as further specified in the Gate, Ticket Counter and Aircraft Parking Position Rules and any other applicable Airport Rules and Regulations. Notwithstanding the foregoing, all FIS designated Terminal Parking Positions shall have priority for international flight activity.

5.2 Remote Parking Positions.

5.2.1 Authority shall designate the number, if any, of Remote Parking Positions at the Airport for the use of Air Carriers. The initial number of designated Remote Parking Positions on the Effective Date is described in Exhibit H.

5.2.2 The designation of the number of one or more Remote Parking Positions to Airline does not include the right to use any specific Remote Parking Positions or Gate at the Airport. Specific Remote Parking Positions shall be assigned using a separate process under the control of Authority through the Gate, Ticket Counter and Aircraft Parking Position Rules Committee. Authority shall establish and revise from time to time, after consultation with the Gate, Ticket Counter and Aircraft Parking Position Rules Committee, protocols for the assignment of individual specific Remote Parking Positions, which shall be included in the Gate, Ticket Counter and Aircraft Parking Position Rules.

5.2.3 Authority shall have the exclusive right and control to assign and relocate Remote Parking Positions to ensure the maximum use of Gates and other Airport Facilities. Authority may require Airline to relocate its aircraft from its assigned Remote Parking Position to
an alternative position. All movements to and from a Remote Parking Position shall be at Airline’s sole cost and expense.

5.3 Cargo Parking Positions.

5.3.1 Airline shall have the priority right to use its assigned Cargo Parking Positions, if any, for the cargo operations of Airline. At all other times, the Authority shall have, upon twenty-four (24) hours advance notice by email, the right to use Airline’s Cargo Parking Positions, as further specified in the Gate, Ticket Counter and Aircraft Parking Position Rules and any other applicable Airport Rules and Regulations.

5.3.2 Airline shall have priority to utilize its assigned Cargo Parking Positions, if any, for the overnight parking of their aircraft; provided, however, that Authority shall have the right, upon twenty-four (24) hours advance notice by email, to require Airline to temporarily relocate any such aircraft parking overnight in order to accommodate a Scheduled Operation or Irregular Operation of another Air Carrier that will not interfere with the operations of Airline. If Airline does not utilize its assigned Cargo Parking Position for required overnight parking, Authority shall have the right to assign overnight parking on that Cargo Parking Position in accordance with the Gate, Ticket Counter and Aircraft Parking Position Rules.

5.4 Assignment of Authority-Controlled Facilities Other than Gates, Ticket Counters, Terminal Parking Positions or Remote Parking Positions. Airline shall submit a written request to Authority to use other Authority-Controlled Facilities, including, but not limited to free-standing kiosks, skycap podiums, and other curbside check-in locations. Such a request shall be submitted to Authority at least sixty (60) days prior to the proposed date of use and contain the following information: name of airline, type of space or facility being requested, desired time of day and day of week, the duration of the use and number of Airline staff to be assigned to the space or facility. Other Authority-Controlled Facilities will be assigned and allocated by Authority based on reasonable and non-discriminatory procedures set by Authority. Authority shall have the exclusive right and control to assign and move Airline from other Authority-Controlled Facilities to ensure the balanced use of Airport Facilities. If Authority requires Airline to relocate to an alternative location, Airline shall relocate within the time prescribed by Authority and Authority shall reimburse Airline for the costs of such relocation and shall add such reimbursed costs to the Airline Terminal Support Cost Center.

5.5 Temporary Uses. Authority may assign the use of any Gate (except for a Preferential Use Gate, which shall be assigned as specified in Article 4), Ticket Counter or other Authority-Controlled Facility on a temporary basis to any Air Carrier for any operation, provided it does not interfere with any Scheduled Operation and with the understanding that a Passenger Carrier’s use of a Gate is “at will.”
Article 6

AFFILIATES

6.1 Airline’s Designation of Affiliates. Subject to the provisions of this Article 6, Airline may designate one or more Affiliates to operate at the Airport. In the event Airline designates an Affiliate, the following provisions shall apply to Airline and its Affiliates:

6.1.1 The Airline’s designation of an Affiliate shall not be effective until Airline has first (a) notified the President/CEO in writing that Airline intends to designate the Affiliate; (b) ensured that the Affiliate has entered into an Affiliate Operating Agreement with Authority in substantially the same form as that attached as Exhibit B; and (c) confirmed for the President/CEO in writing that Airline will pay to Authority all of the Affiliate’s Airline Rents, Fees and Charges and any other charges due to Authority on account of the Affiliate’s use of any Airport facilities as an Affiliate of Airline, as provided in Section 6.1.2.

6.1.2 All Affiliates shall report and pay to Authority all PFCs (if any) that they collect on account of enplaning passengers at the Airport. The Airline shall pay to Authority all Airline Rents, Fees and Charges and any other charges due on account of the Affiliate’s use of any Airport facilities, and shall submit to Authority all reports detailing each Affiliate’s use of any Airport facilities or services as an Affiliate of Airline in accordance with Article 13; provided, however, that both Airline and the Affiliate shall remain jointly and severally liable to Authority for the payment of all Airline Rents, Fees and Charges and any other charges (including PFCs), and the submission of all reports, that are due to Authority on account of the Affiliate’s use of any Airport facilities or services as an Affiliate of Airline.

6.2 Applicability of Agreement to Affiliates. For so long as Airline and its Affiliates have complied with the payment and reporting obligations under Article 10, Article 11 and Article 13, then:

6.2.1 Each Affiliate shall have the same rights as Airline with respect to its use and occupancy of Airline’s Premises.

6.2.2 The Airline Rents, Fees and Charges and any other charges due on account of each Affiliate’s use of Airport facilities or services shall be calculated as if the Affiliate were a Signatory Airline; provided, however, that the Affiliate’s activity as an Affiliate of Airline shall be treated as activity of Airline; and further provided that in calculating Joint Use Fees under Article 10, the Affiliate shall be treated as if it were Airline and shall not be counted as a separate Signatory Airline for purposes of proration in calculating the fixed component of the Joint Use Premises charge.

6.2.3 Each Affiliate’s activity as an Affiliate of Airline shall be treated as activity of Airline for purposes of allocations and reallocations of Gates and Ticket Counters and the calculation of Minimum Daily Average Utilization under Article 4.

6.3 Designation by More than One Signatory Airline. More than one Signatory Airline may from time to time designate the same Passenger Carrier as its Affiliate, and each such
Signatory Airline shall only be responsible for such Passenger Carrier’s operations when such Passenger Carrier operates as such Signatory Airline’s Affiliate.

6.4 Termination of Status of Affiliate. A Passenger Carrier’s status as Affiliate of Airline may be terminated by Airline upon not less than thirty (30) days’ written notice to Authority. Airline’s liability to Authority for the payment of all Airline Rents, Fees and Charges (including PFCs), and the submission of all activity reports, that are due to Authority on account of the use of any Airport Facilities or services by Airline’s Affiliates shall survive any termination of Affiliate status; provided, however, that Airline shall only be responsible for such payments and reports as relate to the terminated Affiliate’s operations before its proper termination by Airline took effect.

6.5 Affiliate as Signatory Airline. If a Passenger Carrier operating at the Airport as an Affiliate of Airline becomes a Signatory Airline, such Passenger Carrier must immediately terminate its status as an Affiliate of Airline in accordance with the Affiliate Operating Agreement executed by the Affiliate and Authority.

Article 7

SUBORDINATION OF AGREEMENT TO INDENTURE

This Agreement and any obligations owed by Authority to Airline that may arise under this Agreement or as it may be amended are subordinate in all respects and at all times to the lien, covenants (including rate covenants), pledges, provisions and funding requirements under the Indenture and any supplemental Indenture then in effect.

Article 8

MAINTENANCE, REPAIR AND JANITORIAL SERVICES

8.1 Authority’s Maintenance and Repair Obligations. Authority, in a manner determined in its sole discretion, shall maintain and keep in good order and repair the Terminal building structure, its appurtenances, access roadways on the Airport, and the Airfield Area as they were originally constructed, modified, acquired and/or installed by Authority in accordance with Exhibit L.

8.2 Airline’s Maintenance and Repair Obligations.

8.2.1 Airline shall be responsible for the repair and maintenance of all facilities, improvements and equipment, including any personal property belonging to Authority, identified in Exhibit L and otherwise expressly specified in this Agreement in conformance with manufacturer’s specifications or, in the absence of manufacturer’s specifications, performance standards provided by Authority. Airline shall perform such repair and maintenance responsibilities in a good and workmanlike manner, consistent with industry practices.

8.2.2 Airline shall keep its Exclusive Use Premises, including without limitation Airline’s fixtures and equipment therein, in a clean, neat, safe, and sanitary condition, and in good order, at all times, except for damages or loss due to reasonable wear and tear, fire or other casualty...
or other cause beyond Airline’s control. Airline shall not store nor allow accumulation of trash or debris on any portion of the Premises, nor use Authority’s trash containers without Authority’s prior written approval. All damage or injury done to the Premises or Authority property by Airline, or Airline's employees, contractors, or agents, shall be paid for by Airline.

8.2.3 Airline shall not perform maintenance and/or repairs on facilities which are part of Joint Use Premises, Shared Use Premises, or Common Use Premises, except as it is expressly obligated to under this Agreement.

8.2.4 If Airline fails to perform any of its obligations under this Section 8.2 within thirty (30) days after written notice from Authority (or, in the case where such repair and/or maintenance responsibility cannot be reasonably completed within thirty (30) days, if Airline has not begun to pursue a remedy during that time period to the reasonable satisfaction of Authority), Authority may undertake the obligation and recover its actual costs plus a fifteen percent (15%) administrative charge, in addition to all other remedies provided for in this Agreement.

8.2.5 Airline, either individually or through a third-party service provider, shall provide Authority with monthly performance metrics for scheduled preventative maintenance and corrective work in a format reasonably requested by Authority.

8.3 Repair and Maintenance of Joint Use Premises, Shared Use Premises, and Common Use Premises. All damage or injury caused by Airline, or Airline's contractor’s employees, and/or agents to Joint Use Premises, Shared Use Premises, or Common Use Premises, shall be paid for by Airline.

8.4 Airline Repair and Maintenance of Passenger Loading Bridges, Baggage Handling Systems and Bag Scales.

8.4.1 The Signatory Airlines, through a third-party service provider, shall repair and maintain, at their sole expense, the Passenger Loading Bridge(s), Baggage Handling Systems and baggage weighing scales (“Bag Scales”) at the Signatory Airlines’ sole cost and expense, including, but not limited to all related appurtenances. The Signatory Airlines shall cause the third-party service provider to repair and maintain any such Passenger Loading Bridges(s), Baggage Handling Systems and Bag Scales in compliance with the manufacturer’s specifications or, in the absence of manufacturer’s specifications, specifications provided by Authority that are consistent with industry practice. The Signatory Airlines shall cause the third-party service provider to provide such repair and maintenance responsibilities in a good and workmanlike manner, consistent with industry practices and, if requested by Authority, to provide monthly reports in accordance with Section 8.2.5.

8.4.2 If the Signatory Airlines’ third-party service provider fails to perform its obligations under this Section 8.4 within thirty (30) days after written notice from Authority (or, in the case where such repair and/or maintenance responsibility cannot be reasonably completed within thirty (30) days, if the third-party service provider has not begun to pursue a remedy during that time period to the reasonable satisfaction of Authority), Authority may undertake such repairs and/or maintenance and recover its costs plus a fifteen percent (15%) administrative charge, in addition to all other remedies provided for in this Agreement. Any costs and service charges
incurred by Authority under this Section 8.4.2 shall be added to the Airline Terminal Support Cost Center.

8.4.3 At all times during the Term, the Signatory Airlines shall cause the third-party service provider to maintain a use and lease agreement with Authority in a form substantially similar in all material respects to Exhibit R.

8.4.4 In the event that no agreement between Authority and the third-party service provider is in place as required under Section 8.4.3, any costs incurred by Authority that would have been borne by the third-party service provider under the use and lease agreement, including without limitation any costs that would have been covered under the indemnification obligations of the third-party service provider, shall be added to the Airline Terminal Support Cost Center.

8.4.5 Notwithstanding anything to the contrary in this Section 8.4, Authority may elect, after providing three hundred sixty-five (365) days written notice to the Signatory Airlines, to maintain one or more of the Passenger Loading Bridges, Baggage Handling Systems or Bag Scales. Upon such election, Authority shall add any costs to the Airline Terminal Support Cost Center.

8.5 Janitorial Services.

8.5.1 The Signatory Airlines, through a contract with a third-party service provider, shall at the Signatory Airlines sole expense provide janitorial services throughout the entire Terminal Area and other areas designated by the Authority, including without limitation non-leased Authority areas. Janitorial services performed by the Signatory Airlines’ third-party service provider shall be in compliance with the scope of work and specifications approved annually by Authority, consistent with industry practices, and in a good and workmanlike manner. Authority shall reimburse the third-party service provider for providing janitorial services in Leasable Premises that are not included in the Airline Leased Premises and for any services provided to the Landside Area and Ancillary as follows:

(a) the costs of janitorial services provided by the Signatory Airlines’ third-party service provider that are allocable to the Landside Area and Ancillary Cost Centers; plus

(b) the ratio of (i) Leasable Premises that is not Airline Leased Premises to (ii) total Leasable Premises, multiplied by the costs of janitorial services, other than those covered in Section 8.5.1(a), provided by the Signatory Airlines’ third-party service provider.

8.5.2 If the Signatory Airlines’ third-party service provider fails to perform its obligations under this Section 8.5 within thirty (30) days after written notice from Authority (or, in the case where such janitorial responsibility cannot be reasonably completed within thirty (30) days, if the third-party service provider has not begun to pursue a remedy during that time period to Authority’s reasonable satisfaction), Authority may undertake such janitorial services and recover its costs plus a fifteen percent (15%) administrative charge, in addition to all other remedies provided for in this Agreement. If the Signatory Airlines’ third-party service provider fails to perform its obligations under this Section 8.5 immediately in the event of a health and/or
safety matter, Authority may affect such janitorial services and recover its costs plus a fifteen percent (15%) administrative charge. Any costs and service charges incurred by Authority under this Section 8.5.2 shall be added to the Airline Terminal Support Cost Center.

8.5.3 At all times during the Term, the Signatory Airlines shall cause the third-party service provider to maintain a use and lease agreement with Authority in a form substantially similar in all material respects to Exhibit R.

8.5.4 In the event that no agreement between Authority and the third-party service provider is in place as required under Section 8.5.3, any costs incurred by Authority that would have been borne by the third-party service provider under the use and lease agreement, including without limitation any costs that would have been covered under the indemnification obligations of the third-party service provider, shall be added to the Airline Terminal Support Cost Center.

8.5.5 Authority shall have the right, after providing three hundred sixty-five (365) days written notice to the Signatory Airlines, to terminate, in part or in whole, the Signatory Airlines’ obligation under this Section 8.5 to provide janitorial services and undertake the obligation itself. In such event, the costs incurred by Authority to provide janitorial services shall be added to the Base Terminal Area Requirement calculated under Section 10.8.1.

8.6 Common Use Systems.

8.6.1 Authority shall maintain and repair the Common Use Systems or, if requested by Authority and agreed to by the Signatory Airlines, the Signatory Airlines may, at their sole cost, assume responsibility for maintenance and repair of Common Use Systems. Authority’s liability for failure to maintain or repair Common Use Systems shall be limited in accordance with Section 8.11.

8.6.2 Authority shall respond to technical difficulties with the Common Use Systems, after Airline has notified Authority of such difficulties, in a manner and process which shall be prescribed by Authority and consistent with the timeframes, manner and process established with any third-party vendors hired by Authority to manage, operate or maintain Common Use Systems. Airline shall ensure the same level of responsiveness and assistance to Authority to identify and resolve Airline or Airline-vendor issues relating to Airline’s applications that run in conjunction with the Common Use Systems. Airline will work cooperatively with Authority in the implementation of other new technologies to improve the efficiency of the Airport.

8.7 Consumable Stock. Whether the responsibility to maintain and repair Common Use Systems is that of Authority or the Signatory Airlines, Authority or a third-party provider approved by Authority shall provide the consumable stock (i.e., boarding pass receipts and bag tag stock), necessary for the operation of common use self-service kiosks, both free-standing and those installed in ticket or curbside passenger check-in counters. Airline may only install proprietary stock in Ticket Counters as approved by Authority. Authority reserves the right to provide stock for all ticketing kiosks. Authority shall also provide the printer paper and ribbons for document control printers provided by Authority.
8.7.1 In the event that Authority reassigns Airline’s Preferential Use Gates to another Passenger Carrier in accordance with Section 4.2 or 4.3, Airline shall remove its proprietary stock.

8.7.2 Airline-provided consumable stock shall be consistent with IATA stock specifications and subject to approval by Authority. In the event that Authority deems the consumable stock provided by Airline to be injurious to Authority’s Common Use Systems, Airline will immediately cease usage of the offending consumable stock upon such receipt of notice by Authority. Authority reserves the right to sell advertising on and collect the applicable advertising revenues that may be generated from the reverse side of any Authority-supplied consumable stock.

8.8 Radio Frequency Identification (“RFID”) Bag Tag Stock. In the event Authority implements an RFID-based bag tag system, Authority will supply all radio frequency identification bag tag stock for use as part of the baggage handling system. Authority will respond as expeditiously and as reasonably possible to technical difficulties with the equipment after Airline has notified Authority of such difficulties, in a manner and process which shall be prescribed by Authority. Airline shall ensure the same responsiveness and assistance to Authority staff and/or Authority’s third-party service provider to identify and resolve Airline and/or Airline-vendor issues relating to Airline’s applications that run in conjunction with the radio frequency identification, bag handling systems.

8.9 Pest Control and Housekeeping. Airline shall use good housekeeping to prevent the attraction and harborage of pests on the Premises. Airline acknowledges that Authority has established and implemented an integrated pest management (IPM) program to eliminate and control pests or the damage they can cause through a combination of cultural practices, mechanical and physical controls, biological controls, and chemical controls such that pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Airline agrees to allow access rights to Authority or Authority’s pest control contractor within the Premises for inspection and recommendations of housekeeping standards and mitigation of pests. Airline shall be provided twenty-four (24) hour advanced notice prior to the Authority or pest control contractor accessing Premises, unless it is an emergency as determined by Authority in its sole discretion, in which case no advance notice will be required by Authority to Airline. In the event of emergency access, Authority will provide Airline notice within three (3) days after such access. Airline shall reimburse Authority for costs resulting from the IPM program based on the proportionate share of Airline’s leased square footage and any direct cost for the Premises or operations. Airline’s late payment shall be subject to the same delinquency provisions identified in Section 11.8. Authority may assess additional fees and charges for repeated violations and failures to maintain the Premises in a manner that prevents the attraction or harborage of pests. Further, Authority reserves the right to discontinue the IPM program at the Airport or at the Premises. If Authority exercises this right, Airline shall implement an integrated pest management program of its own. Failure to comply with this Section 8.9 may be considered a material breach of this Agreement.

8.10 Water Use. Airline shall use water sources, such as captured storm water and air-conditioning condensate, identified by Authority for washing equipment and for other non-potable
needs as mutually agreed as fit-for-purpose by Authority and Airline, to the extent such sources are reasonably available and sufficient for the intended use.

8.11 **Airline’s Waiver.** Except where, and to the extent, caused by any willful and wanton act of Authority, its agents, employees, contractors, officers, directors or predecessors in interest, Authority shall not be liable to Airline for failure to repair or maintain any equipment, supplies or systems or furnish any services, including the provision of Common Use Systems, under this Article 8, whether due to mechanical breakdown or any other causes, and Airline expressly waives all Claims against Authority for damages arising or resulting from any such failure and said failure shall not constitute a constructive eviction. In no event shall Authority be liable to Airline for any indirect or consequential damages under this Article 8.

**Article 9**

**UTILITIES AND OTHER SERVICES**

9.1 **Utilities.**

9.1.1 Airline shall be solely responsible for paying all utilities provided to Airline, its contractors, agents and employees at the Premises to the extent such utilities are metered or otherwise calculated to identify usage by Airline, its contractors, agents and employees at the Premises, provided that such metering or calculation is applied to Air Carriers on a non-discriminatory basis throughout the Airport.

9.1.2 Subject to Section 9.5, Authority shall provide or cause to be provided the following utility services to the Premises, in a manner determined in Authority’s sole discretion: water, electricity, gas, fire suppression systems, sewage outlets, heating, ventilation and air conditioning. Authority shall determine the points in the Premises where utility services will be made available to Airline. If Airline desires to change such points of service, and Authority agrees, in its sole discretion, to such change, Authority shall complete such change, and the expense of making such change shall be at Airline’s sole cost and expense. Any additional utility services requested by Airline and not otherwise provided by Authority shall be provided only with Authority’s prior written approval in accordance with the Airport Rules and Regulations, shall be obtained and paid for at Airline’s sole cost and expense, and shall be subject to applicable fees and charges imposed separately by utility providers.

9.2 **Authority’s Reservations and Right to Relocate Lines.**

9.2.1 Unless otherwise specifically set forth in this Agreement, Authority reserves and retains the right, with reasonable advance notice to Airline (other than in the case of an emergency, in which case no notice to Airline is required), to construct, reconstruct, install, repair, remove, renew, operate and use pipelines, sewer or drain lines, other utility lines, copper wire, fiber-optic or high-speed wireless networks, antennae, utility poles, light fixtures, and other fixtures or appurtenances, provided that Authority shall use commercially reasonable efforts to complete such activities in a manner that reasonably minimizes materially adverse impacts on Airline’s use and occupancy of the Premises and operations at the Airport.
9.2.2 If any pipeline, utility line or appurtenance installed by Airline is so located that it shall be necessary, as determined by Authority in its sole discretion, to change, alter, relocate or reconstruct it to allow Authority, or an independent party through an arrangement with Authority, to install sewer or drain lines or other utility lines, such change, alteration, relocation or reconstruction shall be made by Airline, as requested by Authority, or, at Airline’s election, shall be made by Authority, in each case at Authority’s sole cost and expense. If Airline elects to have Authority perform the change, alteration, relocation or reconstruction requested by Authority, Authority shall indemnify and hold Airline harmless from all Claims and costs for bodily injury or property damage caused by Authority’s performance of such change, alteration, relocation or reconstruction, except to the extent such Claims and costs arise out of or relate to the negligence or willful misconduct of Airline.

9.3 Telecommunications Services and Television. Authority shall offer telecommunication services including, but not limited to, internet connectivity, telephone, and television at a reasonable cost to Airline. Airline is not required to use Authority offered telecommunication services. Airline shall arrange to have all telecommunication services that it intends to use at the Airport delivered to a minimum point of entry (MPOE). From the MPOE, Authority shall, at Authority’s sole cost, provide the telecommunications infrastructure to deliver Airline’s telecommunications services to Airline’s Exclusive Use Premises. Authority shall, subject to Section 9.5 maintain and repair any telecommunications infrastructure installed under this Section 9.3. Airline acknowledges and agrees that, once it has had an opportunity to inspect the telecommunications infrastructure installed by Authority, it shall accept the telecommunications infrastructure without any representation or warranty by Authority with respect to the telecommunications infrastructure and without any obligation on the part of Authority to modify or alter the telecommunications infrastructure. Further, once Airline has had an opportunity to inspect the telecommunications infrastructure installed by Authority to ensure that it is functional, Airline will accept the telecommunications infrastructure in its AS-IS, WHERE-IS condition WITH ALL FAULTS, and except as otherwise explicitly provided for in this Agreement, Airline shall not make any repairs, modifications, alterations, replacements or improvements to the telecommunications infrastructure.

9.4 Airline’s Acts. Airline shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of any drainage and sewerage system, water system, ventilation, air-conditioning and heating systems, communications system, key card access systems, elevators and escalators, electrical system, fire-protection system, sprinkler system, alarm system, fire hydrants, hoses, or other utility or other systems, if any, installed or located on, under, in or adjacent to the Premises now or in the future.

9.5 Airline’s Waiver. Except where, and to the extent, caused by any willful and wanton act of Authority, its agents, employees, contractors, officers, directors or predecessors in interest, Airline expressly waives any and all Claims against Authority for damages arising or resulting from failures or interruptions of utility or telecommunications infrastructure or services or any failure of performance by a third party providing utility or telecommunications infrastructure or services to the Premises, including without limitation electricity, gas, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning or telecommunications infrastructure or services of any kind or for the failure or interruption of any public or passenger conveniences. Subject to the foregoing, Authority shall make commercially
reasonable efforts to provide or cause to be provided to Airline utilities, telecommunications infrastructure and other services in accordance with the Article 9; provided, however, if Authority makes such commercially reasonable efforts and Authority fails to provide or cause to be provided any such utilities, telecommunications infrastructure or other services, said failure shall not constitute a constructive eviction. In no event shall Authority be liable to Airline for indirect or consequential damages under this Article 9.

Article 10

AIRPORT RENTS, FEES AND CHARGES

10.1 Budgeted Airline Rents, Fees, and Charges. The Airline Rents, Fees and Charges to be charged by Authority and paid by Airline and all other Air Carriers for use of the Airport from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using the rate-setting methods set forth in this Article 10. For each Fiscal Year, Authority shall develop a budgeted Landing Fee Rate, Aircraft Parking Position Rentals and Fees, Terminal Rental Rate, Joint Use Fees and Common Use Fees. Illustrative calculations of Airline Rents, Fees, and Charges are provided in Exhibit M. Before formally adopting the budget, and any resulting Airline Rents, Fees, and Charges, Authority shall consult with the Signatory Airlines and consider their comments regarding the capital improvement program at the Airport, budget and calculation of the budgeted Airline Rents, Fees, and Charges.

10.2 Adjustment of Airline Rents, Fees, and Charges During Fiscal Year. Authority shall review the Airline Rents, Fees, and Charges at least once during each Fiscal Year. If during any of these reviews, Authority finds that the estimated Airline Rents, Fees, and Charges vary by 5% or more from those originally budgeted or previously estimated by Authority, Authority may, after consultation with the Signatory Airlines, adjust the Airline Rents, Fees, and Charges to conform to Authority’s current estimates.

10.3 Reconciliation of Airline Rents, Fees, and Charges for the Fiscal Year. Within six (6) months after the close of each Fiscal Year, Authority shall calculate the Airline Rents, Fees, and Charges based on actual results for the Fiscal Year. Any difference between the budgeted Airline Rents, Fees, and Charges paid by the Signatory Airlines and the actual Airline Rents, Fees, and Charges chargeable to the Signatory Airlines based on actual results shall be either refunded by Authority to Airline or Airline shall pay Authority. If the actual Airline Rents, Fees, and Charges paid by Airline under this Agreement for a given Fiscal Year total less than five hundred thousand dollars ($500,000) for a Passenger Carrier or two hundred and fifty thousand dollars ($250,000) for a Cargo Carrier, Airline shall make a supplemental payment such that the total Airline Rents, Fees, and Charges plus the supplemental payment under this Agreement for such Fiscal Year equal five hundred thousand dollars ($500,000) for a Passenger Carrier and two hundred and fifty thousand dollars ($250,000) for a Cargo Carrier. Any amount due Airline shall be paid to Airline in the month following the reconciliation, provided, however, that Authority may deduct any amounts due Authority which are past due by thirty (30) days or more. Any amount due Authority shall be invoiced to Airline and due and payable within thirty (30) days from the date of the invoice. For Fiscal Year 2029, the final year of the Term, the Authority shall make a final settlement in accordance with this Section 10.3, and any resulting credit shall be
issued to Airline, and any resulting charge will be invoiced to Airline, notwithstanding the termination of the Agreement on June 30, 2029.

10.4 Major Maintenance Fund, Coverage Charges, Days Cash on Hand and Transitional Use of Funding.

10.4.1 Establishment of Major Maintenance Fund. Authority shall establish the Major Maintenance Fund to be used to fund Capital Projects in the Airfield Area, Terminal Area, Common Use Systems, and Airline Terminal Support Cost Centers and Capital Projects in Indirect Cost Centers to the extent allocable to the Airfield Area, Terminal Area, Common Use Systems, and Airline Terminal Support Cost Centers. Funding from the Major Maintenance Fund shall not incur Amortization Charges. Each Fiscal Year, Authority shall deposit forty million dollars ($40,000,000) into the Major Maintenance Fund and allocate the costs of the deposits to Cost Centers as follows: fifteen million dollars ($15,000,000) to the Airfield Area; fifteen million dollars ($15,000,000) to the Terminal Area; and ten million dollars ($10,000,000) to a combination of the Landside Area and Ancillary Area, as determined in the discretion of the Authority.

10.4.2 Use of Any Available Coverage Charges. Authority shall report Coverage Charges collected each Fiscal Year to the Signatory Airlines as part of the annual reconciliation under Section 10.3. Authority shall use any Coverage Charges that remain available for use after the year-end reconciliation in Section 10.3 to either (1) reduce the amount of Bonds outstanding in the Airfield Area, Terminal Area, Common Use Systems, and Airline Terminal Support Cost Centers and Indirect Cost Centers to the extent allocable to the Airfield Area, Terminal Area, Common Use Systems, and Airline Terminal Support Cost Centers in a subsequent Fiscal Year or (2) make a supplemental deposit to the Major Maintenance Fund.

10.4.3 Use of Cash, Cash Equivalents, and Investments Above 600 Days’ Cash on Hand. After the completion of an audit of Authority’s Audited Financial Statements for each Fiscal Year, Authority shall determine Days’ Cash on Hand as follows:

(a) As provided in Authority’s Audited Financial Statements, the sum of the following three lines under “Cash, Cash Equivalents, and Investments:” (1) Unrestricted and Undesignated, (2) Designated for specific capital projects and other Commitments, and (3) Bonds Reserves; minus

(b) As provided in Authority’s Audited Financial Statements, the balance in the Major Maintenance Fund; divided by

(c) As provided in Authority’s Audited Financial Statements, O&M Expenses; times

(d) Three hundred sixty-five (365) days.

Days’ Cash on Hand shall be reported on an annual basis to the Signatory Airlines as part of the year-end reconciliation described in Section 10.3. Any Days’ Cash on Hand above six hundred (600) days at the time of the year-end reconciliation shall be used by Authority to either (1) reduce the amount of Bonds outstanding in a subsequent Fiscal Year or (2) fund future Capital Projects.
10.4.4  **Smoothing of Airline Rents, Fees, and Charges using Passenger Facility Charges.** Subject to Section 19.3, Authority and Airline agree to set aside thirty million dollars ($30,000,000) annually in previously FAA-approved Passenger Facility Charges for the three (3) full Fiscal Years prior to the DBO of new Terminal facilities to be constructed in the ADP. These accumulated Passenger Facility Charges shall be used, in accordance with FAA’s previous approval, to pay Debt Service in the Terminal Area in the three (3) full Fiscal Years starting with the DBO of new Terminal facilities to be constructed in the ADP. Airline acknowledges that this section governs only the timing of deploying PFCs and that Airline shall have no right whatsoever to determine which Capital Projects Authority shall fund with Passenger Facility Charges or any other rights with respect to Authority’s use of PFCs. Authority shall consult with the Signatory Airlines on an annual basis regarding the use of Passenger Facility Charges, and Authority may adjust the schedule in its sole discretion.

10.5  **Cost Centers.** To allocate the O&M Expenses, Annual Net Debt Service, Amortization Charges, Reserve Deposits, and Major Maintenance Fund Deposits, the following Cost Centers shall be utilized by Authority:

10.5.1  **Direct Cost Centers.** Airfield Area, Terminal Area, Common Use Systems, Airline Terminal Support, Landside Area and Ancillary.

10.5.2  **Indirect Cost Centers.** Airport Access, General and Administrative, and allocations of O&M Expenses, Annual Net Debt Service, and Amortization Charges, if any, in Authority departments not otherwise assigned to Direct Cost Centers.

To calculate Airline Rents, Fees, and Charges, Authority shall account for and allocate annual O&M Expenses, Annual Net Debt Service, and Amortization Charges for the Indirect Cost Centers to Direct Cost Centers as set forth in **Exhibit G. Exhibit G** may be modified from time to time by Authority after consultation with the Signatory Airlines at a scheduled AAAC meeting, without amendment or supplement to this Agreement.

10.6  **Landing Fee.** Airline shall pay Landing Fees for its use of the Airfield Area based on its Maximum Gross Landed Weight at the Airport during the Fiscal Year. The Landing Fee effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section 10.6.

10.6.1  **Airfield Area Requirement.** The Authority shall calculate the Airfield Area Requirement as the sum of the following for each Fiscal Year:

(a)  the sum of O&M Expenses, Annual Net Debt Service, Amortization Charges, Reserve Deposits, Coverage Charges, Major Maintenance Fund Deposits and Bad Debt Expenses allocable to the Airfield Area; *plus*

(b)  Fuel System Costs, if any; *minus*

(c)  The sum of fuel flowage fee revenue, fingerprinting revenue, ground handling concession revenue, seventy percent (70%) of inflight catering revenue, and any federal, State, or local grants that are allocable to the Airfield Area.
10.6.2 **Landing Fee Rate.** Authority shall calculate the Landing Fee Rate for each Fiscal Year by first subtracting the sum of (i) Non-Signatory Landing Fees, (ii) Aircraft Parking Position Rentals, (iii) Aircraft Parking Position Turn Fees and (iv) Aircraft Parking Position Overnight Fees collected by the Authority from the Airfield Area Requirement and then dividing by the cumulative Maximum Gross Landed Weight of the Signatory Airlines for the Fiscal Year.

10.7 **Aircraft Parking Position Rentals and Fees.** Airline shall pay Aircraft Parking Position Rentals, Aircraft Parking Position Turn Fees, and Aircraft Parking Position Overnight Fees for its use of Aircraft Parking Positions as set forth in this Section 10.7.

10.7.1 **Aircraft Parking Position Rental Rate.** For (a) Terminal Parking Positions associated with a Preferential Use Gate and (b) Cargo Parking Positions, Authority shall calculate the Aircraft Parking Position Rental Rate effective July 1st of each Fiscal Year as follows:

(a) Twenty percent (20%) of the Airfield Area Requirement calculated in accordance with Section 10.6.1; \( \text{minus} \)

(b) Aircraft Parking Position Turn Fees and Aircraft Parking Position Overnight Fees collected from Non-Signatory Airlines; \( \text{divided by} \)

(c) The sum of (i) the total number of Remote Parking Positions divided by three (3); (ii) the total number of Terminal Parking Positions; and (iii) the total number of Cargo Parking Positions.

10.7.2 **Aircraft Parking Position Turn Fees.** For each Operation utilizing a Terminal Parking Position associated with either a Common Use Gate, an accommodation of a Gate Requesting Airline on a Preferential Use Gate or a Cargo Parking Position, Cargo Carrier Operation on a Remote Parking Position, and an accommodation of a Cargo Carrier on another Cargo Carrier’s Cargo Parking Position, Airline shall pay an Aircraft Parking Position Turn Fee for its use of the Terminal Parking Position, Cargo Parking Position, or Remote Parking Position. Authority shall calculate the Aircraft Parking Position Turn Fee effective July 1st of each Fiscal Year as follows:

(a) The sum of (i) the total number of Remote Parking Positions divided by three; and (ii) the total number of Terminal Parking Positions associated with a Common Use Gate; \( \text{times} \)

(b) Aircraft Parking Position Rental Rate; \( \text{divided by} \)

(c) For the Fiscal Year for Signatory Airlines, the sum of (i) the total number of Operations at (a) Terminal Parking Positions associated with Common Use Gates, (b) accommodations of Gate Requesting Airlines on Preferential Use Gates, (c) accommodations of Gate Requesting Airlines on Cargo Parking Positions, (d) Cargo Carrier operations on Remote Parking Positions, and (e) accommodations of Cargo Carriers on another Cargo Carrier’s Cargo Parking Position, and (ii) the total number of Operations parking overnight at (a) Remote Parking Positions, (b) Terminal Parking Positions associated with Common Use Gates, (c) Terminal Parking Positions associated with accommodations of Gate Requesting Airlines on Preferential
Use Gates and (d) Cargo Parking Positions associated with Passenger Carrier operations multiplied by three (3).

10.7.3 Aircraft Parking Position Overnight Fees. For each Operation parking overnight at Remote Parking Positions, Terminal Parking Positions associated with Common Use Gates, accommodations on Terminal Parking Positions associated with Preferential Use Gates and accommodations on Cargo Parking Positions, Airline shall pay an Aircraft Parking Position Overnight Fee equal to three times the Aircraft Parking Position Turn Fee.

10.7.4 Cap on Aircraft Parking Position Fees. Notwithstanding the foregoing, for any individual Gate, Airline shall not pay more in cumulative Aircraft Parking Position Turn Fees and Overnight Fees than the Aircraft Parking Position Rental Rate for its use of any single, individual Aircraft Parking Position during a Fiscal Year. Such cap on Aircraft Parking Position Fees shall not apply to Non-Signatory Airlines.

10.8 Terminal Rental Rate. Airline shall pay rent for Exclusive Use Premises, Joint Use Charges and Common Use Fees for its use of the Terminal Area based on the Terminal Rental Rate. The Terminal Rental Rate effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section 10.8.

10.8.1 Base Terminal Area Requirement. Authority shall calculate the Base Terminal Area Requirement as the sum of the following for each Fiscal Year:

(a) Sum of the O&M Expenses, Annual Net Debt Service, Amortization Charges, and Reserve Deposits allocable to the Terminal Area; minus

(b) FIS fee revenue and any federal, State, or local grants received to offset O&M Expenses, Annual Net Debt Service, or Reserve Deposits allocable to the Terminal Area.

10.8.2 Base Terminal Area Rental Rate. Authority shall calculate the Base Terminal Area Rental Rate by dividing the Base Terminal Requirement by the square footage of the Leasable Premises.

10.8.3 Supplemental Terminal Rental Rate. Authority shall calculate the Supplemental Terminal Rental Rate by dividing the sum of Coverage Charges, Major Maintenance Fund Deposits and Bad Debt Expenses allocable to the Terminal Area by the square footage of Airline Leased Premises.

10.8.4 Terminal Rental Rate. Authority shall calculate the Terminal Rental Rate as the sum of the Base Terminal Rental Rate and the Supplemental Terminal Rental Rate.

10.9 Rent for Exclusive Use Premises. Airline shall pay rent to Authority for any Temporary Space within its Exclusive Use Premises by multiplying the Non-Signatory Terminal Rental Rate by the total square footage of its Temporary Space within its Exclusive Use Premises in Airline’s Premises Notice. Airline shall pay rent to Authority for the remainder of its Exclusive Use Premises by multiplying the Terminal Rental Rate by the square footage of the remainder of its Exclusive Use Premises in Airline’s Premises Notice.
10.10 **Joint Use Charges.** Airline shall pay Authority Joint Use Charges for its use of Joint Use Premises and Airline Terminal Support. The Joint Use Charges effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section 10.10.

10.10.1 **Joint Use Requirement.** Authority shall calculate Joint Use Requirement as follows:

(a) the Terminal Rental Rate multiplied by the total square footage of the Joint Use Premises; \textit{plus}

(b) after the DBO of new Terminal facilities to be constructed in the ADP, the Terminal Rental Rate multiplied by the total square footage of the Shared Use Premises; \textit{plus}

(c) the sum of the O&M Expenses, Annual Net Debt Service, Amortization, and Coverage Charges attributable or allocable to Airline Terminal Support; \textit{minus}

(d) rental payments received for Unenclosed Operations Premises.

10.10.2 **Joint Use Charges – 10% Share.** Authority shall calculate the Joint Use Charges – 10% Share in the following manner:

(a) Ten percent (10\%) of the Joint Use Requirement; \textit{minus}

(b) Any Non-Signatory Airline Joint Use Charges – 10\% Share collected pursuant to Section 10.10.2(g); \textit{minus}

(c) The number of Signatory Airlines, excluding Cargo Carriers, with one percent (1\%) or less of the Enplaned Passengers at the Airport in such Fiscal Year multiplied by two-tenths of one percent (0.2\%) of the Joint Use Requirement, \textit{divided by}

(d) The number of Signatory Airlines, excluding Cargo Carriers, with more than one percent (1\%) of the Enplaned Passengers at the Airport in such Fiscal Year. Each Signatory Airline and its approved Affiliate(s) will be treated as a single entity for purposes of determining the Airline’s portion of the ten percent (10\%) share.

(e) For Signatory Airlines with more than one percent (1\%) of the Enplaned Passengers at the Airport for such Fiscal Year, the Joint Use Charges – 10\% Share be the amount calculated under Section 10.10.2(a)-(d).

(f) For Signatory Airlines with one percent (1\%) or less of the Enplaned Passengers at the Airport for such Fiscal Year, the Joint Use Charges – 10\% Share shall be the Joint Use Requirement multiplied by two-tenths of one percent (0.2\%).

(g) Non-Signatory Airlines, excluding Cargo Carriers, with more than one percent (1\%) of the Enplaned Passengers at the Airport for such Fiscal Year, shall pay Joint Use Charges – 10\% Share in the amount calculated under Section 10.10.2(a)-(d) times one hundred
and twenty percent (120%). Non-Signatory Airlines, excluding Cargo Carriers, with one percent (1%) or less of the Enplaned Passengers at the Airport for such Fiscal Year, shall pay Joint Use Charges – 10% Share in the amount calculated under Section 10.10.2(f) times one hundred and twenty percent (120%).

10.10.3 Joint Use Charges – 90% Share. Authority shall calculate the Joint Use Charges – 90% Share in the following manner:

(a) The remaining ninety percent (90%) of the Joint Use Requirement; minus

(b) Any Non-Signatory Airline Joint Use Charges – 90% Share; divided by

c) Total Signatory Airline Enplaned Passengers.

10.11 Common Use Fees. Airline shall pay Authority Common Use Fees for its use of Common Use Premises and Common Use Systems. The Common Use Fee effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section 10.11.

10.11.1 The Authority shall calculate the Common Use Fee by:

(a) Multiplying the Terminal Rental Rate by the total square footage of the Common Use Premises; plus

(b) Sum of the O&M Expenses, Annual Net Debt Service, Amortization, and Coverage Charges attributable or allocable to the Common Use Systems; minus

(c) Sum of the O&M Expenses, Annual Net Debt Service, Amortization, and Coverage Charges attributable or allocable to Signatory Airlines excluded from paying Common Use Fees under Section 10.11.2; minus

(d) Non-Signatory Common Use Fees; divided by

(e) Total Signatory Airline Enplaned Passengers in Common Use System equipped terminals.

10.11.2 Any Signatory Airline that uses only Exclusive Use Ticket Counters during a Fiscal Year shall be excluded from Common Use Fees but shall pay the sum of the O&M Expenses, Annual Net Debt Service, Amortization, and Coverage Charges attributable or allocable to their use of Common Use Systems.

10.11.3 Notwithstanding anything to the contrary in this Agreement, if future Common Use System configurations allow, the Authority may, after consultation with the Signatory Airlines at a AAAC meeting, modify the methodology for determining Common Use Fees to a per-use charge based on time or frequency of use. Any such modification may be made without amendment or supplement to this Agreement.
10.12 Rent for Shared Use Premises. Prior to the DBO of new Terminal facilities to be constructed in the ADP, Airline shall be assigned a pro-rata share of the square footage of the Shared Use Premises set forth in Exhibit E for each Fiscal Year on the following basis for each individual Shared Use Premises area:

(a) The square footage of the individual Shared Use Premises area; divided by
(b) The total Enplaned Passengers of Passenger Carriers assigned to the individual Shared Use Premises area; multiplied by
(c) Airline’s total Enplaned Passengers.

For each Fiscal Year, Airline shall pay rent to Authority for its assigned Shared Use Premises by multiplying the Terminal Rental Rate by the square footage of its assigned pro-rata share of Shared Use Premises in Airline’s Premises Notice. After the DBO of new Terminal facilities to be constructed in the ADP, Shared Use Premises shall be incorporated into the Joint Use Fees.

10.13 Other Fees and Charges.

10.13.1 FIS Fees. For each Fiscal Year, Authority shall charge for use of its FIS Facilities an amount equal to ten dollars ($10) per each seat on an arriving aircraft using the FIS Facilities. The President/CEO or a representative appointed by the President/CEO may make adjustments to this charge on a semi-annual basis. The Signatory Airline and Non-Signatory Airline FIS Fee shall be the same.

10.13.2 Unenclosed Operations Premises. Unenclosed Operations Premises shall be charged twelve dollars ($12) per square foot per Fiscal Year. The President/CEO or a representative appointed by the President/CEO may make adjustments to this charge on a semi-annual basis based on increases in the Consumer Price Index.

10.14 Non-Signatory Airline Rates, Fees, and Charges. The Airline Rates, Fees, and Charges in this Agreement apply to Signatory Airlines. Non-Signatory Airline Rates, Fees, and Charges shall be one hundred and twenty percent (120%) of the Airline Rates, Fees, and Charges, except the FIS Fees established under Section 10.13.1. The Non-Signatory Airline Terminal Rental Rate shall apply to any Temporary Space leased by a Signatory Airline.

Article 11

PAYMENTS

11.1 Landing Fees. Airline agrees to pay monthly Landing Fees in an amount equal to the Landing Fee Rate multiplied by the Airline’s Maximum Gross Landing Weight for such monthly period. Landing Fees shall be due and payable on or before the fifteenth (15th) day of each month for the prior month during the term of this Agreement, without invoice, deduction, or setoff, accompanied by an accurate, verifiable activity report on such form as Authority may provide. Authority reserves the right to require Airline to utilize an electronic system for the transmittal of said reports.
11.2 Aircraft Parking Position Rentals and Fees.

11.2.1 Aircraft Parking Position Rentals. For Terminal Parking Positions associated with a Preferential Use Gate or Cargo Parking Positions, Airline agrees to pay each month one-twelfth (1/12th) of the Aircraft Parking Position Rental Rate for each Terminal Parking Position and Cargo Parking Position assigned to Airline. Aircraft Parking Position Rentals shall be due and payable on or before the tenth (10th) day of each month during the term of this Agreement, in advance, without invoice, deduction, or setoff.

11.2.2 Aircraft Parking Position Turn Fees. Airline agrees to pay monthly Aircraft Parking Position Turn Fees in an amount equal to the Aircraft Parking Position Turn Fee multiplied by the number of Airline’s Operations at Terminal Parking Positions associated with Common Use Gates and Terminal Parking Positions associated with accommodations of Gate Requesting Airlines on Preferential Use Gates and Cargo Carrier operations on Remote Parking Positions. Aircraft Parking Position Turn Fees shall be due and payable on or before the fifteenth (15th) day of each month for the prior month during the term of this Agreement, without invoice, deduction, or setoff, accompanied by an accurate, verifiable activity report on such form as Authority may provide. Authority reserves the right to require Airline to utilize an electronic system for the transmittal of said reports.

11.2.3 Aircraft Parking Position Overnight Fees. Airline agrees to pay monthly Aircraft Parking Position Overnight Fees in an amount equal to the Aircraft Parking Position Overnight Fee multiplied by the number of the Airline’s Operations parking overnight at Remote Parking Positions and Terminal Parking Positions associated with Common Use Gates, Terminal Parking Positions associated with accommodations on Preferential Use Gates and Cargo Parking Positions associated with Passenger Carrier operations. Aircraft Parking Position Overnight Fees shall be due and payable on or before the fifteenth (15th) day of each month for the prior month during the term of this Agreement, without invoice, deduction, or setoff, accompanied by an accurate, verifiable activity report on such form as Authority may provide. Authority reserves the right to require Airline to utilize an electronic system for the transmittal of said reports.

11.3 Terminal Rentals.

11.3.1 Exclusive Use and Shared Use Premises. Airline agrees to pay each month one-twelfth (1/12th) of the Terminal Rental Rate for each square foot of Exclusive Use Premises, excluding Temporary Space, and the pro-rata share of Shared Use Premises assigned to Airline. Airline agrees to pay each month one-twelfth (1/12th) of the Non-Signatory Terminal Rental Rate for each square foot of Temporary Space in its Exclusive Use Premises assigned to Airline. Exclusive Use Premises, including Temporary Use Premises, and Shared Use Premises are identified in the Premises Notice, subject to Article 2 through Article 5. Exclusive Use Premises rent and Shared Use Premises rent shall be due and payable on or before the tenth (10th) day of each month during the term of this Agreement, in advance, without invoice, deduction, or setoff.

11.3.2 Joint Use Premises – 10% Share.

(a) If Airline is a Signatory Airline with more than one percent (1%) of the Enplaned Passengers at the Airport for such Fiscal Year, Airline agrees to pay each month one-
twelfth (1/12th) of the Joint Use Premises – 10% Share calculated under 10.10.2(a)-(d). Any such payments shall be due and payable on or before the tenth (10th) day of each month during the term of this Agreement, in advance, without invoice, deduction, or setoff.

(b) If Airline is a Signatory Airline with one percent (1%) or less of the Enplaned Passengers at the Airport for such Fiscal Year, Airline agrees to pay each month one-twelfth (1/12th) of the Joint Use Premises – 10% Share calculated under 10.10.2(f). Any such payments shall be due and payable on or before the tenth (10th) day of each month during the term of this Agreement, in advance, without invoice, deduction, or setoff.

11.3.3 Joint Use Premises – 90% Share. Airline agrees to pay monthly Joint Use Premises – 90% Share in an amount equal to the Joint Use Premises – 90% Share Fee multiplied by the Airline’s Enplaned Passengers in such monthly period. Joint Use Premises – 90% Share shall be due and payable on or before the fifteenth (15th) day of each month for the prior month during the term of this Agreement, without invoice, deduction, or setoff, accompanied by an accurate, verifiable activity report on such form as Authority may provide. Authority reserves the right to require Airline to utilize an electronic system for the transmittal of said reports.

11.4 Common Use Fees. Airline agrees to pay monthly Common Use Fees in an amount equal to the Common Use Fee multiplied by the Airline’s Enplaned Passengers in such monthly period. Common Use Fees shall be due and payable on or before the fifteenth (15th) day of each month for the prior month during the term of this Agreement, without invoice, deduction, or setoff, accompanied by an accurate, verifiable activity report on such form as Authority may provide. Any Passenger Carrier that uses only Exclusive Use Ticket Counters throughout a Fiscal Year shall be excluded from Common Use Fees; if such a Passenger Carrier utilizes Common Use Ticket Counters for part of a Fiscal Year, it will be excluded from Common Use fees for a prorated portion of the Fiscal Year. Authority reserves the right to require Airline to utilize an electronic system for the transmittal of said reports.

11.5 [Reserved].

11.6 Other Fees and Charges. Airline agrees to pay monthly FIS Fees in an amount equal to the FIS Fee multiplied by the Airline’s number of passenger seats on arriving aircraft using the FIS Facilities for such monthly period. FIS Fees shall be due and payable on or before the fifteenth (15th) day of each month for the prior month during the Term, without invoice, deduction, or setoff, accompanied by an accurate, verifiable activity report on such form as Authority may provide. Unenclosed Operations Premises rentals shall be due and payable on or before the tenth (10th) day of each month during the Term, in advance, without invoice, deduction, or setoff.

11.7 Self Reporting. Airline shall be liable for any deficiencies in payments based on self-reporting made under this Agreement; payment for said deficiencies shall be deemed due as of the date such rental fee or charge was due and payable. If such self-reporting results in an overpayment by Airline, Authority shall apply such overpayment as a credit against subsequent amounts due for such rentals, fees, and charges from Airline; provided, however, Airline shall not be entitled to any credit for interest on payments of such estimated amounts.
11.8 **Late Payment of Airline Rent, Fees or Charges.** In the event Airline is delinquent in remitting to Authority the Airline Rents, Fees, and Charges due in accordance with the provisions of this Agreement, including payments of any deficiencies which may be due as a result of inaccurate self-reporting pursuant to Section 11.7 above or due to an audit performed pursuant to Section 14.2, said delinquency or non-payment is a breach and default of this Agreement for which Authority may terminate the Agreement and/or take such other legal actions as it deems necessary in accordance with Article 21.

Without waiving any rights available under the Agreement or by law, in the event of a late or delinquent payment, Airline recognizes that Authority will incur certain expenses, the amount of which is difficult to ascertain. Therefore, in addition to the Airline Rents, Fees and/or Charges owing, Airline agrees to pay the liquidated damages set forth below to compensate Authority for all expenses and/or damages and loss resulting from said late or delinquent payment(s) by Airline.

The liquidated damages for late or delinquent payments shall be the greater of twenty five dollars ($25) or 10% per annum on the balance of the unpaid monthly amount calculated from the date of the delinquency until the close of the business day upon which the delinquent payment is received by Authority. The President/CEO shall have the right to waive for good cause the assessment and/or collection of any liquidated damages upon a timely written application by Airline.

11.9 **Remittances.** Any amounts due shall be paid by check or electronic transfer by Airline to Authority, which check shall be delivered or mailed, postage prepaid, to the Treasurer of Authority at Post Office Box 81323, San Diego, California 92138-1323. The designated place of payment may be changed at any time by Authority upon ten (10) days' written notice to Airline. The acceptance by Authority of any payment made by Airline shall not preclude Authority from verifying the accuracy of Airline's report submitted to Authority or from recovering any additional payment due from Airline or from crediting any overpayment due to Airline.

**Article 12**

**REVIEW OF OFF- AIRPORT PUBLIC TRANSPORTATION PROJECTS**

12.1 **Off-Airport Public Transportation Projects.** Airline acknowledges that, during the Term, Authority may undertake or provide funding for one or more Off-Airport Public Transportation Projects. Airline and Authority agree that addressing public transportation issues related to the Airport is an important goal and that such projects may require funding from Authority. However, as of the Effective Date, the number and scope of any Off-Airport Public Transportation Projects is not known. Due to this uncertainty and the potentially significant impact of Off-Airport Public Transportation Projects on Airline’s costs of operating at the Airport, Airline has requested the right to review the Authority’s funding of Off-Airport Public Transportation Projects that exceeds certain cost thresholds. In order to address the cost concerns of Airline, Authority and Airline agree to the process set forth in this Article 12 for the funding of Off-Airport Public Transportation Projects by the Authority. Section 12.2 sets forth the commitment of the Signatory Airlines to pre-approve, in aggregate, an estimated Five Hundred Fifteen Million Dollars ($515,000,000) in funding for Off-Airport Public Transportation Projects, subject to certain
conditions. Section 12.3 sets forth the process for Signatory Airline review of additional funding for Off-Airport Public Transportation Projects.

12.2 **Pre-Approved Funding.**

12.2.1 Authority shall have the right, without any review or any other limitation imposed by the Signatory Airlines, to fund the full, actual costs of a new limited access in-bound roadway on the Airport that will connect with North Harbor Drive at approximately Laurel Street and allow vehicles to access both Terminals (the “Inbound Roadway Project”). The Inbound Roadway Project is currently estimated to cost One Hundred Sixty Five Million Dollars ($165,000,000), but the full, actual costs may exceed that estimate.

12.2.2 In addition to funding the Inbound Roadway Project, Authority shall have the right, without any review or any other limitation imposed by the Signatory Airlines, to provide up to Seventy-Five Million Dollars ($75,000,000) in funding for Off-Airport Public Transportation Projects during the Term.

12.2.3 In addition to the funding described in Sections 12.2.1 and 12.2.2, Authority shall have the right, without any review or any other limitation imposed by the Signatory Airlines, to provide up to an additional One Hundred Twenty-Five Million Dollars ($125,000,000) in funding for Off-Airport Public Transportation Projects during the Term, but only if non-Authority funding of at least Two Hundred Million Dollars ($200,000,000) for the Off-Airport Public Transportation Projects has been secured through legally binding commitments from third-parties.

12.2.4 In addition to the funding available in Sections 12.2.1, 12.2.2, and 12.2.3, Authority shall have the right, without any review or any other limitation imposed by the Signatory Airlines, to provide up to an additional One Hundred Fifty Million Dollars ($150,000,000) in funding for Off-Airport Public Transportation Projects during the Term, but only if additional non-Authority funding of at least One Hundred Fifty Million Dollars ($150,000,000), at least Three Hundred Fifty Million Dollars ($350,000,000) in aggregate, for the Off-Airport Public Transportation Projects has been secured through legally binding commitments from third-parties.

12.2.5 As provided by 49 U.S.C. § 40117(f), no Capital Project shall be subject to Majority-in-Interest voting or approval to the extent such Capital Project is financed by PFCs or PFC-backed bonds.

12.2.6 All amounts of funding provided by Authority under Sections 12.2.1-12.2.4 shall be net of CFCs and federal and state transportation grants.

12.3 **Majority-in-Interest Review.** Any funding of Off-Airport Public Transportation Projects in excess of the pre-approved amounts in Section 12.2.1 through 12.2.4 shall be subject to the Majority-in-Interest review procedures in this Section 12.3.

12.3.1 Authority shall submit a written proposal to the Signatory Airlines describing the Off-Airport Public Transportation Projects, the estimated cost of the Off-Airport Public Transportation Projects, the amount of the funding anticipated from Authority, the amount of anticipated funding from third-parties and the estimated project schedule.
12.3.2 Authority may proceed with the proposed funding of Off-Airport Public Transportation Projects that are subject to review under this Section 12.3 unless Authority is notified in writing by the chair of the AAAC within thirty (30) days of delivery of Authority’s proposal that a Majority-in-Interest has disapproved Authority’s proposal. Such written notification to Authority shall include the written disapproval of each Signatory Airline that disapproved the proposal.

12.4 Cost Allocation. All funding provided by Authority for Off-Airport Public Transportation Projects shall be allocated to the Airport Access Cost Center.

12.5 Limitation on Majority-in-Interest Review. Airline shall have no right to review or approve any Capital Projects other than Off-Airport Public Transportation Projects, as specified in this Article 12.

Article 13

REPORTS AND OTHER INFORMATION

13.1 Regular Reports. Airline shall, in a format and manner prescribed by Authority, provide the following reports to Authority:

13.1.1 An activity report, using a form and including activity prescribed by Authority, by the fifteenth (15th) day of each month. Late submissions shall be assessed a five-hundred dollar ($500) late charge.

13.1.2 An annual summary of all contracts Airline holds with ground handling service providers due July 1 and an updated report any time Airline materially changes, terminates or adds a new ground handling service contract.

13.1.3 The monthly performance metrics for scheduled preventative maintenance and corrective work required under Section 8.2.5.

13.2 Additional Reports. Authority reserves the right to require Airline and Airline agrees to provide, after consultation with Authority, such additional reports as Authority may reasonably need for the purposes of this Agreement or the operation of the Airport in a format and manner prescribed by Authority.

13.3 Airline Operations Information and Planning. For planning purposes, upon the request of Authority, Airline shall cooperate to the greatest extent possible to furnish to Authority any and all pertinent information regarding Airline’s current and future operations (including forecasts) at the Airport; subject to a non-disclosure agreement between Airline and Authority that reasonably protects Airline’s proprietary and confidential information from disclosure and requires Airline to indemnify and defend Authority in the event that Airline seeks to withhold any information from a public records request. Airline shall discuss with Authority at the earliest date possible its consideration of changes to its operations or the type and series of aircraft used at the Airport (other than equipment substitution necessitated by occurrences beyond the control of Airline). Authority shall not disclose any such information deemed confidential by Airline without first obtaining Airline’s written consent, unless otherwise required by law. Notwithstanding the
foregoing, Authority shall be entitled, from time to time, to release consolidated statistics for all Air Carriers providing Scheduled Operations at the Airport.

Article 14

AUDIT

14.1 **General.** Airline, at its expense and upon reasonable advance notice of not less than three (3) business days, shall have the right to inspect and audit Authority’s books, records and other data relating to Airline Rents, Fees and Charges charged to Airline under this Agreement, provided that such inspection and audit are made during Authority’s regular business hours. In the event Airline can demonstrate that Airline Rents, Fees and Charges were not accurately assessed by Authority, Authority agrees to reconcile any discrepancy.

14.2 **Books and Records of Airline.** Airline shall maintain separate and accurate daily records of Airline’s operations at the Airport for a period of five (5) years after the close of each Fiscal Year throughout the Term. This record-keeping obligation shall survive the expiration or earlier termination of this Agreement. All such books and records shall be kept in accordance with generally accepted accounting principles, consistently applied, showing in detail all business done or transacted in, on, about, from or pertaining to the Airport, and shall be sufficient to permit Authority to calculate and verify the Airline Rents, Fees and Charges and other fees and charges due under this Agreement. Upon the President/CEO’s or Chief Auditor’s written request, Airline shall make available to Authority or its auditors any and all books, records and accounts pertaining to its operations under this Agreement. If the requested books, records and accounts are not made available at the Airport, and Authority or its auditors are required to travel elsewhere to review them, Authority may require that Airline reimburse Authority for the reasonable costs of such review of Airline’s books, records and accounts. In the event Authority or its auditor(s) demonstrates an underpayment of two percent (2%) or more, Airline shall pay to Authority the cost of any review or audit.

Article 15

AIRLINE’S REPRESENTATIONS AND WARRANTIES

Airline represents and warrants to Authority that:

15.1 **Corporate Structure.** Airline (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, and (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement.

15.2 **Duly Authorized.** The execution, delivery and performance by Airline of this Agreement has been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of Airline’s organization documents, or (b) to Airline’s knowledge conflict with or result in any breach or contravention of any contractual
obligation to which Airline is a party, or any order, injunction, writ or decree of any governmental authority or any arbitral award to which Airline or its property is subject.

15.3 Approvals Unnecessary. Except as otherwise required pursuant to Section 15.5, to Airline’s knowledge no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental authority or any other person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Airline of this Agreement.

15.4 Duly Executed. This Agreement has been duly executed and delivered by Airline. This Agreement constitutes a legal, valid and binding obligation of Airline, enforceable against Airline in accordance with its terms.

15.5 No Bankruptcy or Insolvency. On the date it becomes a Signatory Airline, either (a) Airline is not the subject of a case, proceeding or occurrence described in Sections 21.1.1 through 21.1.7 or (b) if Airline is the subject of such a case, proceeding or occurrence, Airline has obtained entry in such case or proceeding of a final order in form reasonably satisfactory to Authority as to which the appeal period has expired authorizing Airline to execute, deliver and perform its obligations under this Agreement.

15.6 Legal Proceedings. There is no action, suit, proceeding or investigation at law or in equity before or by any court or public board or body pending or, to the knowledge of Airline, threatened against it, which, in Airline’s opinion, is likely to materially adversely affect the financial condition of Airline or the transactions contemplated by this Agreement, or which in any way would adversely affect the validity of this Agreement.

15.7 Compliance with Laws, Consents and Other Agreements. (i) Airline is not in violation in any material respect of any term or provision of any mortgage, lease, agreement, or other instrument that is material to its business or assets, or of any judgment, decree, governmental order, statute, rule, or regulation by which it is bound or to which it or any of its assets is subject; and (ii) Airline’s execution and delivery of this Agreement will not violate or constitute a material default of any term or provision of any mortgage, lease, agreement, or other instrument, or of any judgment, decree, governmental order, statute, rule, or regulation by which Airline is bound or to which any of its assets is subject, except to the extent that any such violation or default described in clauses (i) or (ii) would not have a material adverse effect on the financial condition of Airline.

INDEMNIFICATION AND INSURANCE

16.1 Indemnification.

16.1.1 Except for Claims for environmental matters (which are the subject of the indemnification obligation under Article 23), Airline shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Authority and its Board, officers, officials, directors, employees, volunteers and agents (each and “Indemnified Party”) from and against (i) Claims arising directly or indirectly from any act or omission of Airline or Airline Entity or out of the obligations undertaken in connection with or the performance of this Agreement, or (ii) for Claims
based upon Airline’s alleged breach of any statutory duty or obligation or Airline’s duty under contracts with third parties, or (iii) Claims arising from any use or occupancy of any part of the Premises by Airline or Airline Entities except, for those claims arising out of the sole active negligence or willful misconduct of Authority. The obligations in this Article shall apply for the entire time that any third party can legally make a claim against or sue Authority for liabilities arising out of Airline’s use, occupancy, or operation of the Premises or Airport.

16.1.2 Except for claims for environmental matters (which are the subject of the indemnification obligations under Article 23), Airline shall release, defend, indemnify, and hold each Indemnified Party completely harmless from and against any Claims arising from or based upon the actual or alleged violation by Airline or an Airline Entity, of any Applicable Laws, Airport Rules and Regulations or any license, certificate, permit or other authorization issued under any of the aforesaid, in connection with Airline’s conduct of its air transportation business on or at the Airport or use or occupancy of the Airport.

16.1.3 If Authority is alleged to be in non-compliance with Applicable Laws governing access to secure areas of the Airport and said non-compliance is the result of or due to the negligence or willful act or omission of Airline or an Airline Entity, and such breach of a secure area results in a civil penalty or other action against Authority, Airline agrees to reimburse Authority for all expenses, including reasonable attorneys’ fees, incurred by Authority in defending against the civil penalty action or other action, and for any civil penalty or settlement amount paid by Authority as a result of being deemed in non-compliance as aforesaid. Authority shall give Airline reasonable notice of any allegation, investigation, or proposed or actual civil penalty or other action sought for such non-compliance.

16.1.4 If any action or proceeding is brought against Authority by reason of any Claim that may be subject to Airline’s indemnification obligations contained in this Section 16.1, Airline, upon reasonable notice from Authority, shall resist or defend such claim, suit, demand, action, liability, loss, damage, judgment, fine, or penalty with counsel reasonably acceptable to Authority, and Authority shall take reasonable actions to mitigate its damages.

16.1.5 The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to Authority or an Indemnified Party that would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement. Authority shall give Airline written notice of any claims threatened or made or any suit instituted against it that could result in a claim of indemnification hereunder.

16.1.6 Notwithstanding anything to the contrary set forth in this Agreement, neither party nor any of its members, directors, officers, agents, representatives or employees shall be liable to the other party for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Agreement or such party’s performance or non-performance hereunder; provided, however, that this Section 16.1.6 shall not apply to third-party claims for bodily injury, wrongful death or property damage arising out of or relating to this Agreement.
16.1.7 The indemnification and other obligations under this Section 16.1 shall survive the expiration or earlier termination of this Agreement.

16.2 Airline’s Insurance.

16.2.1 Duty to Carry Insurance. Airline shall procure, at its expense, and maintain at all times during the term of this Agreement, the types and amounts of insurance specified in Exhibit O. The specified insurance described in 1. and 2. on Exhibit O shall include and insure Authority, its Board, officers, employees, their successors and assigns, as additional insureds, against the areas of risk associated with this Agreement to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, and property damage suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act, omission or activity of Airline, or any person acting for it or under its control or direction, or any person authorized by it to use the Premises.

16.2.2 Severability of Interest and Contractual Endorsement. Each specified insurance policy (other than Worker’s Compensation, Employers’ Liability, and Property All Risk Insurance) shall contain a Severability of Interest (Cross Liability) clause which states, “It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability,” and a Contractual Endorsement which shall state, “Such insurance as is afforded by this policy shall also apply to liability assumed by the Insured [Airline] under Insured’s [Airline’s] Agreement with Authority.”

16.2.3 Primary and Non-contributory. All such insurance shall be primary and non-contributory with any other insurance held by Authority where liability arises out of or results from the acts of omissions of Airline or those of its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Airline.

16.2.4 No Liability for Premiums; No Partnership; and Default. Authority shall have no liability for any premiums charged for such coverage(s). The inclusion of Authority, its Board, officers and employees, their successors and assigns, as additional insureds is not intended to, and shall not make them, or any of them, a partner or joint venturer with Airline in Airline’s operations at Airport or in the performance of this Agreement. In the event Airline fails to furnish Authority with evidence of insurance and maintain the insurance as required, which failure continues for thirty (30) days following Airline’s receipt of written notice of its failure, Authority may (but shall not be required to) terminate this Agreement.

16.2.5 Continuing Coverage. Airline shall use commercially reasonable efforts to ensure that no policy of insurance required of Airline under this Agreement shall be cancellable or subject to non-renewal or adverse, material modification except after thirty (30) days’ prior written notice to Authority. Airline shall, in a timely manner prior to the expiration, cancellation, non-renewal or modification of such policies, furnish Authority with evidence of renewals or insurance binders that evidence the renewal thereof. In the event of cancellation of any insurance required of Airline at any time during the Term, or any change not reasonably acceptable to Authority, including an erosion in available limits below those specified in this Article 16,
Authority reserves the right, after consultation with Airline, to provide additional insurance and charge the cost of any premiums for such coverage to Airline. Authority’s right under this Section 16.2.5 includes, but is not limited to, Authority’s right to purchase higher limits for its own insurance program to account for an erosion in Airline’s limits and charge the cost of any such higher limits to Airline.

16.2.6 Proof of Insurance. Airline shall provide proof of all specified insurance and related requirements to Authority either by broker’s letter reasonably acceptable to the President/CEO in both form and content in the case of foreign insurance syndicates or by other written evidence of insurance reasonably acceptable to the President/CEO. The documents evidencing all specified coverage shall be filed with Authority prior to Airline performing under this Agreement or using the Airport. The documents shall contain the applicable policy number, the inclusive dates of policy coverage, and the insurance carrier’s number, address, and telephone number, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or non-renewal except after written notice by US mail or e-mail to Authority at least thirty (30) days prior to the effective date thereof. Authority reserves the right to have submitted to it, upon request, all pertinent information about the agent, broker and carrier providing such insurance.

16.2.7 Acceptable evidence of proof of insurance shall be mailed to Authority as follows:

San Diego County Regional Airport Authority  
Attention: Risk Management Dept.  
P.O. Box 82776  
San Diego, CA 92138-2776  
certificates@san.org

16.2.8 Non-Admitted Carriers. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code §§1760-1780, and any laws, ordinances or other regulations and/or directives from the State of California’s Department of Insurance or other regulatory board or agency. Airline agrees, except where legally exempted, to provide Authority with proof of said insurance by and through a surplus line broker licensed by the State of California.

16.2.9 Full Liability Clause. The procuring of such required policies of insurance shall not be construed to limit Airline’s liability hereunder, or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policies of insurance, and only to the extent consistent with the obligations of Airline set forth elsewhere in this Agreement, Airline shall be obligated for the full and total amount of any damage, injury or loss caused by its negligence, neglect or intentional misconduct connected with this Agreement or with its use of Airport.

16.2.10 Deductibles and Self-Insurance. Any deductibles or self-insured retentions must be declared. At the option of Authority, and upon written notice to Airline, Airline shall (1) cause the insurer to either reduce or eliminate such deductibles or self-insured retentions as respects Authority, its Board, officers, officials, and employees, or (2) procure a bond or letter
of credit guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount equal to any deductible or self-insurance retention.

16.2.11 **Sufficient Coverages.** Authority shall retain the right at any time to review the coverage, form, and amount of the insurance required by Airline under this Agreement. If, in the reasonable opinion of Authority, the insurance provisions in this Agreement do not provide adequate protection for Authority and/or for members of the public, Authority may require Airline to obtain increased insurance sufficient in coverage, form, and amount to provide adequate protection. Authority's requirements shall be reasonable, but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

16.2.12 **Liability of Airline.** Provisions of this Article as to the maintenance of insurance shall not be construed as limiting in any way the extent to which Airline may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

16.3 **Waiver of Subrogation.** Airline waives and shall cause its insurers to waive, and Airline shall cause each of its contractors, Affiliates and sublessors and each of its contractor’s, affiliate’s and sublessor’s insurers to waive, their respective rights of subrogation against Authority and its Board, officers, officials, directors, employees, volunteers and agents for recovery of damages to the extent these damages are covered by the following insurance obtained by Airline pursuant to this Agreement; (1) Workers Compensation; (2) Aircraft/Airline General Liability Insurance; (3) Commercial Automobile Liability Insurance; (4) Property Insurance. With respect to the waiver of subrogation for Worker’s Compensation and Employer’s Liability Insurance, Airline shall obtain an endorsement equivalent to WC 00 03 13 to effect such waiver.

16.4 **Increase in Cost of Insurance.** Airline shall not use the Premises in any manner not contemplated by this Agreement so as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If Airline shall do so, then, at Authority’s option, the full amount of any resulting increase in premiums paid by Authority with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term, shall be paid by Airline to Authority. Conversely, Authority shall not use the Public Areas in any manner not contemplated by this Agreement so as to increase the existing rates of insurance applicable to Airline’s Premises. If Authority shall do so, then, at the option of Airline, the full amount of any resulting increase in premiums paid by Airline with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term, shall be paid by Authority to Airline.

**Article 17**

**COMPLIANCE WITH LAWS**

17.1 **General Laws.**

Airline shall comply with all Applicable Laws.
17.2 **Airport Rules and Regulations.**

The use by Airline of the areas and facilities described herein and the rights and privileges granted Airline pursuant to this Agreement shall at all times be subject to the Airport Rules and Regulations. Airline covenants and agrees that it will not violate or permit any Airline Entity to violate any such Airport Rules and Regulations. Authority may prescribe civil penalties and injunctive remedies for violations thereof, and the same may be applied to Airline for violations by Airline or any Airline Entity. Airline may contest in good faith any federal, State or local code, law, regulation, ordinance or rule, Airport Rules and Regulations or any other rule or regulation of Authority without being considered in breach of this Agreement so long as such contest is diligently commenced and prosecuted by Airline. Authority shall provide at least thirty (30) days’ advance notice of any new or amended Airport Rules and Regulations affecting Airline. Such notice may be given by email or through posting on the Authority’s website.

17.3 **State Noise Variance.** Airline agrees to comply with the applicable provisions of Section 9.40 of the Authority Code which contains time of day and other use restrictions on aircraft operations at the Airport. Airline acknowledges that Authority operates Airport under a variance issued by the Department of Transportation, Division of Aeronautics of the State of California. A copy of the present effective variance and any subsequent “Decision and Order” regarding any applicable variance will be made available to Airline upon request.

17.4 **No Liability - Right to Terminate.** Authority shall not be liable to Airline for any diminution or deprivation of its rights hereunder on account of any laws, ordinances, statutes, rules, regulations, orders, federal grant assurances, limitations, restrictions, prohibitions, directives, or resolutions. In the event, however, that any laws, ordinances, statutes, rules, regulations, orders, federal grant assurances, limitations, restrictions, prohibitions, directives, or resolutions, shall so interfere with the conduct of Airline’s activities and business operations under this Agreement as to constitute a termination in whole or in part of this Agreement by operation of law in accordance with the laws of the State of California, Airline shall have the right to terminate this Agreement and thereby be relieved of all future obligations and duties hereunder. In no event, however, shall such termination impose any liability upon Authority, or obligate Authority to make any payment to Airline.

17.5 **Licenses, Certificates and Authorizations.**

Airline shall obtain, at Airline’s sole expense, all licenses, certificates, permits and other authorizations that are now or hereafter required by Applicable Laws or the Airport Rules and Regulations for Airline’s operations at the Airport, Airline’s use of the Premises and all other areas of the Airport, and Airline’s exercise of any rights under this Agreement.

17.6 **Wage Hour Laws.**

Airline shall comply with all applicable Federal, state and local wage and hour laws.
Article 18

CIVIL RIGHTS AND AFFIRMATIVE ACTION

18.1 General Civil Rights Provisions. Airline agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Airline transfers its obligation to another, the transferee is obligated in the same manner as Airline.

This provision obligates Airline for the period during which the property is owned, used or possessed by Airline and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

18.2 Compliance with Nondiscrimination Requirements. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as “Airline”) agrees as follows.

18.2.1 Compliance with Regulations: Airline (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

18.2.2 Nondiscrimination: Airline, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Airline will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

18.2.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Airline for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Airline of Airline’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

18.2.4 Information and Reports: Airline will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Airline is in the exclusive possession of another who fails or refuses to furnish the information, Airline will so certify to Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

18.2.5 Sanctions for Noncompliance: In the event of Airline’s noncompliance with the nondiscrimination provisions of this contract, Authority will impose such contract
sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding payments to Airline under the Agreement until Airline complies; and/or
(b) Cancelling, terminating, or suspending the Agreement, in whole or in part.

18.2.6 Incorporation of Provisions: Airline will include the provisions of paragraphs 18.2.1 through 18.2.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Airline will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Airline becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Airline may request Authority to enter into any litigation to protect the interests of Authority. In addition, Airline may request the United States to enter into the litigation to protect the interests of the United States.

18.3 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

18.3.1 Airline, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(a) In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

18.3.2 With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

18.4 Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

18.4.1 Airline, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise
subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline will use the premises in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts and Authorities.

18.4.2 With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

18.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities.

18.5.1 During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the “Airline”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

(a) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

(b) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

(c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

(d) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

(e) The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

(f) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

(g) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

(h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities
as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

(i) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

(j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

(k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

(l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

18.6 **Affirmative Action.** Airline assures that: (a) it will comply with applicable statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefiting from federal assistance. This paragraph obligates Airline or its transferee for the period during which federal assistance is extended to the airport program, except where federal assistance is to provide, or is in the form of, personal property or real property or interests therein or structures or improvements thereon. In these cases, this paragraph obligates the party or any transferee for the longer of the following periods: (i) the period during which the property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this paragraph binds the contractors from the bid solicitation period through the completion of the contract; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted with or benefitting from Federal financial assistance received by Authority from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section 18.6 in Airline’s contracts and other applicable documents under this Agreement, and shall require that its contractors and others similarly include these statements in their subcontracts and applicable documents.
Article 19

ADDITIONAL FEDERAL REQUIREMENTS

19.1 Subordination to Agreements with the United States.

This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between Authority and the United States, including without limitation the terms of any “Sponsor’s Grant Assurances” or like agreement, the execution of which is required to enable or permit the transfer of rights or property to Authority for airport purposes, or the expenditure of federal grant funds for Airport improvement, maintenance or development. Airline shall reasonably abide by the requirements of agreements entered into between Authority and the United States, and shall consent to amendments and modifications of this Agreement if required by such agreements or if required as a condition of Authority’s entry into such agreements.

19.2 Passenger Facility Charges.

19.2.1 Authority expressly reserves the right to impose and use PFCs in accordance with 49 U.S.C. § 40117 and the PFC Regulations.

19.2.2 Airline shall hold in trust for Authority the net principal amount of all PFCs that are collected by Airline or its agents on behalf of Authority pursuant to 49 U.S.C. § 40117 and the PFC Regulations. For purposes of this Section 19.2, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of Authority, reduced by any amount that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations. PFCs collected by Airline shall be remitted to Authority at its Payment Address, or at such other place as the President/CEO may from time to time designate in writing.

19.3 PFC Act and Assurances.

19.3.1 Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall impair the authority of Authority to impose a Passenger Facility Charge or to use the Passenger Facility Charge revenue as provided in the Aviation Safety and Capacity Expansion Act of 1990, 49 U.S.C. § 40117 (the “PFC Act”).

19.3.2 Airline acknowledges that Authority has given to the United States of America, acting by and through the FAA, certain assurances set forth in the PFC Act and implementing regulations at 14 C.F.R. Part 158 (“PFC Assurances”), and Airline agrees that this Agreement shall be subordinate and subject to the PFC Assurances.

19.3.3 In the event that the FAA or its successors require any modifications or changes in this Agreement as a condition precedent to the collection of PFCs or otherwise complying with the PFC Act, Airline shall not withhold its consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may reasonably be required to collect PFCs or comply with the PFC Act. Authority agrees to provide Airline with advance written notice of any provisions that would adversely modify material terms of this Agreement.
19.4 **No Exclusive Rights.**

Nothing contained in this Agreement shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) with respect to activity on the Airport, except that, subject to the terms and provisions of this Agreement, Airline shall have the right to exclusive possession of any Exclusive Use Premises made available to Airline under this Agreement.

19.5 **Right to Develop Airport.** Authority reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of Airline and without interference or hindrance.

19.6 [Reserved].

19.7 **Right of Flight.** There is hereby reserved to Authority, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

19.8 **14 C.F.R Part 77, Obstructions in Navigable Airspace.** Airline agrees to comply with the applicable notification and review requirements covered in 14 Code of Federal Regulations ("C.F.R.") Part 77 of the Federal Aviation Regulations, in the event future construction of a building is planned for the Premises covered by this Agreement, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

19.9 **No Obstructions.** Airline, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land rented hereunder above the mean sea level elevation of zero (0) feet for the Airfield Areas, and fifty (50) feet for all other areas covered by this Agreement without Authority’s written consent. In the event the aforesaid covenants are breached, Authority reserves the right to enter upon the land covered by this Agreement and to remove the offending structure or object or cut the offending tree, all of which shall be at the expense of Airline.

19.10 **War or National Emergency.** This Agreement shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

19.11 **No Interference with Airport Operations.** Airline by accepting this Agreement agrees for itself, its successors, and assigns that it will not do or permit to be done by its officers, agents, employees, contractors or invitees, any act or omission which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard, or unreasonably interfere with the conduct of business by another airline, tenant or contractor of Authority, or unreasonably interfere with the performance of their duties by the staff of Authority or by the staff of the FAA, the TSA or any other agency of the U. S. Government, or of the contractors thereof.
In the event this covenant is breached, Authority reserves the right, in addition to any other rights or remedies under this Agreement or in law or equity, to enter upon the Premises and cause the abatement of such interference at the expense of Airline.

19.12 SEC Rule 15c2-12.

Airline, upon Authority’s request, shall provide to Authority such information as Authority may reasonably request in writing to comply with Authority’s continuing disclosure requirements under SEC Rule 15c2-12, as it may be amended from time to time, provided, however, that Airline may, in lieu of providing the requested information, direct Authority to an Airline or SEC website where the requested information is then currently available.

19.13 Americans with Disabilities Act (“ADA”). Airline acknowledges that, pursuant to the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. and Title 24 of the California Code of Regulations, as amended and supplemented (ADA) and the Air Carrier Access Act, 49 U.S.C. Section 41705, as amended and supplemented (ACAA), to the extent applicable to Airline, programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. To the extent the ADA or the ACAA is so applicable: (a) Airline shall provide the services specified in this Agreement in a manner that complies with the ADA or the ACAA, as applicable, and any and all other applicable federal, State and local disability rights legislation; (b) Airline agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement; and (c) Airline further agrees that any violation of this prohibition on the part of Airline, its employees, agents or assigns shall constitute a material breach of this Agreement.

Article 20

DAMAGE OR DESTRUCTION OF PREMISES

20.1 Damage or Destruction of Authority Constructed Improvements. In the event of damage to, or destruction by fire, the elements, acts of God, or any other cause of Authority-constructed improvements at Airport which materially impacts Airport operations, Authority shall have the option, in its reasonable discretion, and shall within ninety (90) days, following the date of such damage, provide Airline written notice of Authority’s election, to commence reconstruction of the damaged improvements and prosecute the same diligently to completion, in which event this Agreement shall continue in full force and effect, and Airline Rents, Fees and Charges for all or the portion of the Premises rendered untenantable shall be abated until such repairs are complete and the Premises or the portion thereof deemed untenantable are untenantable once again. In the event Authority elects not to perform such reconstruction, the portion of the Premises rendered untenantable shall be removed from Airline’s Premises and a revised Premises Notice shall be issued to Airline and Authority shall reimburse Airline for any Airline Rents, Fees and Charges paid in advance, if any, for all or a portion of the Premises rendered untenantable.

20.2 Damage or Destruction of Airline Constructed Improvements.

20.2.1 In the event of damage to or destruction by fire, the elements, acts of God, or any other cause, of Airline-constructed improvements located within the Premises or in the
event Airline-constructed improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Airline shall, subject to Section 20.2.2, within sixty (60) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of Airline-constructed improvements necessary to permit full use and occupancy of the Premises for the purposes required by this Agreement.

20.2.2 Repair, replacement or reconstruction of Airline-constructed improvements within the Premises shall be accomplished in a manner and according to plans approved by Authority; provided, however, Airline shall not be obligated to repair, reconstruct, or replace the improvements following their destruction in whole or substantial part except to the extent the loss is covered by insurance required to be carried by Airline pursuant to this Agreement (or would be covered whether or not such required insurance is actually in effect).

Article 21

DEFAULT AND TERMINATION

21.1 Airline Default. The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:

21.1.1 Airline shall become insolvent (as such term is defined under Section 101 of the Federal Bankruptcy Code); or shall fail to pay its debts generally as they mature; or shall take the benefit of any present or future federal or state insolvency statute; or shall make a general assignment for the benefit of creditors.

21.1.2 Airline shall file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Federal Bankruptcy Code or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property; or an order for relief shall be entered by or against Airline under any chapter of the Federal Bankruptcy Code.

21.1.3 By order or decree of a court, Airline shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the restructuring of its indebtedness under the Federal Bankruptcy Code or under any other law or statute of the United States or any state thereof and such order or decree shall not be stayed or vacated within sixty (60) days of its issuance.

21.1.4 A petition under any chapter of the Federal Bankruptcy Code or an action under any federal or state insolvency law or statute shall be filed against Airline and shall not be dismissed or stayed within sixty (60) days after the filing thereof.

21.1.5 By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator or other similar official shall take possession or control of all or substantially all of the property of Airline and such possession or control shall continue in effect for a period of sixty (60) days.
21.1.6 Airline shall become a corporation in dissolution.

21.1.7 The letting, license or other interest of or rights of Airline hereunder shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Sections 21.1.1 through 21.1.6.

21.1.8 Airline shall fail duly and timely to pay any Airline Rents, Fees and Charges, or any other fee or charge due under this Agreement when due to Authority, and such failure shall continue for ten (10) days beyond Airline’s receipt of a written notice of such breach or default from the President/CEO. Notwithstanding the foregoing, if there occur two (2) defaults in the payment of Airline Rents, Fees and Charges, or other fee or charge due under this Agreement in any twelve (12) month period, thereafter Airline shall not be entitled to notice of any further payment defaults (i.e., thereafter Airline’s failure to pay Airline Rents, Fees and Charges, or other fee or charge due under this Agreement in a timely manner shall be deemed an Event of Default), and Authority shall have no obligation to give such notice.

21.1.9 Airline shall fail duly and timely to remit to Authority PFCs collected by Airline from its passengers in accordance with the PFC Regulations and such failure shall continue for five (5) days beyond Airline’s receipt of a written notice from Authority of such breach or default.

21.1.10 There shall occur an assignment or transfer subject to Section 3.3 without Authority’s prior written consent and such assignment or transfer is not reversed within ten (10) days after written notice by Authority or Authority consents in writing to the assignment or transfer.

21.1.11 Airline shall abandon the Premises and its conduct of business at the Airport, and in connection with this abandonment, suspend operations for a period of sixty (60) days in the absence of a labor dispute, force majeure event in accordance with Section 24.14 or other governmental action in which Airline is directly involved.

21.1.12 Any lien shall be filed against the Premises as a result of an act or omission of Airline, and shall not be discharged within sixty (60) days after Airline’s receipt of notice.

21.1.13 Airline shall fail to obtain and maintain the insurance required by Section 16.2, or provide copies of the policies or certificates (including without limitation those related to renewals of such coverages) to Authority as required and, only with respect to providing copies of the policies or certificates, the failure to provide the copies shall continue for five (5) days beyond Airline’s receipt of a written notice from Authority of such breach or default.

21.1.14 [Reserved].

21.1.15 Airline shall fail to keep, perform and observe each and every other promise, representation, covenant and agreement set forth in this Agreement, and such failure shall continue for a period of more than ten (10) days after the President/CEO’s delivery of written notice of such failure or, if satisfaction of such obligation requires activity over a period of time,
if Airline fails to commence the cure of such failure within ten (10) days after Airline’s receipt of such notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within sixty (60) days of the President/CEO’s delivery of such notice.

21.2 Authority’s Remedies.

21.2.1 General Remedies – Applicable to All Portions of the Premises.

(a) Whenever any Event of Default shall occur (other than a default pursuant to Subsection 21.1.3 upon which termination of this Agreement, at Authority’s option, shall be effective immediately without further notice), this Agreement and all of Airline’s rights hereunder shall terminate if the written notice of default so provides. Authority shall be entitled to recover Termination Damages from Airline, together with interest on all Termination Damages at the rate of 18% per annum, or the maximum rate permitted by Applicable Laws, whichever is lower, from the date such Termination Damages are incurred by Authority.

(b) In addition to Termination Damages, and notwithstanding termination, Airline’s liability for Future Charges shall not be extinguished, and Airline agrees that Authority shall be entitled, upon termination for an Event of Default, to collect as additional damages a Rental Deficiency so long as Authority is using commercially reasonable efforts to mitigate its damages; provided, however, that the obligation of Authority to use commercially reasonable efforts to mitigate its damages shall not be construed to require Authority to rent all or any portion of the Premises for a use or to a tenant that is not consistent with this Agreement or Authority’s current or future business needs or requirements for the Airport, or to prioritize the renting of all or any portion of the Premises over other space that Authority may have available at the Airport. As used in this Section 21.2.1, a “Rental Deficiency” shall mean: an amount or amounts equal to Future Charges less the amount or amounts of rental, if any, that Authority shall actually receive during the remainder of the Term from others to whom the Premises may be rented, in which case such Rental Deficiency shall be computed and payable at Authority’s option either: (i) in an accelerated lump sum payment discounted to present value or (ii) in monthly installments, in advance, on the first day of each calendar month following termination of the Agreement, and continuing until the date on which the Term would have expired but for such termination. Any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months shall not in any manner prejudice Authority’s right to collect any portion of Rental Deficiency by a similar proceeding.

(c) If such Event of Default relates to Airline’s Exclusive Use Premises, Authority may re-enter the Exclusive Use Premises upon termination, take exclusive possession of any such Exclusive Use Premises, and remove all persons and property therefrom without Authority being liable to Airline for damage or loss thereby sustained by Airline. Authority shall be entitled to recover from Airline, in addition to Termination Damages and Rental Deficiency, Additional Termination Damages, together with interest on all Additional Termination Damages at the rate of 18% per annum, or the maximum rate permitted by Applicable Laws, whichever is lower, from the date such Additional Termination Damages are incurred by Authority. Airline shall have no right to or claim upon any improvements that may have been previously installed by Airline in or on the Exclusive Use.
(d) If this Agreement terminates as a result of Airline’s default, Authority shall use commercially reasonable efforts (as described in Section 21.2.1(b)) to relet the Exclusive Use or any part thereof, alone or together with other Exclusive Use, for such term or terms and for such use or uses as Authority in its sole discretion may determine. Airline’s obligations hereunder shall not be discharged by reason or failure of Authority to relet the Exclusive Use Premises.

(e) Except as specifically provided in Section 16.1.6, Authority’s action pursuant to this Section 21.2.1 shall not in any way limit Authority in the pursuit of any other additional right or remedy available to Authority in law or in equity by reason of Airline’s default.

21.3 Termination. This Agreement may be terminated in advance of its Expiration Date in the following events:

21.3.1 If Authority, in its sole discretion, shall require the use of the Premises or any substantial portion thereof for a major capital improvement for public or private use in connection with Authority’s business, Authority may terminate this Agreement by written notice delivered or mailed by Authority to Airline not less than one (1) year before the termination date specified in the notice; provided, however, that if this Agreement is terminated under this Section 21.3.1, Authority shall reimburse Airline for the unamortized costs of any improvements to the Terminal constructed by Airline with Authority’s consent during the Term; and provided further that the costs of any such improvements shall be amortized on a generally accepted accounting principles, unless Authority has previously reimbursed Airline for the costs of such improvements; or

21.3.2 If any federal, state or local government, or agency or instrumentality thereof, shall, by condemnation or deed or conveyance in lieu thereof, take title, possession, or the right to possession of the Premises or any substantial portion thereof, Authority may, at its option, terminate this Agreement as of the date of such taking; or

21.3.3 If any court having jurisdiction shall render a decision that has become final and will permanently or for a substantial period of time prevent Authority’s performance of any of its material obligations under this Agreement, either party hereto may terminate this Agreement by written notice. This right of termination shall be and remain effective whether or not Authority, by taking affirmative action or by inaction, could have prevented the rendering of the decision, or could have caused the decision to be vacated before it became final.

21.3.4 If this Agreement is terminated under Sections 21.3.1 through 21.3.3, all rights and obligations of the parties shall terminate (with the exception of (i) any undischarged rights and obligations that accrued prior to the effective date of such termination and (ii) any rights and obligations that this Agreement states shall survive such termination), and if Airline is not in default under this Agreement on the effective date of termination, any Airline Rent, Fees and Charges prepaid by Airline shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Airline.

21.4 Authority’s Right to Perform. All agreements and obligations to be performed by Airline under this Agreement shall be at Airline’s sole cost and expense and without any
abatement of Airline Rent, Fees and Charges. If Airline shall fail to make any payment or perform any act required to be performed under this Agreement, and such failure shall continue for ten (10) days after Authority’s notice thereof, Authority may, but shall not be obligated to, and without waiving or releasing Airline from any of its obligations, make any such payment or perform any such act on Airline’s behalf. All sums so paid by Authority and all necessary incidental costs shall be deemed additional Airline Rent, Fees and Charges hereunder, payable to Authority on demand, and Authority shall have (in addition to any other right or remedy of Authority) the same rights and remedies in the event of the nonpayment thereof by Airline as in the case of Airline’s default in the payment of Airline Rent, Fees and Charges.

21.5 Airline’s Rights Related to Termination. In the event of any termination based on any breach by Airline of the covenants, terms and conditions contained in this Agreement, all of Airline’s rights, powers and privileges under this Agreement shall cease, and Airline shall immediately vacate any portions of the Premises it occupies under this Agreement. Airline shall have no claim of any kind whatsoever against Authority by reason of such termination, or by reason of any act by Authority related to such termination.

21.6 Bankruptcy. In no event shall this Agreement or any rights or privileges hereunder be an asset of Airline under any bankruptcy, insolvency or reorganization proceedings. To the extent consistent with and permitted under the United States Bankruptcy Code or similar debtor relief laws, if Airline seeks protection under the United States Bankruptcy Code or similar debtor relief laws, or is currently operating under the protection of the United States Bankruptcy Code or other similar debtor relief laws, Airline will comply with every provision of this Agreement as and when required under this Agreement, including without limitation performing any required remediation relating to any environmental matter pursuant to Airline’s obligations under Article 23 which arose prior to or arises during the course of Airline’s bankruptcy case. No Air Carrier will be allowed to assume this Agreement without performing any required remediation as part of the cure of any Event of Default under this Agreement.

Article 22

SURRENDER OF POSSESSION; HOLDING OVER

22.1 Surrender. Airline covenants and agrees to surrender possession of the Premises or a portion of the Premises, as applicable, upon (a) termination of this Agreement; (b) partial termination of Premises under Sections 3.2 or 20.1; (c) the effective date of Authority’s relocation, reallocation or recapture of all or any portion of the Premises under Article 3 or Article 4; (d) termination of any holdover period; or (e) expiration of the Term in as good condition as on the Effective Date (or in the case of improvements or alterations made or fixtures installed subsequent thereto, then as of the date of such improvements, alternations, or fixtures were made or installed), reasonable wear and tear, and damage from casualty as described in Article 20 resulting in the termination or partial termination of this Agreement, and repairs that are the responsibility of Authority, excepted. No act or thing done by Authority during the Term shall be deemed acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing and signed by Authority.
If, upon such expiration or earlier termination, Airline shall fail to remove any personal property or trade fixtures (which Airline is allowed under the terms hereof to remove) within thirty (30) days of the date of termination, Authority may, but without the obligation to do so, remove said personal property and trade fixtures and hold them for the owners thereof, or may place the same in a public warehouse, all at the expense and risk of the owners thereof. Airline shall reimburse Authority for any reasonable expense incurred by Authority in connection with such removal and storage. In addition, Authority shall have the right, but not the obligation, to dispose of such property as waste, or sell such stored property and the proceeds of such sale shall be applied; first, to the cost of the sale; second, to the payment of charges for storage and removal; third, to the payment of Airline Rent, Fees and Charges or any other obligation that may then be due from Airline to Authority; and the remaining balance, if any, shall be paid to Authority. If the expenses of such removal, storage, disposal and sale shall exceed the proceeds of sale, Airline shall pay such excess to Authority upon demand. Airline shall indemnify, defend, release and hold harmless Authority from any and all damage, cost and expenses related to said removal, storage, disposal and sale, which obligations shall survive expiration or earlier termination of this Agreement.

22.2 Holding Over. In the event Airline holds over its tenancy of all or any portion of the Premises beyond the expiration date of this Agreement with Authority’s approval, this Agreement shall be deemed to be a month-to-month tenancy, terminable on thirty (30) days’ written notice given at any time by either party. During any month-to-month tenancy, Airline shall pay all Airline Rents, Fees and Charges required by this Agreement which shall be paid in accordance with the most current rent and landing fees schedules. All provisions of this Agreement shall apply to the month-to-month tenancy.

Article 23

ENVIRONMENTAL MATTERS

23.1 Airline Representations, Warranties, and Covenants

Airline represents, warrants, and covenants the following with respect to its use of the Airport pursuant to this Agreement:

23.1.1 Airline has obtained and throughout the Term shall regularly maintain and timely update all applicable licenses, permits, registrations and other authorizations and approvals required under Environmental Laws, and shall provide any notices required under Environmental Laws, for conducting its operations at the Airport during the Term. Airline shall ensure that Airline Entities obtain, maintain and update all applicable licenses, permits, registrations and other authorizations required by Environmental Laws pertaining to its and their use of and operations at the Airport.

23.1.2 Airline shall comply, and shall ensure that Airline Entities comply, with all applicable Environmental Laws pertaining to its and their use of, and operations at, the Airport.

23.1.3 Airline shall not conduct its operations at the Airport during the Term in such a manner so as to cause, unlawfully allow or contribute to, and shall ensure that Airline
Entities do not conduct their operations at the Airport during the Term in such a manner so as to cause, unlawfully allow or contribute to:

(a) any Release of any Regulated Materials and Pollutants at the Airport, unless authorized by an Environmental Law;

(b) any violation of any applicable Environmental Laws as a result, in whole or in part, of the use by or operations of Airline or Airline Entities at the Airport;

(c) any Release in violation of any applicable Environmental Laws which is a contributing cause of Authority exceeding any terms, conditions or effluent limits of any NPDES permit or individual storm water discharge permit issued to Authority, Multi-Sector General Permit, Municipal Separate Storm Sewer System permit, or any applicable federal or State of California effluent limitation guideline;

(d) any Release to soil or waters at, underlying, or adjacent to the Airport in violation of any applicable Environmental Laws; or

(e) any emissions to the air in violation of any applicable Environmental Laws that results in an exceedance of an applicable emission standard at the Airport or of any terms or conditions of any of Airline’s air permits.

23.1.4 Airline shall, and shall ensure that Airline Entities, handle, use, store, Dispose of, transport, or otherwise manage, any Regulated Materials and Pollutants at the Airport during the Term in a lawful manner. Without limiting the foregoing, Airline shall not conduct and shall ensure that Airline Entities do not conduct any operations or activities involving the use or application of ethylene glycol, propylene glycol, or any other substance in de-icing or anti-icing at any location at the Airport except in accordance with all applicable Environmental Laws and in compliance with any de-icing policies and practices as may be adopted by Authority after consultation with Airline.

23.1.5 Airline shall be, and shall ensure that Airline Entities are, responsible for the maintenance of any structural controls (above-ground or below-ground), as defined below, used to treat sanitary sewer waste and storm water runoff operated by Airline or Airline Entities on the Premises during the Term. Maintenance frequencies for any such structural controls shall be established by Airline in a reasonable manner in accordance with industry standards and
applicable Environmental Laws to ensure effective operation of such controls and to prevent failures of such controls that could result in the Release of Regulated Materials and Pollutants in violation of any applicable Environmental Laws. Airline shall ensure that environmental records required to be kept in accordance with Environmental Laws, including any applicable Storm Water Pollution Prevention Plan (SWPPP), are maintained to the extent required by Environmental Laws and made available to Authority upon request. Structural controls to be maintained by Airline may include, but are not limited to: oil/water separators (both storm and sanitary sewer), grease traps, sand traps, diversion valves, shut-off valves, storm sewer drain filters, trench drains. Airline shall remove and properly dispose of any Regulated Materials and Pollutants in said designated structural controls maintained by Airline prior to vacating the Premises, except when such equipment itself and any Regulated Materials and Pollutants contained therein are removed from the Airport.

23.1.7 Airline shall be, and shall ensure that Airline Entities are, responsible for the maintenance of any air pollution control equipment required by any applicable Environmental Laws operated by Airline or Airline Entities on the Premises during the Term. Maintenance frequencies for any such air pollution control equipment shall be established by Airline in a reasonable manner in accordance with industry standards, the provisions of applicable air permits and applicable Environmental Laws to ensure effective operation of such equipment and to prevent failures of such equipment that could result in the emission of pollutants in violation of any applicable Environmental Laws. Airline shall ensure that environmental records required are maintained in accordance with Environmental Laws and made available to Authority upon request. Airline shall remove and properly dispose of any Regulated Materials and Pollutants in such air pollution control equipment operated by Airline prior to vacating the Premises, except when such equipment itself and any Regulated Materials and Pollutants contained therein are removed from the Airport.

23.1.8 If Airline or Airline Entities cause, unlawfully allow or contribute to a Release of a Regulated Materials and Pollutants at the Airport that is in violation of any applicable Environmental Laws or that is above any applicable reportable quantity, emission standard or effluent guideline set forth in any applicable Environmental Laws, Airline shall report such Release to the appropriate governmental authorities in compliance with applicable Environmental Laws. Airline shall ensure that Airline Entities report any Release that is in violation of any applicable Environmental Laws or that is above any applicable reportable quantity, emission standard or effluent guideline set forth in any applicable Environmental Laws to the appropriate governmental authorities, in compliance with applicable Environmental Laws, if the operations of the Airline Entity cause, unlawfully allow or contribute to a Release of a Regulated Materials and Pollutants that is in violation of any applicable Environmental Laws or that is above any reportable quantity set forth in any applicable Environmental Laws.

23.1.9 Airline acknowledges that Authority is subject to certain NPDES permits, state and federal storm water regulations, federal and state effluent limitation guidelines, and San Diego Metropolitan Wastewater Department standards for operations at the Airport. Airline shall conduct operations and activities at the Airport, including but not limited to de-icing, anti-icing, and construction, and shall ensure that Airline Entities conduct operations and activities at the Airport in compliance with applicable Environmental Laws. Airline acknowledges that its reasonable cooperation is necessary to ensure Airport’s compliance with any applicable NPDES
storm water permits and effluent limitation guidelines under Environmental Laws. Airline further acknowledges that reasonable cooperation may include the preparation and submittal of a written site-specific SWPPP at the request of the Authority. Airline shall not seek NPDES coverage under a separate mechanism unless so directed by Authority or if Environmental Laws require separate coverage. Airline further acknowledges that any effluent limitation guidelines in any NPDES storm water discharge permit issued to Authority and timely provided to Airline are incorporated by reference into this Agreement to the extent such guidelines affect Airline’s operations at or use of the Airport or operations or activities conducted on its behalf at the Airport. Authority shall provide advance notice to Airline of and a reasonable opportunity to comment on, and shall otherwise endeavor to negotiate reasonable and cost effective terms and conditions of, any permits issued to Authority which may affect Airline’s operations at or use of the Airport or operations or activities conducted on its behalf at the Airport, or which may necessitate Airline’s reasonable cooperation to assure Authority’s compliance therewith.

23.1.10 Airline and each Airline Entity shall be responsible for preparation and implementation of any Spill Prevention, Control, and Countermeasures (SPCC) Plans and/or Facility Response Plan (FRP) in accordance with 40 CFR Part 112, as applicable to the Airline’s or Airline Entity’s use of the Premises or Airport.

23.1.11 Airline and Airline Entities shall cooperate with Authority, as reasonably requested from time to time by Authority, to ensure that Airline’s and Airline Entities’ operations at, or use of, the Airport will not unreasonably interfere with Authority’s implementation of its San Diego International Airport Wildlife Hazard Management Plan to reduce wildlife hazards at the Airport.

23.1.12 Any fixed tanks, pumps, chemical or Regulated Materials and Pollutants containers, pipelines, lines, and equipment or other such fixtures installed by or on behalf of Airline or an Airline Entity shall remain the property of Airline or the Airline Entity, and ownership of, or responsibility for, such equipment shall not pass to Authority, except pursuant to the agreement of Authority and Airline or Airline Entity. No such equipment shall be installed without the written consent of Authority.

23.1.13 Airline understands and acknowledges that Authority’s future capital projects at the Airport may require review or approval by the FAA, the United States Environmental Protection Agency (“USEPA”), the California Environmental Protection Agency (“Cal-EPA”), or the California Coastal Commission pursuant to requirements imposed upon the Airport or the Authority. If requested by the Authority, Airline shall, and shall cause Airline Entities to, reasonably cooperate with the Authority in its preparation of such submittals as are required of the Authority by FAA, USEPA, Cal-EPA, the California Coastal Commission or their successor agencies, in connection with Airline’s future capital projects or in connection with the Authority’s capital projects at the Airport which benefit Airline.

23.1.14 Airline, prior to vacating or surrendering any portion of its Premises for any reason, shall:
(a) with respect to any Regulated Materials and Pollutants on the
Premises for which it is responsible under Section 23.4, Airline shall demonstrate compliance with
Section 23.5 and all other provisions of this Article;

(b) remove and dispose of any and all trash, debris, or garbage generated
by Airline or Airline Entities;

(c) remove any and all above-ground containers and non-permanent
structural controls owned by Airline or Airline Entities, including, but not limited to, removable
filters, grates and above-ground tanks located on Airline’s Premises, unless Airline and Authority
agree otherwise; and

(d) comply with applicable Environmental Laws regarding the closing
or removal from service of any underground or aboveground tanks, vessels, and containers
operated or owned by Airline or Airline Entities and located on Airline’s Premises, provided,
however, that Airline shall have no such obligation with respect to any airport hydrant fuel system
maintained by an airport fueling consortium.

23.2 Right of Entry to Perform Environmental Inspections and Sampling

23.2.1 Authority and its contractors and other agents shall have the full right to
enter any part of the Premises, at all reasonable times and in Authority's sole discretion, for the
purpose of conducting an inspection, assessment, investigation, or compliance audit of Airline’s
operations thereon, or any other party’s use and operations, including operations of Airline
Entities. As needed following an unauthorized Release of Regulated Materials or Pollutants, or
other reasonable basis, Authority and its authorized agents may, at Authority’s expense, take
samples and perform tests, including but not limited to soil borings, ground water monitoring, and
collection of samples of air, soil, surface water and ground water. In order to minimize undue
interference with Airline’s operations, Authority will provide seventy-two (72) hours’ advance
written notice of any Authority inspection, assessment, investigation, or compliance audit of
Airline’s operations thereon, or any other party’s use and operations, including operations of any
Airline Entity or intrusive Authority sampling to Airline, except in emergencies, when advance
notice shall not be required. Airline shall have the right to accompany Authority when any such
inspection or sampling is performed, provided that Authority is not required to unreasonably delay
its inspection or sampling to enable Airline to be present. Airline shall have the right to obtain, at
Airline’s expense, split samples and Authority shall promptly provide copies of all analytical
results of such sampling, including any non-privileged reports.

23.2.2 Airline shall cooperate, and shall ensure that Airline Entities cooperate, in
allowing prompt, reasonable access to Authority to conduct such inspection, assessment, audit,
sampling, or tests. In the exercise of its rights under this Section 23.2, Authority shall not
unreasonably interfere with the authorized use and occupancy of the Premises by Airline or Airline
Entities. Airline remains solely responsible for its environmental, health, and safety compliance,
notwithstanding any Authority inspection, audit, or assessment.

23.2.3 Airline shall be provided the opportunity to review and comment on the
report of the audit results prior to finalization. In the event a compliance audit shall disclose any
violation of this Agreement by Airline or an Airline Entity, Airline shall pay all reasonable costs associated with the compliance audit. Airline shall promptly correct any deficiencies resulting from its non-compliance with this Agreement as identified in the final audit report.

23.3 **Information to be Provided to Authority**

23.3.1 If Airline or an Airline Entity receives any written notice, citation, order, warning, complaint, claim or demand from a government entity regarding Airline's or an Airline Entity’s use of, or operations at, the Premises during the Term or other property at the Airport used by Airline pursuant to this Agreement that is not legally privileged, made confidential by Applicable Laws, or protected as trade secrets:

(a) concerning any alleged Release of a Regulated Materials and Pollutants by Airline or by Airline Entities; or

(b) alleging Environmental Damages attributable to Airline or any Airline Entity or alleging that Airline or any Airline Entity is, or may be, in violation of any Environmental Laws; or

(c) asserting that Airline or any Airline Entity is liable for the cost of investigation or remediation of a Release;

Airline shall promptly, but not later than five (5) business days after Airline's or an Airline Entity’s receipt, inform Authority in writing of same, including a copy of such notice received by Airline.

23.3.2 Unless waived by Authority in writing, Airline shall simultaneously provide to Authority copies of an Airline or an Airline Entity’s submittals of any non-privileged reports or notices required under Environmental Laws to any governmental agency regarding:

(a) Airline’s or Airline Entities’ alleged failure to comply with any Environmental Laws at the Premises or other property at the Airport used by Airline pursuant to this Agreement, or

(b) any Release arising out of the past or present operations at or use of the Premises or other property at the Airport used by Airline or Airline Entities pursuant to this Agreement.

23.3.3 In connection with any matter arising under Section 23.3.1 above, Airline shall make available, within ten (10) business days of Airline’s receipt of Authority’s written request, subject to document retention requirements provided by Applicable Laws, the non-privileged documents that Airline has submitted to any governmental agency pertaining to the environmental compliance status of Airline’s or an Airline Entity’s operations at or use of the Premises or other property at Airport used pursuant to this Agreement by Airline or an Airline Entity, including without limitation any and all non-privileged records, permits, permit applications, test results, sample results, written or electronic documentation, studies, or other documentation regarding environmental conditions or relating to the presence, use, storage, control, disposal, or treatment of any Regulated Materials and Pollutants by Airline or Airline Entities at the Airport used by Airline or an Airline Entity pursuant to this Agreement.
23.3.4 Within 30 days of request from Authority, Airline shall provide Authority with (a) a copy of any application filed with the previous 12-month period from the date of the request for a permit, if required, for use or storage of Regulated Materials and Pollutants on the Airport from any governmental agency responsible for enforcement of applicable Environmental Laws; and b) a copy of any permit received from such agency in response to such application; and (c) any reports made within the previous 12-month period from the date of the request by Airline or Airline Entity to any environmental agency arising out of or in connection with any Regulated Materials and Pollutants or pursuant to any Environmental Laws or permits on or about the Premises.

23.4 Airline’s Environmental Response and Compliance Obligations

23.4.1 Without limiting the indemnity obligations of Section 23.7, if, during the Term, Airline or any Airline Entities causes, unlawfully allows or contributes to a Release of Regulated Materials and Pollutants that is in violation of any applicable Environmental Laws or that is above any applicable reportable quantity, emission standard or effluent guideline set forth in an applicable Environmental Laws, at any portion of the Airport or adjacent waters, in connection with their operations at the Premises or at other property at the Airport used by Airline pursuant to this Agreement, Airline shall perform or shall cause to be performed, consistent with the provisions of Section 23.5, the following:

(a) notify Authority of such Release as required by and in accordance with the Airport Rules and Regulations and applicable Environmental Laws;

(b) report such Release to appropriate governmental agencies as required by and in accordance with applicable Environmental Laws;

(c) promptly Respond to the Release of a Regulated Materials and Pollutants, as required by applicable Environmental Laws;

(d) promptly take all further actions required under Environmental Laws to abate any threat to human health or the environment;

(e) promptly undertake any further removals, remediation, or corrective actions as are required by Environmental Laws or a governmental agency exercising its authorized regulatory jurisdiction under Environmental Laws, to remedy any such Release of a Regulated Materials and Pollutants, and any resulting impacts; and

(f) if applicable, and to the extent feasible, promptly obtain documentation of the approval of the closure of such Release from the governmental agency(ies) with regulatory jurisdiction as such may be issued under Environmental Laws, and provide such documentation to Authority.

23.4.2 Any remedial or other activity undertaken by Airline under this Article shall not be construed to impair Airline’s rights, if any, to seek contribution or indemnity from any person, consistent with the terms and limitations of this Agreement, including Section 23.7, below.
23.4.3 Airline shall not be responsible under this Section 23.4 for a Release to the extent caused by another Air Carrier that Authority has compelled Airline to accommodate pursuant to Article 4.

23.5 **Investigation, Remediation, or Corrective Action Process**

23.5.1 Before commencing any subsurface soil, surface water, storm water, or groundwater investigations, removals, remediation, or corrective actions that Airline or an Airline Entity are required to perform at the Airport under this Agreement, including any such actions mandated in Section 23.4, and except for immediate removal actions required by Environmental Laws and otherwise undertaken pursuant to Section 23.4, Airline shall promptly provide any proposed plans for such investigations, removals, remediation, or corrective actions to Authority for approval in accordance with applicable Environmental Laws, which approval shall not be unreasonably withheld, delayed or conditioned. The work shall be performed in a diligent manner consistent with the time(s) prescribed by Environmental Laws and relevant governmental authorities and at Airline's expense, and Authority shall have the right to review and inspect all such work at any time using consultants and representatives of Authority’s choice, at Authority’s expense. Specific cleanup levels for any environmental removals, remediation or corrective actions shall comply with applicable Environmental Laws, with remediation standards being applied to such actions consistent with the use of the Airport for such purposes, including Planned Uses. Airline may also utilize institutional controls and other engineered barriers as part of any removals, remediation or corrective actions to the extent authorized by Environmental Laws and approved by Authority in writing, which shall not be unreasonably withheld, delayed or conditioned. Airline shall, at Airline’s own cost and expense, have all tests performed, and reports and studies prepared, and shall provide such information to any governmental agency as may be required by applicable Environmental Laws, with a copy simultaneously provided to Authority. This obligation includes but is not limited to any requirements for a site characterization, site assessment, remediation objectives report, remedial action plan, and remedial action completion report that may be necessary to comply with applicable Environmental Laws.

23.5.2 If during the Term Authority Authority’s Planned Uses of any portion of the Premises or Airport for which Airline has conducted investigations, removals, remediation, or corrective actions and which, pursuant to Environmental Laws, require additional investigations, removals, remediation, or corrective actions to accommodate Planned Uses, the costs of any such additional investigations, removals, remediation, or corrective actions necessary to make such portion of the Premises or Airport suitable for any such Planned Uses shall be included in Airfield Cost Center and recovered through the Landing Fee.

23.6 **Authority’s Rights to Ensure Airline’s Compliance with Environmental Response and Compliance Obligations.**

23.6.1 If, as is reasonably determined by Authority, Airline or any Airline Entities or any third party under their direction or control:

(a) do not take appropriate Response actions required by applicable Environmental Laws in response to a Release for which it is responsible under Section 23.4, within the time(s) prescribed by such Environmental Laws and relevant governmental authorities; or
(b) do not perform or complete reporting, notifications, investigations, removals, remediation, corrective actions, or closure actions for which it is required under Section 23.4 within the time(s) prescribed by applicable Environmental Laws and relevant governmental authorities, or within the time reasonably necessary to enable Authority to meet its obligations under Environmental Laws (subject to the condition that, in the case of both Sections 23.6.1(a) above and this 23.6.1(b), then

Authority shall first provide reasonable advance written notice to Airline of Airline’s failure to comply with such obligations and a reasonable opportunity for Airline to cure such failure to comply by Airline initiating or recommencing any such actions consistent with required schedules (including exercising its legal right to reasonably and in good faith challenge such alleged obligation to comply), but in any event not less than forty-five (45) days, except in emergency circumstances in which such advance notice is not possible, then Authority or its authorized contractor, in addition to its rights and remedies described elsewhere in this Agreement and otherwise available at law, in equity, or otherwise, may, at its election, upon reasonable notice, enter the affected area, and take whatever action Authority reasonably deems necessary to meet Airline’s obligations under Environmental Laws, within the time required under such Environmental Laws, consistent with the requirements of Section 23.4. In addition to notice and opportunity to cure as set forth in this Section 23.6.1, Authority shall provide Airline with its plan to perform such work for Airline’s review and comment at least seven (7) business days before the commencement of such work, which comments shall be reasonably considered by Authority, except in emergency circumstances where such advance notice is not possible. Such action taken by Authority consistent with the requirements of this Agreement shall be at Airline’s expense plus administrative expenses of the greater of Five Hundred Dollars ($500.00) or fifteen percent (15%) of all costs incurred by Authority, including but not limited to reasonable attorneys’ and consultants’ fees and expenses, monetary fines and penalties, litigation costs or costs incurred in anticipation of litigation, expert witness fees, and expenses of investigation, removal, remediation, or other required plan, report, or Response action performed in accordance with applicable Environmental Laws.

23.6.2 [Reserved].

23.6.3 In the event that (a) a Release in violation of Environmental Laws which occurred prior to the Effective Date is encountered in any portion of the Airfield Area or Premises or (b) the Authority cannot identify with commercially reasonable effort any of the parties causing, unlawfully allowing, contributing to or responsible for a Release at or from the Airport requiring the completion of appropriate Response actions as provided in Section 23.4.1, then Authority may take actions to report, repair, contain, investigate, remove, correct or remediate such Release. The costs incurred by the Authority to undertake such work, shall be allocated by Authority to the Airfield Area and recovered through the Landing Fee.

23.6.4 Nothing in this Section 23.6 is intended or shall be construed so as to prevent Authority or Airline from exercising, in their reasonable discretion, any rights granted or available elsewhere in this Article, in this Agreement, or by law, including without limitation Authority’s right to require Airline to take actions to report, repair, contain, investigate, remove, correct or remediate a Release that is subject to Section 23.6.3 or seek contribution from Airline or an Airline Entity for any activities undertaken by the Authority under Section 23.6.3, or
Airline’s right to challenge any request by any government authority or Authority to perform any of the actions identified in this Article under applicable Environmental Laws. Additionally, nothing in this Agreement shall relieve Airline or Authority of any obligations, or operate as a waiver by Airline or Authority of any respective rights, under the 2013 AOLA or any other agreement between Airline and Authority except that Airline shall have no right to recover from Authority any costs incurred by the Authority and recovered from Airline through Landing Fees under Section 23.6.3.

23.6.5 Nothing in this AOLA shall limit any of the responsibilities or obligations of SAN Fuel, any other airline consortium, or any other third party leasing any portion of the Fuel System at the Airport, including without limitation any responsibilities or obligations to undertake a Response.

23.7 **Environmental Indemnification and Reimbursement.**

23.7.1 Notwithstanding any other provision to the contrary, Airline agrees to indemnify, defend, and hold harmless Authority, its past and present elected and appointed officials, officers, agents and employees (“Environmental Indemnitees”), from and against any and all Environmental Damages resulting from:

(a) the breach by Airline of any representation or warranty made in this Article; or

(b) the failure of Airline to meet its obligations under this Article, whether caused or unlawfully allowed by Airline, an Airline Entity, or any other third party under Airline’s direction or control; or

(c) documented loss by any Environmental Indemnitee(s) from any Environmental Damages, to the extent caused, unlawfully allowed or contributed to by the unauthorized Release of a Regulated Materials and Pollutants by Airline or by an Airline Entity or the failure of Airline or any Airline Entity to comply with applicable Environmental Laws in connection with the operations of Airline or Airline Entities at the Airport used by Airline pursuant to this Agreement, during the Term; in each case, except to the extent arising out of the sole active negligence or willful misconduct of the Environmental Indemnitees.

23.7.2 Authority shall provide Airline with prompt notice of any Environmental Damages to allow Airline the opportunity to properly and effectively respond to or otherwise defend such Environmental Damages. Airline shall, at its own cost and expense, defend all Environmental Damages whether frivolous or not. In the event Authority undertakes any action, including, but not limited to, investigations, removals, remediation, or corrective actions with respect to any Environmental Damages in response to the failure of Airline to defend such Environmental Damages as required under this Agreement, Airline shall reimburse Authority, upon written demand by Authority, for all reasonable and documented costs that Authority incurs in association with such action, including but not limited to consultants’ fees, contractors’ fees, reasonable attorneys’ fees and expenses of investigation, removal, Response, remediation, or corrective action.
23.7.3 Except to the extent arising out of the sole active negligence or willful misconduct of the Environmental Indemnitees, Airline waives the right of contribution and subrogation against the Environmental Indemnitees in connection with Environmental Damages set forth in Sections 23.7.1 and 23.7.2, above.

23.7.4 Regardless of the date of termination of this Agreement, the indemnifying party's representations, obligations and liabilities under this Article shall continue as long as the Environmental Indemnitees bears any liability or responsibility under this Article or the Environmental Laws.

23.7.5 Any claims for environmental matters shall be subject to this Section 23.7 and shall not be subject to the general indemnity provision of Section 16.1 in this Agreement.

23.8 **Environmental Disclosures.** Airline hereby acknowledges that excavation of soils from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together “Regulated Waste Removal”). Authority takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal associated with any project undertaken by Airline or an Airline Entity. Accordingly, Airline hereby waives any Claim, or potential Claim, it may have against the Authority to recover costs or expenses arising out of or associated with Regulated Waste Removal associated with any project undertaken by Airline and agrees to indemnify, defend and hold harmless Authority from and against any and all Claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal associated with any project undertaken by Airline or an Airline Entity. Authority accepts no liability or responsibility for ensuring that Airline’s or Airline Entity’s workers, including without limitation those conducting testing, construction and maintenance activities on the Premises, are satisfactorily protected from residual contaminants in accordance with 29 Code of Federal Regulations Part 1926 (Safety and Health Regulations for Construction). Airline hereby waives any Claim, or potential Claim, it may have against the Authority to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual Regulated Materials and Pollutants contamination at the Premises and agrees to indemnify, defend and hold harmless Authority from and against any and all such Claims, liabilities, losses, damages, costs, and expenses.

23.9 **Initial Walk-Through.** Prior to Airline’s initial occupancy (as of the Effective Date or later) of, use of, or operations at the Premises, Authority shall have the opportunity to perform, at its own expense, an Initial Walk-Through of the Premises regarding the environmental condition of the Premises and their state of compliance with Environmental Laws and produce an Initial Walk-Through report. Authority shall provide Airline with an opportunity to participate in any such Initial Walk-Through and review and comment upon the conclusions and findings of the Initial Walk-Through report.

23.10 **Concluding Environmental Site Inspection.** At least ninety (90) days prior to vacating or surrendering the Premises or any portion of them for any reason, Airline shall provide Authority with access to perform a Concluding Walk-Through in order to determine the environmental condition of the Premises or that part of the Premises being vacated, and their state of compliance with the requirements of Section 23.1.14. Authority shall provide Airline with an opportunity to participate in the Concluding Walk-Through. If the Concluding Walk-Through
reveals that Airline has not removed all trash, containers, tanks, structures, debris, residue, and other items and materials for which Airline or anyon e operating on its behalf is responsible as required by Section 23.1.14, or has otherwise failed to comply with the requirements of Section 23.1.14, Authority will share its Concluding Walk-Through report and any relevant photographs with Airline. Airline will remove or correct any items to the extent not in compliance with the requirements of this Agreement within five (5) business days of receipt of said report and photographs or such longer period of time as reasonably requested by Airline to perform the corrective actions but no longer than six (6) months. Airline shall leave facilities and equipment being surrendered or vacated by Airline in a state of good repair. However, tanks, structures and other items and materials owned by Airline may revert to Authority upon agreement of Airline with Authority accepting such tanks, structures and other items and materials in an “as is, where is” condition.

23.11 [Reserved].

23.12 Reporting Requirements. Each year Airline shall provide, in a manner prescribed by Authority, environmental data that includes: a vehicle and GSE inventory (including type, age, fuel type); amount of landfilled waste disposal and recyclable materials recycled, if disposed or recycled outside the airport-wide waste management program; and other key metrics as defined by Authority.

23.13 Sustainable Aviation Fuels. Airline shall cooperate with the Authority to evaluate the use of sustainable aviation biofuel sources at the Airport, and evaluate measures and policies adopted at other airports in the United States, in compliance with Applicable Laws applicable to storage, sale, delivery, and dispensing of such fuels.


Unless specifically stated elsewhere herein, the provisions of this Article, including the representations, warranties, covenants and indemnities of Airline, are intended to and shall survive termination of this Agreement.

Article 24

MISCELLANEOUS PROVISIONS

24.1 Governing Law and Venue. This Agreement has been entered into and shall be governed by, construed and interpreted in accordance with the laws of the State of California. Venue of any action brought under this Agreement shall be vested in the state courts of California in the County of San Diego or if federal jurisdiction is appropriate, in the United States District Court in the Southern District of California.

24.2 Agent for Service of Process and Alternative Service. It is expressly agreed and understood that if Airline is not a resident of the state of California, or is a partnership or joint venture without a partner or member resident in California, or is a foreign corporation, then Airline shall designate the California Secretary of State as its agent for the purpose of service of process in any court action or other litigation between it and Authority arising out of or based upon this Agreement. Service shall be made as provided by the laws of the state of California for service
upon a nonresident and a copy of such service of process shall also be delivered to Airline’s address for notices provided in Section 1.1. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, Airline may be served personally with such process out of this State by mailing, by registered or certified mail, the complaint and process to Airline at the address specified in Section 1.1, and that such service shall constitute valid service upon Airline as of the date of mailing, and Airline shall have thirty (30) days from the date of mailing to respond. It is further expressly agreed that Airline is amenable, and hereby agree, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

24.3 Entire Understanding. This Agreement contains the entire and only understanding and agreement of Authority and Airline, which by accepting this Agreement, acknowledge that there is no other written or oral understanding or agreement between them with respect to the subject matter of this Agreement and that this Agreement supersedes all prior negotiations, discussions, obligations and rights of Authority and Airline. No waiver, modification, amendment or alteration of this Agreement shall be valid unless it is expressed in writing and signed by authorized representatives of Airline and Authority. Airline and Authority acknowledge that no other party, nor any agent or attorney of any other party, has made any promise, representation, waiver or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Agreement and further acknowledge that this Agreement was not executed in reliance upon any collateral promise, representation, waiver or warranty, or in reliance upon any belief as to any fact not expressly recited in this Agreement.

24.4 Amendments.

Except as specifically provided herein, neither this Agreement, nor any of its terms or provisions, may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought.

24.5 Cumulative Rights. Each right of Authority and Airline is cumulative and is in addition to every other legal right that the party may have in the event of any default by the other.

24.6 Construction to Save Agreement. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and in no way shall be affected, impaired, or invalidated thereby. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

24.7 No Waiver. No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed or operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party. No failure on the part of either party to require or exact full and complete compliance by the other party with any of the covenants,
conditions, or agreements of this Agreement be construed in any manner as a change in or to the terms of this Agreement or prevent the enforcement in full of any provisions.

24.8 **Relationship of Parties.** Nothing in this Agreement shall be deemed or construed by Authority or Airline, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between Authority and Airline. No provision in this Agreement, including without limitation the method of computing Airline Rents, Fees and Charges and no act of Authority or Airline create a relationship other than the relationship of landlord and tenant.

24.9 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement other than as specifically and expressly provided in this Agreement.

24.10 **[RESERVED].**

24.11 **Successors and Assigns.** All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of each party to this Agreement.

24.12 **Prohibition of Gifts.** Airline is familiar with Authority's prohibition against the acceptance of any gift by an Authority officer or employee, which prohibition is found in Article 2 of Authority's Code, and as it may be amended from time to time. Airline agrees not to offer any Authority officer or employee any gift prohibited by Article 2 of the Authority’s Code and agrees to abide by all laws applicable to it with respect to the making or offering of gifts or things of value to Authority officers or employees.

24.13 **Labor Disputes.** Airline agrees to use commercially reasonable efforts to avoid disruption to Authority, its tenants or members of the public arising from labor disputes involving Airline, and in the event of a strike, picketing, demonstration or other labor difficulty involving Airline, to use its good offices, including the utilization of available legal remedies, to minimize or eliminate any disruption to Authority, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

24.14 **Force Majeure.** If either party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor disputes (all of which shall be subject to Section 24.13), inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, terrorism, war, fire or other casualty, or other reason of a similar nature beyond the reasonable control of the party delayed in performing work or doing acts required under this Agreement, performance of such act shall be excused for the period of the actual delay attributable to such causes, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay is herein referred to as an “Unavoidable Delay”). This Section 24.14 shall not be applicable to Airline’s obligations to procure insurance or to pay Airline Fees and Charges, or any other sums, moneys, costs, charges or expenses required to be paid by Airline. If any provision of this Agreement negates or limits the period of any force majeure or Unavoidable Delay extension, such provision shall override this Section 24.14. Airline shall give Authority
notice of any Unavoidable Delay within a reasonable time (not to exceed one (1) year) following the occurrence of the delaying event.

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

24.16 **Acceptance of Payments.** The subsequent acceptance of payments hereunder by Authority from Airline shall not be deemed to be a waiver of any preceding breach by Airline of any term, covenant, or condition of this Agreement, other than the failure of Airline to pay the particular fees or rent so accepted, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such landing fees and/or rent.

24.17 **Attorneys’ Fees.**

24.17.1 If Authority shall, without any fault, be made a party to any litigation commenced by or against Airline arising out of Airline’s use or enjoyment of Airport or the Premises and as a result of which Airline is finally adjudicated to be liable, then Airline shall pay all costs and reasonable attorneys’ fees incurred by or imposed upon Authority in connection with such litigation.

24.17.2 In any action by Authority or Airline against the other for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants or conditions contained herein, the prevailing party shall be entitled to reasonable attorneys’ fees in addition to costs and necessary disbursements incurred in such action. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

24.18 **Easements.**

24.18.1 **Agreement Subject to Easements.** This Agreement and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by Authority (and its legal predecessors in interest) in, to, or over the Premises covered by this Agreement for any purpose whatsoever and shall be subject to such future rights-of-way for reasonable access, sewers, pipelines, conduits, and such underground telephone, telegraph, light, heat, communication or power lines, as may from time to time be determined by Authority to be in the best interests of the development of Authority property.

24.18.2 **Minimum Interference.** Authority agrees that future easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Airline, to the extent practicable. Other than as provided for in Section 3.2 (Demolition, Reconstruction, or Relocation) Airline shall not be entitled to any monetary payment or other remuneration for any such future easements.

24.19 **Taxes.**

24.19.1 This Agreement may result in or create a taxable possessory interest and be subject to the payment of property taxes.
24.19.2 Airline shall be liable for, and shall pay throughout the Term, all taxes payable for, or on account of: (a) the activities conducted by Airline on the Airport; (b) all taxes, if any, on the personal property of Airline on or at the Premises; (c) taxes, if any, on any property interest of Airline in the Premises created by this Agreement; (d) any taxes levied in lieu of a tax on any such property interest; and (e) any sales, use, or other taxes levied on, or measured by, the Airline Rent, Fees and Charges and any other fees and charges payable under this Agreement, whether imposed on Airline or on Authority.

24.19.3 Airline shall reimburse Authority for all such taxes paid or payable by Authority. With respect to any such taxes payable by Authority that are levied on, or measured by, the Airline Rent, Fees and Charges or any other fees or charges payable under this Agreement, Airline shall pay to Authority with each payment an amount equal to the tax levied on, or measured by, that particular payment. All other tax amounts for which Authority is or will be entitled to reimbursement from Airline shall be payable by Airline to Authority at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided that Airline shall be entitled to a minimum of ten (10) days’ written notice of the amounts payable by Airline.

24.19.4 Airline may contest, in its own name or the name of Authority, the validity or amount of any tax it shall be required to pay to a taxing entity; provided, however, that Airline shall defend, indemnify and hold Authority harmless from all liability and expense arising from such contest, which obligations shall survive expiration or earlier termination of this Agreement and shall provide security satisfactory to Authority for its performance of such indemnification obligation. Airline shall not permit a lien or encumbrance to attach to the Premises or the Airport by reason of any failure to pay taxes.

24.20 Liens and Encumbrances.

24.20.1 Airline shall keep the Premises free and clear of any liens and encumbrances arising or growing out of Airline’s use and occupancy of the Premises or activities at the Airport. Airline agrees that it will at all times indemnify, defend and hold harmless Authority from and against all claims, encumbrances, stop notices, levies and liens (“Indemnified Lien Claims”) for labor, services, or materials in connection with improvements, repairs, or alterations made by Airline or its subtenants, contractors, and agents on the Premises, and for the costs of defending against such claims, including reasonable attorney's fees and court costs. The indemnification and other obligations under this Section 24.20 shall survive expiration or earlier termination of this Agreement.

24.20.2 In the event that any Indemnified Lien Claim caused by Airline or its subtenants, contractors, and agents, is filed against the Premises or the leasehold interests of Airline therein, Airline shall, upon written request of Authority, make immediate payment in full of all claims upon which said claim has been filed. In the event Airline contests the Indemnified Lien Claim, Airline shall deposit with Authority a bond conditioned for the payment in full of all claims upon which said claim has been filed. Such surety bond shall be acknowledged by Airline as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Authority shall have the right to declare this Agreement in default in the event the bond required by this
Article has not been deposited with Authority within ten (10) days after written request has been delivered to Airline.

24.20.3 This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if it has been consented to by Authority as provided in this Agreement.

24.21 Depreciation and Investment Credit. Neither Airline nor any successor of Airline under this Agreement may claim depreciation or an investment credit under the Internal Revenue Code of 1954, as amended, with respect to Authority-owned improvements in the Premises, the Terminal or other leased facilities. Airline represents that it has made an election under Proposed Treasury Regulations §1.103(n)-1T through §1.103(n)-6T not to claim such depreciation or investment credit with respect to such Authority-owned improvements in the Premises or other leased facilities and agrees that it will retain copies of said election in its records. Authority acknowledges receipt of a copy of said election and agrees that it will retain copies of said election in its records.

24.22 Memorandum of Lease. In the event that Authority so requests, Airline shall execute, attest, acknowledge, and deliver for recording with the Recorder of San Diego County a short form Memorandum of Lease of this Agreement.

24.23 Approval or Consent. Whenever consent or approval is required herein by either party to the other, such consent or approval shall not be unreasonably withheld, conditioned, or delayed.

24.24 Time of the Essence. Time is of the essence of this Agreement and of each and all of its terms, conditions, covenants and provisions.

24.25 Notices.

All notices and payments under this Agreement may be delivered or mailed. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received at the Street Addresses listed in Article 1. If mailed or sent via overnight courier, they shall be sent to Authority’s Overnight Delivery and Street Address and Airline’s Overnight Delivery and Street Address as provided in Article 1, respectively, or to such other respective addresses as either party may from time to time designate to the other party in writing. All notices and payments mailed by regular mail (including first class) shall be deemed to have been given on the fifth business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. Notices delivered via courier or overnight courier shall be deemed to have been given upon arrival.

24.26 Counterparts.

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original copy of this Agreement and, when taken together, shall be deemed to be one and the same Agreement.
24.27 **Air Service Incentive Program.**

Subject to applicable federal laws and policies, and in order to enhance existing air service or attract new air service to the Airport, Authority reserves the right to adopt and implement one or more air service incentive programs. Each air service incentive program, if implemented, shall be offered to all eligible Air Carriers on a nondiscriminatory basis.

24.28 **Agreement Not to Grant More Favorable Terms.**

During the Term, Authority agrees not to enter into any lease, contract, or other agreement with any other Air Carrier conducting operations at the Airport that contains terms more favorable to such Air Carrier than the terms under this Agreement, unless Authority also makes those more favorable terms available to Airline. The provisions of this Section 24.28 shall be subject to Authority’s rights under Section 24.27 and shall in no way limit, impair, or interfere with Authority’s ability to establish terms as Authority may deem applicable or necessary when entering into any lease, contract, or other agreement with any party that is not an Air Carrier.

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Signature of Parties

It is an express condition of this Agreement that it shall not be complete, binding or effective until such time as it has been executed by the President/CEO on behalf of the Authority and by two duly authorized representatives of Airline.

APPROVED AS TO FORM

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

By: ________________________________
Amy Gonzalez
General Counsel

By: ________________________________
Kimberly J. Becker
President/CEO

ALASKA AIRLINES

By: ________________________________
Print Name: __________________________
Print Title: __________________________

By: ________________________________
Print Name: __________________________
Print Title: __________________________