

amount of any such monetary penalty or other damages, in addition to other penalties or remedies available to City under this Agreement.

Section 907 Compliance with Code Requirements. Airline shall promptly, at its sole expense, cause Airline's use of the Airport and operations therein to comply at all times with all applicable present and future federal, State and local laws, as the same may be amended from time to time, including all applicable laws relating to (a) health and safety, (b) disabled access, including the ADA and the ACAA, (c) the Code Requirements, and (d) the Airport Rules. (Airline's obligation to comply with Environmental Laws is set forth in Article 20.) Airline shall also promptly, at its sole expense, cause the Demised Premises and related equipment to comply with all applicable Code Requirements and Airport Rules to the extent such portions of the Demised Premises and/or equipment are deemed an Airline responsibility pursuant to Exhibit C attached hereto. The parties acknowledge and agree that such obligations are a material part of the bargained for consideration under this Agreement. Any work or installations made or performed by or on behalf of Airline or any person or entity claiming through or under Airline on the Demised Premises shall be subject to and performed in compliance with the provisions of this Agreement, including this Section. Airline shall keep current all licenses and permits, whether municipal, county, Airport, State or federal, required for conduct of its operations at Airport, and pay all fees promptly when due. Airline shall promptly upon reasonable request provide City with evidence of its compliance with any of the obligations required under this Section.

Section 908 Trash Removal. Airline shall at all times cause the Demised Premises and the areas around the Demised Premises to be clean, sightly and free from trash. Airline shall not store nor allow accumulation of trash or debris on the Demised Premises, nor use City's trash containers without Director's prior consent. Airline shall provide its own trash containers for its use. As provided in Section 1503, in the event that Airline fails to perform the aforementioned obligations, the Airport shall have the right to do so, at Airline's expense.

Section 909 Taxes. Airline recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Airline may be subject to the payment of property taxes levied on such interest. Airline further recognizes and understands that any Transfer permitted under this Agreement and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Airline shall pay all taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the real property interest hereby created and pay all other taxes, excises, licenses, permit charges and assessments based on Airline's usage of the Demised Premises, all of which shall be paid when the same become due and payable and before delinquency.

Airline shall report any Transfer, or any renewal or extension hereof, to the County of San Mateo Assessor within sixty (60) days after such Transfer, renewal or extension. Airline further agrees to provide such other information as may be requested by the City within sixty (60) days of said request to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests.

Section 910 Other Liens. Airline shall not permit or suffer any liens to be imposed upon the Airport or any part thereof, including without limitation, mechanics, materialmen's and tax liens, as a result of its activities without promptly discharging the same. Notwithstanding the foregoing, Airline may in good faith contest any such lien if Airline provides a bond in an amount and form acceptable to City in order to clear the record of any such liens. Airline shall assume the defense of and indemnify and hold City harmless against any and all liens and charges of any and every nature and kind which may at any time be imposed upon the Airport or any part thereof as a consequence of any act or omission of Airline or as a consequence of the existence of Airline's interest under this Agreement.

Section 911 Damage and Destruction.

A. Partial Damage. If any part of the Demised Premises shall be partially damaged by fire or other casualty, but these circumstances do not render the Demised Premises untenable as reasonably determined by City, the same shall be repaired, constructed or renovated to usable condition with due diligence by the parties as provided in Section 911(D) below.

B. Substantial Damage. If any part of the Demised Premises shall be so extensively damaged by fire or other casualty as to render any portion of the Demised Premises untenable, but capable of being repaired, as reasonably determined by City, the same shall be repaired to usable condition with due diligence by the parties as provided in Section 911(D). City shall use commercially reasonable efforts to provide Airline with comparable temporary alternative facilities sufficient to allow Airline to continue its operations while repairs are being completed, at a rental rate applicable to such alternative facilities; provided, however, that Airline shall not be required to lease more alternative space than was rendered untenable in accordance with this Section.

C. Destruction.

(i) If any part of the Demised Premises shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of the Demised Premises untenable and not economically feasible to repair, as reasonably determined by City, City shall notify Airline within a period of forty-five (45) days after the date of such damage of its decision whether said space should be reconstructed or replaced; provided, however, City shall be under no obligation to reconstruct or replace such premises.

(ii) If City elects to replace or reconstruct the affected Demised Premises, the same shall be replaced or reconstructed to usable condition with due diligence by the parties as provided in Section 911(D), and City shall use commercially reasonable efforts to provide Airline with comparable temporary alternative facilities sufficient to allow Airline to continue its operations while reconstruction or replacement facilities are being completed; provided, however, that Airline shall not be required to occupy and pay for more alternative space than was rendered untenable in accordance with this Section.

(iii) If City elects to not reconstruct or replace the damaged Demised Premises, City shall either relocate Airline pursuant to Section 210 above, or if no premises are

available to accomplish such relocation, amend this Agreement to remove the damaged facilities. City agrees to amend this Agreement effective as of the date of damage or destruction to reflect such changes, additions and deletions to the Demised Premises. If Airline is not relocated and, after amendment of this Agreement as to the damaged facilities, the remaining tenantable portion of the Demised Premises is not sufficient to maintain operations at the Airport, Airline may terminate this entire Agreement upon at least thirty (30) days advance notice given within sixty (60) days after receipt by Airline of notice of amendment of this Agreement as to the damaged facilities.

D. Allocation of Responsibility for Reconstruction.

(i) In the event any Alterations in the Exclusive Use Space or Preferential Use Space included in the Demised Premises are to be reconstructed or repaired following damage by any casualty described in Sections 911(A), (B) or (C) above. Airline shall repair such damage to its Alterations, at its sole cost and expense, and this Agreement shall continue in full force and effect. In the event such damage occurs to Alterations in Exclusive Use Space or Preferential Use Space that is open or available to the public, Airline shall use commercially reasonable efforts to cause such repair to be performed within ninety (90) days. If the damage occurs to Alterations in Exclusive Use Space or Preferential Use Space that is not open or available to the public, Airline shall use commercially reasonable efforts to cause such repair to be performed within one hundred and eighty (180) days.

(ii) In the event any improvements in the Joint Use Space included in the Demised Premises are to be reconstructed or repaired following damage by any casualty described in Sections 911(A), (B) or (C) above, such damage shall be repaired as follows: all Joint Use Space which is an Air Carrier's responsibility pursuant to Exhibit C hereof shall be repaired by the Air Carriers operating in such Joint Use Space, at their sole cost and expense; and all Joint Use Space which is City's responsibility pursuant to Exhibit C hereof shall be repaired by City.

(iii) Any replacement, repair or reconstruction not described in Section 911(D)(i) or (ii) shall be completed by City.

E. No Abatement of Rent; Airline's Remedies. If the Demised Premises is wholly or partially destroyed or damaged, Airline shall have no claim against City for any damage suffered by reason of any such damage, destruction, repair or restoration. Airline waives California Civil Code Sections 1932(2) and 1933(4) providing for termination of hiring upon destruction of the thing hired. In no event will Airline be entitled to an abatement of rent resulting from any damage, destruction, repair, or restoration described herein; provided, however, that Airline shall not be charged rent for both untenable Demised Premises and temporary alternative facilities.

F. Reporting of Damage to Airport Property. Neither Airline nor any Airline Entity shall destroy or cause to be destroyed, injure, deface, or disturb in any way, property of any nature on the Airport, nor willfully abandon any personal property on the Airport. If Airline or Airline Entity is aware of any injury, destruction, damage or disturbance of property on the Airport (regardless of responsibility therefor), Airline shall file a written report with City

describing the incident and damage within twenty four (24) hours after discovery, and, if such damage was caused by Airline or any Airline Entity, upon demand by the Director, shall reimburse the City for the full amount of such damage within sixty (60) days. Failure to file any written reports required by this Section shall constitute an Event of Default under this Agreement and a violation of Airport Rules subject to fines under Section 1507, as applicable.

Section 912 Condemnation/Eminent Domain.

A. If all or a substantial part of the Demised Premises shall be taken or condemned by any competent authority through exercise of its power of eminent domain or other authority justifying such taking, Airline may terminate this Agreement upon thirty (30) days' notice, and the rents, fees and charges in respect of the Demised Premises shall cease as of the date possession is taken by the taking authority, if City does not notify Airline in writing within sixty (60) days before the date of taking that it will provide Airline with mutually acceptable substitute facilities.

B. If a portion of the Demised Premises shall be so taken, Airline shall have the right, exercisable at its sole discretion, to request City to amend this Agreement to remove the Demised Premises so taken upon thirty (30) days' notice, if City does not notify Airline in writing within sixty (60) days before the date of taking that it will provide Airline with mutually acceptable substitute facilities.

C. City shall be entitled to all damages payable by reason of a taking, (including, but not limited to, any portion of such damages made for the value of the leasehold estate created by this Agreement and any Alterations), and Airline shall have no claim against City for the value of any unexpired term of this Agreement, provided that Airline may make a separate claim for compensation, and Airline shall receive any damages made specifically to Airline, for Airline's relocation expenses or the interruption of or damage to Airline's business or damage to Airline's movable personal property.

ARTICLE 10. RULES AND REGULATIONS

Section 1001 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 any and all reasonable rules, regulations, and laws, including, but not limited to, the Airport TI Guide, Airport Rules and Regulations, Airport Operation Bulletins and Airport Directives (collectively "Airport Rules"), as may be established by City, as the same may be amended from time to time, and to the provisions of this Agreement; provided that (a) Airport Rules must be reasonable, not unjustly discriminatory, and not in conflict with any federal, state or local laws or regulations, and (b) in the event that any Airport Rules conflicts with any term or provision of this Agreement, the Agreement shall prevail. Airline covenants and agrees that it will not violate or permit any Airline Entity to violate any such rules, regulations and laws. City 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. Nothing herein contained shall be deemed to prevent Airline from contesting in good faith any federal, State or local code, law, regulation, ordinance or rule, Airport Rules or any other rule or regulation of the City or Commission without being considered in breach of this Agreement so long as such contest is

diligently commenced and prosecuted by Airline.

ARTICLE 11. NO OTHER CHARGES, QUIET ENJOYMENT

Section 1101 No Other Charges.

A. Except as otherwise specifically provided herein or as the parties hereto may subsequently agree in writing, no charges, fees or tolls of any nature, direct or indirect (including, but not limited to, fuel flowage charges), shall be charged by Commission, directly or indirectly, against Airline or its passengers, employees, furnishers of services, or suppliers, for any of the premises, facilities, rights, licenses and privileges granted in this Agreement, or for the privilege of purchasing, selling, using, storing, withdrawing, handling, consuming, loading, unloading, or delivering any such personal property of Airline or its suppliers or for the privilege of transporting such personal property or persons to, from, or on the Airport.

B. Nothing in this Agreement shall preclude the Commission from imposing and using a PFC. Airline agrees to collect and remit PFCs to City as required by applicable law. Such PFC shall not be credited in any way to the West of Bayshore Cost Center.

Section 1102 Quiet Enjoyment. City represents that it has the right to lease said Demised Premises together with all the premises and facilities, easements, rights, licenses, and privileges herein granted, and has full power and authority to enter into this Agreement in respect thereof; and City further covenants that Airline shall peaceably have and enjoy said Demised Premises and the premises and facilities, easements, rights, licenses and privileges for the Term of this Agreement.

ARTICLE 12. LIMITED OBLIGATIONS, INDEMNITY, WAIVER AND INSURANCE

Section 1201 Limited Obligations of City. Any obligation or liability of City created by or arising out of this Agreement shall be payable solely out of the Revenues and other lawfully available moneys of the Airport, and shall not constitute a general obligation of City or a charge upon its general fund. This Agreement shall not obligate City to make any appropriation from its general fund for any payment due hereunder. No breach by City hereunder shall impose any pecuniary liability upon City, other than from Revenues, or be payable from or constitute a charge upon the general credit or against the taxing power of City.

Section 1202 Indemnity, Waiver.

A. Airline agrees to protect, defend, reimburse, indemnify and hold and save City and each City Entity, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney's fees) and causes of action of every kind and character, whether or not meritorious, against or incurred by City by reason of any damage to property or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever or any governmental agency, arising out of or incident to or in connection with the performance, non-performance or purported performance of Airline or any Airline Entity under this Agreement, or any breach of the terms of this Agreement by Airline or

any Airline Entity; Airline's or any Airline Entity's use or occupancy of the Demised Premises; or Airline's or any Airline Entity's negligent acts, omissions or operations hereunder; provided, however, that Airline shall not be so obligated to protect, defend, reimburse, indemnify and hold City free and harmless if the applicable claim, liability, expense, loss, cost, fine, damage or cause of action is caused (i) solely by the negligence or the willful misconduct of the City or any City Entity; (ii) by the existence of Hazardous Materials on the Demised Premises caused exclusively by a third party other than an Airline Entity; or (iii) by a Pre-Existing Condition provided that Airline demonstrates to City's reasonable satisfaction both that the Hazardous Materials constitute a Pre-Existing Condition and that Airline or other Airline Entity did not exacerbate the Pre-Existing Condition. Upon the filing by anyone of a claim with City for damages arising out of incidents for which Airline is obligated herein to indemnify and hold City harmless, City shall promptly notify Airline of such claim and, in the event that Airline does not settle or compromise such claim, Airline shall undertake the legal defense of such claim both on behalf of Airline and on behalf of City. It is specifically agreed, however, that City, at its option and at its own expense, may participate in the legal defense of such claim. Any final judgment against City from which no appeals remain for any cause for which Airline or Airline Entity is liable hereunder shall be conclusive against Airline or Airline Entity as to liability and amount upon the expiration of the time for appeal therefrom. Airline recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges that the terms and conditions of this Agreement constitute good and valuable consideration provided by City in support of this indemnification in accordance with laws of the State.

B. Airline, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action against City, its officers, or employees which it may have for damages to any property on, about, or related to the Airport, and for injuries or death to persons on, about, or related to the Airport, from any cause or causes arising during the term of this Agreement. By way of example and not limitation, Airline hereby waives any and all claims or causes of action which it may hereafter have against City, its officers, or employees (a) for loss, injury, or damage sustained by reason of any deficiency, impairment, and interruption of any water, electrical, gas, plumbing, air conditioning, ventilation, Information and Communications Technology, Shared Use Equipment or sewer service or system serving any portion of the Airport, or failure or interruption of any public or passenger conveniences; (b) for any loss, injury, or damage arising or resulting from any act or neglect or omission of any other tenant, subtenant, permittee, concessionaire, or occupant of the Airport, or any person who uses the Airport with authorization or permission of the City (City agrees to use commercially reasonable efforts to control tenants, subtenants, permittees, concessionaires, occupants, or Airport users to prevent loss, injury, or damage); and (c) for any loss or damage to the property of, or injury or damage to Airline, its officers, employees, agents, contractors, or any other person whomsoever, from any cause or causes arising at any time because of Airline's use or occupancy of the Demised Premises or of the Airport, or its operations thereon (City will use commercially reasonable efforts to control the activities of other users); and (d) for loss, injury, or damage sustained by reason of any act of terrorism. Nothing in this Section shall relieve City from liability to Airline caused solely and directly by the negligence or willful misconduct of City or a City Entity, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

C. The parties hereto expressly agree that no provision of this Section shall in any way limit, modify, diminish, or otherwise affect the rights, claims, suits, judgments, or causes of action that either party may at any time have (or have had) against the other party (whether for contribution, indemnity, or otherwise) arising out of, resulting from, or related to Airline's noise, smoke, or vibration.

D. This Section shall survive the termination of this Agreement as to claims arising during the Term thereof. Compliance with the insurance requirements of this Article 12 shall not relieve Airline of its liability or obligation to indemnify City as set forth in this Article 12.

Section 1203 Public Liability and Property Damage Insurance.

A. Airline, at its sole cost and expense, and for the full Term of this Agreement or any renewal thereof, shall obtain and maintain all of the following minimum insurance:

(i) An Aircraft Liability policy, with coverage of at least \$500 million combined single limit for bodily injury and property damage, which shall include but not necessarily be limited to all of the following coverages: Aircraft Liability, including General Liability, Aircraft Products and Completed Operations, Liquor Liability, Premises Liability, Products & Completed Operations, Contractual Liability, Hangarkeepers Liability, Motor Vehicle Liability within the secured side of the Airport, Cargo Legal Liability and Fueling and Refueling, if such operations are conducted by Airline.

(ii) At least \$100 million War and Named Perils coverage for bodily injury and property damage, each occurrence and annual aggregate, or the U.S. Government equivalent.

(iii) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State providing coverage for any and all employees of Airline and providing coverage as follows:

- (a) Workers' Compensation (Coverage A);
- (b) \$2 million in Employers' Liability (Coverage B);
- (c) Broad Form All States Endorsement;
- (d) Voluntary Compensation Endorsement; and
- (e) Waiver of Subrogation in favor of City.

(iv) A Commercial Business Auto policy with a minimum limit of not less than \$2 million combined single limit for bodily injury and property damage providing that coverages shall be applicable to any and all leased, owned, hired or non-owned vehicles used in pursuit of any of the activities associated with this Agreement. Any and all mobile equipment, including cranes, which is not covered under the Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy required above.

(v) Property Insurance in an amount equal to "Value of Airline Improvements and Betterments" during the course of construction and after completion. Coverage shall include Replacement Value, covering Airline improvements and betterments, for

Fire & Extended Coverage, including Sprinkler Leakage, Vandalism & Malicious Mischief, and Debris Removal.

B. Any deductibles or self-insured retentions must be disclosed to the City.

C. Except for U.S. government equivalent War and Named Perils coverage, Workers Compensation/Employer's Liability Insurance and Property Coverage, the insurance policies shall contain, or be endorsed to contain, the following provisions:

(i) City and its officials, employees, agents and contractors shall be covered as additional insureds to the extent of Airline's indemnity obligations under this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City, its officials, employees, agents and contractors.

(ii) Airline's insurance coverage shall be primary insurance with respect to City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials, employees, agents or contractors, shall be excess of Airline's insurance and shall not contribute with it.

D. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees, agents or contractors.

E. Coverage shall state that Airline's insurance shall apply separately to each insured against whom claim is made or suit is brought, except at the limits of the insurer's liability.

F. City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of City, the insurance provisions in this Agreement do not provide adequate protection for City and/or for members of the public, City may require Airline to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. City's requirements shall be commercially reasonable but shall be designed to assure protection from and against the kind and extent of risk which exists at the time a change in insurance is required (provided such protection is available on commercially reasonable terms), and Airline agrees to provide same within thirty (30) days of receiving notice from City.

G. Provisions of this paragraph as to 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 of any person or persons for which it is otherwise responsible.

H. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days prior written notice has been given to City (notwithstanding the foregoing, the notice period for War Risks and Named Allied Perils insurance may be seven (7) days or such lesser period as may be customarily available, and the notice period for cancellations due to non-payment of premium for the Property, Worker's Compensation/Employers Liability, and Commercial Business Auto policies shall be ten (10) days).

I. Insurance is to be placed with insurers reasonably acceptable to City's Risk Manager.

J. Airline shall furnish City with certificates of insurance, and "Additional Insured" endorsements where appropriate, as required by this clause. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

K. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Airport Risk Manager, with a copy to Airline's Property Manager at the address set forth in the Summary:

Airport Risk Manager
San Francisco International Airport
PO Box 8097
San Francisco, CA 94128
Fax: 650-821-5554

L. Airline shall either self-insure (by establishing reserves in accordance with accepted accounting practices) or procure and keep in force fire and extended coverage insurance upon its leasehold improvements located at the Airport, to the full replacement cost, insurable value thereof and shall furnish City, upon execution of this Agreement, with evidence that such self-insurance reserves have been established or such coverage has been procured and is being maintained in full force and effect. Said evidence of insurance shall be endorsed to require thirty (30) days written notice to City of cancellation or material change and to provide that any insurance carried by City be excess insurance only.

M. City and Airline agree to have all property insurance carried with respect to the Airport, the Demised Premises or any property therein endorsed with a clause that waives all rights of subrogation that the insurer of one party may have against the other party hereto. To that effect, City and Airline will respectively employ diligent efforts to cause their insurance companies to endorse the affected property insurance policies with a waiver of subrogation clause as required herein.

ARTICLE 13. SECURITY DEPOSIT

Section 1301 Security for Faithful Performance.

A. Security. The full and faithful performance of the Lease and Use Agreement by each Signatory Airline, including this Agreement by Airline, including, but not limited to, the payment of all Terminal Area Rentals, Landing Fees, usage fees, rates and charges now or in the future payable to City hereunder, and the compensation for any loss or damages the City may suffer by a default hereunder or breach or rejection hereof, shall be secured by the Deposit provided in accordance with Section 1302 by such Signatory Airline, including Airline.

B. Other Agreements. From time to time, Signatory Airlines, including Airline, have entered or may enter into other agreements with City under which Signatory Airlines, including Airline, may provide additional security deposits in accordance with such agreements.

Section 1302 Deposit/Faithful Performance Bond.

A. Applicability. The provisions of this Section shall be applicable to all Signatory Airlines, including Airline.

B. Nature of Deposit. Prior to the Effective Date, Airline will deliver to Director the Deposit in the Deposit Amount. Such Deposit shall be in the form of (a) a surety bond payable to City, naming City as obligee, and otherwise in form satisfactory to City's City Attorney, and issued by a surety company satisfactory to Director, or (b) a letter of credit naming City as beneficiary, and otherwise in form satisfactory to City's City Attorney, issued by a bank satisfactory to Director. Such bond or letter of credit shall be renewed annually at Airline's cost, and shall be kept in full force and effect at all times to ensure the faithful performance by Airline of all covenants, terms, and conditions of this Agreement between City and Airline, including payment of rent and Landing Fees. Airline shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date or termination of such bond or letter of credit of its intention not to renew said bond or letter of credit or to terminate said bond or letter of credit.

C. Draws upon Deposit. If Airline fails to pay any Terminal Area Rentals, Landing Fees, usage fees, rates and charges now or in the future payable to City hereunder, or otherwise defaults with respect to any provision of this Agreement, City may use, apply or retain all or any portion of the Deposit for the payment of such amounts, or for the payment of any other sum to which City may become obligated by reason of Airline's default or to compensate City for any loss or damages which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Airline, within ten (10) days after demand therefor, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof. In the event the surety company or bank declines to renew or elects to cancel the bond or letter of credit comprising the Deposit, Airline shall, at least fifteen (15) days prior to the expiration or cancellation date thereof, replace such bond or letter of credit with another bond or letter of credit. If Airline fails to do so, City may, without notice to Airline, draw on the entirety of the Deposit and hold the proceeds thereof as security hereunder. City shall not be required to keep the Deposit separate from its general accounts. If Airline performs all of Airline's obligations hereunder, the Deposit, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Airline (or, at City's option, to the last assignee, if any, of Airline's interest hereunder) upon the revocation or termination of this Agreement and following Airline's cessation of use of the Demised Premises and Common Use facilities. No trust relationship is created herein between City and Airline with respect to the Deposit.

ARTICLE 14. ASSIGNMENT AND SUBLETTING

Section 1401 No Transfer. Except as expressly provided herein, Airline shall not Transfer the Demised Premises, this Agreement, or any right hereunder without Director's prior written consent, which consent shall not be unreasonably withheld. Without limiting the generality of the foregoing reasonableness standard, the parties agree that it would be reasonable for Director to deny consent for any Transfer if the proposed transferee does not have adequate financial or operational capacity to perform the assumed obligations under this Agreement. In no event will

Director be obligated to consent to any Transfer where the transferor earns a profit or bonus rent. Director's consent to one Transfer shall not be deemed a consent to subsequent Transfers. Any Transfer made without Director's consent shall constitute an Event of Default hereunder and shall be voidable at Director's election.

Section 1402 Changes in Airline.

A. The merger of Airline with any other entity or the transfer of any controlling ownership interest in Airline, or the assignment or transfer of a substantial portion of the assets of Airline, whether or not located on the Demised Premises shall constitute a Transfer to which the consent requirements in Section 1401 are applicable. Without limiting the generality of the foregoing, if Airline is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the partnership shall be deemed a Transfer to which the consent requirements in Section 1401 are applicable. If Airline is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Airline, or the sale or other transfer of a controlling percentage of the capital stock or membership interests of Airline, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of Airline, shall be deemed a Transfer to which the consent requirements in Section 1401 are applicable. The phrase "controlling percentage" means the ownership of, and the right to vote, stock or interests possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Airline's capital stock or interests issued, outstanding and entitled to vote for the election of directors. Without limiting the restrictions on asset transfers, this paragraph shall not apply to stock or limited liability company interest transfers of corporations or limited liability companies the stock or interests of which are traded through an exchange or over the counter. Airline's entering into any operating agreement, license or other agreement where a third party, other than a subsidiary, Affiliate Airline, or code share partner of Airline, is given rights or privileges to utilize portions of the Demised Premises shall be considered an attempted Transfer to which the consent requirements in Section 1401 are applicable.

B. Notwithstanding anything set forth herein to the contrary, Airline shall have the right, without first obtaining City's written consent, to assign or transfer this Agreement and Airline's rights and obligations hereunder, to (i) an entity controlling, controlled by or under common control with Airline, or (ii) a successor by merger, consolidation or acquisition to all or substantially all of the assets of Airline, if such entity or successor conducts an air transportation business at the Airport and assumes all rights and obligations hereunder. Written notice of such assumption shall be provided by such entity or successor thirty (30) days prior to the effective day of such assignment.

C. Notwithstanding anything set forth herein to the contrary, Airline shall have the right, without first obtaining City's written consent, to grant a no-fee license to use a portion of the Demised Premises to a ground handler or other service provider as part of a ground handling or services agreement; provided that (i) such ground handler or service provider shall be licensed or permitted by City to operate at the Airport in accordance with Section 202(O), (ii) such ground handler or service provider shall acquire no interest or rights in this Agreement or

the Demised Premises, and (iii) Airline shall provide City with notice of the license thirty (30) days prior to the effective date thereof.

Section 1403 No Release. In no event will Director's consent to a Transfer be deemed to be a release of Airline as primary obligor hereunder.

ARTICLE 15. TERMINATION OR SUSPENSION OF LEASE PROVISIONS

Section 1501 Airline Events of Defaults and City Remedies.

A. The occurrence of any one or more of the following events shall constitute a breach of this Agreement and an "Event of Default" hereunder:

(i) Airline shall fail duly and punctually to pay rent, Landing Fees, or to make any other payment required hereunder, when due to City, and such failure shall continue beyond the date specified in a written notice of such breach or default from Director, which date shall be no earlier than the tenth (10th) day after the effective date of such notice.

Notwithstanding the foregoing, in the event there occurs two (2) defaults in the payment of rent, Landing Fees, or other payment under this Agreement, thereafter Airline shall not be entitled to, and City shall have no obligation to give, notice of any further defaults in the payment of rent, Landing Fees, or other payment. In such event, there shall be deemed to occur an "Event of Default" immediately upon Airline's failure to duly and punctually pay rent, Landing Fees or other payment hereunder; or

(ii) Airline shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or

(iii) A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Airline and shall not be dismissed within thirty (30) days after the filing thereof; or

(iv) There shall occur a Transfer (other than in accordance with Section 1402(B) or (C)) without the prior approval of the City, and such Transfer shall not be voided or rescinded within ten (10) days after receipt of notice from City to Airline; or

(v) Airline shall abandon, desert, or vacate the Demised Premises; or

(vi) Any lien shall be filed against the Demised Premises as a result of an act or omission of Airline, and shall not be discharged or contested by Airline in good faith by proper legal proceedings within thirty (30) days after receipt of notice by Airline; or

(vii) Airline shall fail to provide the Deposit when required hereunder or shall fail to maintain in full such Deposit at all times thereafter, and such failure shall continue

for a period of more than three (3) days after delivery by Director of written notice of such failure; or

(viii) Airline shall fail to obtain and maintain the insurance or self-insured reserves required hereunder, or provide copies of the policies or certificates to City as required herein; or

(ix) Airline shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, and such failure shall continue for a period of more than ten (10) days after delivery by Director of a written notice of such failure (the "First Notice"); 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 receipt of the First Notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within one hundred twenty (120) days after the giving of the First Notice;

(x) There shall occur a default under any other agreement between Airline and City, if any, and such default is not cured as may be provided in such agreement; provided, however, that nothing herein shall be deemed to imply that Airline shall be entitled to additional notice or cure rights at such default other than as may be provided in such other agreement; or

(xi) Airline shall fail duly and timely to remit to City any PFCs collected by Airline from its passengers in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Pt. 158, as they may be amended from time to time.

Section 1502 Remedies. Upon the occurrence and during the continuance of an Event of Default, City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:

A. City shall have the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Airline's right to use the Demised Premises upon written notice to Airline. Airline expressly acknowledges that in the absence of such written notice from City, no other act of City, including, but not limited to, its re-entry into the Demised Premises, its efforts to relet the Demised Premises, its reletting of the Demised Premises for Airline's account, its storage of Airline's personal property and trade fixtures, its acceptance of keys to the Demised Premises from Airline, its appointment of a receiver, or its exercise of any other rights and remedies under this Section or otherwise at law shall constitute an acceptance of Airline's surrender of the Demised Premises or constitute a termination of this Agreement or of Airline's right to possession of the Demised Premises.

B. Upon any termination in writing of Airline's right to possession of the Demised Premises, this Agreement shall terminate and City shall be entitled to recover damages from Airline as provided in California Civil Code Section 1951.2 or any other applicable existing or future laws providing for recovery of damages for such breach, including, but not limited to, the following:

- (i) The reasonable cost of recovering the Demised Premises; plus
- (ii) The reasonable cost of removing Airline's Alterations, trade fixtures and improvements; plus
- (iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (iv) The amount by which the rent which would be payable by Airline hereunder, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Airline proves could have been reasonably avoided, together with the interest rate on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (v) The amount by which the rent which would be payable by Airline hereunder, as reasonably estimated by City, for the remainder of the then Term after the date of the award of damages exceeds the amount such rental loss as Airline proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus
- (vi) Any other amount necessary to compensate City for all the detriment proximately caused by Airline's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom.

For purposes of the foregoing, the amounts referred to in clauses (iii) and (iv) above are computed by allowing interest at the lower of eighteen 18% per annum and the highest rate legally permitted under applicable law. For purposes of the foregoing, the term "rent" shall mean all rent, Landing Fees, and other amounts payable by Airline hereunder. Notwithstanding any other provisions hereof, any efforts by City to mitigate damages caused by Airline's breach of this Agreement shall not constitute a waiver of City's right to recover damages hereunder and shall not affect the right of City to indemnification pursuant to the provisions of Article 12 hereof. Airline agrees that Airline's obligations under this Agreement, including the payment of rent, are independent covenants and are not conditioned on the covenants or warranties of City.

C. City shall have the right and remedy described in California Civil Code Section 1951.4. City may elect not to terminate this Agreement and let this Agreement continue, in which case City may enforce all its rights and remedies under this Agreement, including the right to recover rent as it becomes due under this Agreement. Acts of maintenance or preservation or efforts to relet the Demised Premises or the appointment of a receiver upon the initiative of City to protect City's interest under this Agreement shall not constitute a termination of Airline's right to possession.

D. City shall have the right to have a receiver appointed upon application by City to take possession of the Demised Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to this Section.

E. City shall have the right to enjoin, and any other remedy or right now or hereafter available to a landlord against a defaulting tenant under the laws of the State or the equitable powers of its courts, and not otherwise specifically reserved herein.

F. City may elect to terminate any other agreement between Airline and City.

Section 1503 City's Right to Perform. All agreements and provisions to be performed by Airline under any of the terms of this Agreement shall be at its sole cost and expense and without any abatement of rent or Landing Fees. If Airline shall fail to make any payment or perform any act on its part to be performed hereunder and such failure shall continue for three (3) days (as to any emergency), or thirty (30) days (as to any non-emergency), after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Airline from any obligations of Airline, make any such payment or perform any such other act on Airline's part to be made or performed as provided in this Agreement. All sums so paid by City and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable to City on demand, and City shall have (in addition to any other right or remedy of City) the same rights and remedies in the event of the nonpayment thereof by Airline as in the case of default by Airline in the payment of rent or Landing Fees.

Section 1504 Rights Related to Termination. In the event of any termination based on any breach of the covenants, terms and conditions contained in this Agreement, City shall have the option at once and without further notice to Airline to enter upon the Demised Premises and take exclusive possession of same. City may remove or store any personal property located therein, at the sole cost and expense of Airline without City being liable to Airline for damages or loss thereby sustained by Airline. Upon such termination by City, all rights, powers and privileges of Airline hereunder shall cease, and Airline shall immediately vacate any space occupied by it under this Agreement, and Airline shall have no claim of any kind whatsoever against City or any City Entity by reason of such termination, or by reason of any act by City or any City Entity incidental or related thereto. In the event of the exercise by City of such option to terminate, Airline shall have no right to or claim upon any improvements or the value thereof, which may have been previously installed by Airline in or on the Demised Premises.

Section 1505 Cumulative Rights. The exercise by City of any remedy provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

Section 1506 Prepayment. As provided in Section 407, if Airline defaults in the payment of rent, Landing Fees, or any other amounts due hereunder, City may require prepayment thereof. Such right shall be in addition to and not in lieu of any and all other rights hereunder, or at law or in equity.

Section 1507 Fines. City reserves the right to impose and collect from Airline the fines set forth in the Airport Rules as established and updated from time to time by the Director for violations of Airport Rules or the terms of this Agreement by any Airline Entity.

Director's right to impose fines pursuant to this Agreement shall be in addition to and not in lieu of any and all other rights hereunder, in the Airport Rules, at law or in equity. City shall

have no obligation to Airline to impose fines on or otherwise take action against any other tenant at the Airport. THE PARTIES HAVE AGREED THAT THE VIOLATIONS SET FORTH IN THE AIRPORT RULES SHALL RESULT IN CITY INCURRING DAMAGES WHICH ARE IMPRACTICAL OR IMPOSSIBLE TO DETERMINE. THE PARTIES HAVE AGREED THAT THE FINES FOR SUCH VIOLATIONS SET FORTH IN THE AIRPORT RULES ARE A REASONABLE APPROXIMATION OF SUCH DAMAGES. Such fines shall constitute "additional rent."

City reserves the right to impose and collect from Airline reimbursement for any fines for violations of any federal, state or local laws or regulations by any Airline Entity.

Section 1508 [Reserved].

Section 1509 Waiver of Notice. Except as otherwise expressly provided in this Article 15, Airline hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Airline, for and on behalf of itself and all persons claiming through or under Airline, also waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, if Airline is evicted or City takes possession of the Demised Premises by reason of any default by Airline hereunder.

Section 1510 Annual Service Payments and City's Right to Suspend Part of Agreement.

A. An Annual Service Payment will be paid from the Airport Revenue Fund into the General Fund of the City for each Fiscal Year during the Term of this Agreement beginning with Fiscal Year 2011/2012. In each such Fiscal Year, the Annual Service Payment shall equal the greater of (a) fifteen percent (15%) of Concession Revenues or (b) five million dollars (\$5,000,000).

In each Fiscal Year, payment of the Annual Service Payment from the Airport Revenue Fund to the City's General Fund shall be made in installments on September 30, December 31, March 31 and June 30. Each of the installments payable on these dates shall be in an amount equal to twenty-five percent (25%) of the budgeted Annual Service Payment for such Fiscal Year. As part of each Fiscal Year audit, the Annual Service Payment shall be recalculated based on actual Concession Revenues and the payment submitted to the City shall be adjusted to reflect the recalculation.

During the Term of this Agreement, the Commission will not make any payments to the City's General Fund other than the Annual Service Payments, to reimburse the City for the costs of any and all indirect services provided by the City to the Commission during any Fiscal Year in which Annual Service Payments calculated as provided above are paid. The Commission shall not make any additional payments to the City's General Fund for indirect services provided by the City to the Airport during any such Fiscal Year. The Commission may, in addition to making Annual Service Payments, continue to reimburse the City's General Fund for the actual, verifiable and reasonable costs of direct services provided by the City to the Airport.

B. If Airline was a signatory to the Settlement Agreement or received from the City and the Commission a Release in the form attached as Exhibit C to the Settlement

Agreement, Airline hereby waives and forever releases whatever rights, if any, Airline may have, either (a) under the Settlement Agreement or (b) by reason of such Release to challenge Annual Service Payments made after June 30, 2011.

C. In the event that the Annual Service Payment provided for above cannot be made for any reason, other than Airport's own inaction or action not in conformance with this Agreement, including, but not limited to, supervening legislation or court decision, City may elect to suspend uniformly as to all Signatory Airlines all or some of the following provisions of this Agreement:

<u>Article</u>	<u>Section</u>	
4	403	Landing Fees
5	503(A)-(K)	Method of Adjusting Landing Fees
5	504(A)	Review of Adjusted Rentals and Fees (only to the extent it pertains to adjustment of Landing Fees "in accordance with this Agreement")
6	601(B)	Capital Improvements
6	602(A)	Other Capital Improvements
6	602(C)	Other Capital Improvements
7	703	Airfield Area Users
17	1701	Holding Over

In addition or alternatively, in such event City may: (1) appropriate an amount equal to the Annual Service Payment then payable hereunder in any Fiscal Year for Capital Improvements included in City's then-current Five Year Capital Program pursuant to Sections 16.104(b)(5) and (6) of the City Charter (or any successor legislation) and any such appropriation shall not be subject to Section 602; and (2) during any period of suspension of Sections 403, and 503(A) through (K), pursuant to this Section, adjust the level of Terminal Area Rental Rates, observing in the calculations of such adjusted rental rates the Cost Centers and procedures for allocation of revenues, expenses, and debt service to such Cost Centers as illustrated in Exhibit O, and maintaining the relationships between rental rates for each Space Category of Demised Premises; provided, however, Airline reserves its rights to contest such adjusted rental rates through legal processes to determine whether any such adjusted rental rates are reasonable or are otherwise in accordance with applicable law.

D. The right of City to elect to suspend the above-referenced provisions, or any of them, shall not be effective unless and until:

(i) The payment of the Annual Service Payment is interrupted for any cause other than City's own inaction or action not in conformance with this Agreement;

(ii) City has given written notice to Airline of such interruptions in payment;

(iii) Within twelve (12) months after the date of the notice of interruption in payment, the City has failed to achieve the resumption of such Annual Service Payment or to have received sums equal to the then-current Annual Service Payment obligation for its General Fund in lieu thereof; and

(iv) After expiration of such twelve (12) month period, City shall have given Airline thirty (30) days written notice of its election to exercise such right to suspend, which notice shall specify which of the above-referenced provisions of this Agreement are suspended. Following receipt of such notice and until Section 1510(F)(iv) shall be applicable, Airline may elect to terminate this Agreement upon thirty (30) days written notice to City.

E. During the period commencing with any such interruption of Annual Service Payments and continuing thereafter until such payments are resumed or sums equal to the then-current Annual Service Payment obligation are received by City's General Fund, in lieu thereof, Section 502(B) shall remain in effect, and amounts equal to the Annual Service Payment shall be segregated as accumulated in an identifiable, interest-bearing subaccount of the Airport Revenue Fund by City. Monies in such subaccount may be applied to any lawful purpose of the Commission; provided, however, that to the extent such monies are so applied the Annual Service Payment shall be deemed satisfied, pro tanto.

F. During any period of any interruptions of the Annual Service Payment to City, City shall use commercially reasonable efforts to achieve the resumption of such Annual Service Payment or receipt in the General Fund of a sum equivalent to the then-current Annual Service Payment obligation in lieu thereof. Upon resumption of the Annual Service Payment or receipt of sums equivalent to the then-current Annual Service Payment obligation by City's General Fund in lieu thereof

(i) The right of Commission to suspend or continue suspension of the provisions referred to in this Section shall terminate;

(ii) Commission shall release from the Airport Revenue Fund subaccount all funds therein, plus accrued interest, to the Airport Revenue Fund to be available for customary budgeting disposition;

(iii) As soon as practicable thereafter, Commission shall make any necessary adjustments to the Terminal Area Rentals and Landing Fees; and

(iv) Airline's right to terminate this Agreement as provided in Section 1510(D)(iv) shall terminate.

G. During any period of suspension of some or all of the above-referenced provisions pursuant to this Section, City may take such other actions as may be permitted by law

which are designed to provide City with substitute monies in lieu of the Annual Service Payment provided for in Section 502(B); provided, however, Airline reserves its rights to challenge the reasonableness or contest the legality of any such actions and nothing in this Agreement shall operate as a waiver of, or estoppel or other bar to, any such challenge or contest.

H. No action properly taken by City in exercise of its rights under this Article 15 shall be deemed a breach of any other provision of this Agreement.

Section 1511 Airline's Right to Terminate. If Airline is not then in default in the payment of any amount due from it to City hereunder, Airline, in addition to any other rights given to it herein or to which it may be entitled by law, may terminate this Agreement in its entirety by giving City ninety (90) days advance written notice upon or after the occurrence and during the continuance of any one or more of the following events:

A. The issuance of a permanent injunction by any court of competent jurisdiction substantially restraining or preventing Airline from using all or major portions of the Airport for airport purposes and its remaining in force for one hundred and eighty (180) days;

B. Any action of any governmental authority, board, agency or officer having jurisdiction thereof preventing Airline from conducting its air transportation business in its entirety at the Airport;

C. The involuntary termination by any governmental authority, board, agency or officer having jurisdiction, of Airline's right to serve San Francisco, California; or

D. The default by City in the performance of any material covenant or agreement required to be performed by City herein, which default materially and adversely limits or prohibits Airline's operations at the Airport, and the failure by City to remedy such default after written notice thereof has been delivered to City, unless (i) City takes prompt action to remedy such default within a period of sixty (60) days after receipt from Airline of such notice, or (ii) in the case of any such failure which cannot with due diligence be cured within such sixty (60) day period, City takes corrective action within the sixty (60) day period and diligently pursues such action until the failure is cured.

ARTICLE 16. SURRENDER OF POSSESSION OF DEMISED PREMISES

Section 1601 Surrender. At the termination of this Agreement by expiration or otherwise, or of any renewal or extension hereof, or upon partial surrender of the Demised Premises, including as provided in Section 212, or upon Airline's rejection of Preferential Gates as provided in Section 304, Airline shall peaceably quit and surrender to City the Demised Premises together with the improvements and all Alterations approved by City in good order and condition, except for normal wear and tear after Airline having made the last necessary repair required on its part under this Agreement, and further except for any portion of the Demised Premises condemned and any damage and destruction for which Airline is not responsible hereunder.

Immediately before the Expiration Date or other termination of this Agreement, Airline shall remove all personal property and trade fixtures, and repair any damage resulting from the removal; provided, City in its sole discretion shall have the right to reserve ownership of any telecommunications equipment, wire, cabling and/or conduit installed in the Demised Premises by or on behalf of Airline. If such removal is not completed at the expiration or other termination of this Agreement, City may remove the same at Airline's expense. In such event, Airport shall not be responsible for any losses related to such personal property, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law. Notwithstanding anything to the contrary in this Agreement, City can elect at any time prior to the Expiration Date or within five (5) days after termination of this Agreement, to require Airline to remove, at Airline's sole expense, all or part of the improvements, Alterations, trade fixtures or equipment constructed or installed by or at the expense of Airline including, but not limited to, any passenger loading bridges, baggage handling systems, telecommunications equipment, wires, cabling and/or conduit installed in the Demised Premises by or on behalf of Airline. Airline shall promptly remove such items and shall repair, at no cost to the City, any damage to the Demised Premises resulting from such removal, or if Airline fails to repair, City may do so, at Airline's expense. Airline's obligations under this Section shall survive the Expiration Date or other termination of this Agreement.

ARTICLE 17. HOLDING OVER

Section 1701 Month to Month. If Airline shall, with the concurrence of Commission, hold over after the expiration or sooner termination of the Term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis, and may be terminated by Airline or Commission at any time on thirty (30) days written notice to the other party. During such month-to-month tenancy, Airline shall pay to Commission the same rate of rentals and Landing Fees as are set forth herein, unless different rates shall be agreed upon, and the parties shall be bound by all of the provisions of this Agreement, insofar as they may be pertinent, unless different terms and conditions shall be agreed upon. If Airline shall, without the written consent of the Commission, hold over after the expiration or sooner termination of the Term of this Agreement, Airline shall pay to Commission on a month-to-month basis the rentals and the Non-Signatory Premium on Landing Fees as provided in Section 503(J) for any such holdover period and shall otherwise be subject to the terms and conditions of this Agreement beyond the end of the term hereof. Any holding over without Commission's consent shall constitute a default by Airline and entitle Commission to exercise any or all remedies as provided herein, notwithstanding that Commission may elect to accept one or more payments of Terminal Area Rentals, and whether or not such amounts are at the holdover rate specified above or the rate at the end of the term of this Agreement.

ARTICLE 18. CITY CONTRACTING PROVISIONS

Section 1801 Nondiscrimination Ordinance. Airline shall comply with the following:

A. Airline Shall Not Discriminate. In the performance of this Agreement, Airline agrees not to discriminate against any employee, City employee working with Airline, applicant for employment with Airline, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or

organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. Subleases and Other Subcontracts. Airline shall include in all subleases and other subcontracts relating to the Demised Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of Subsection (A) above. In addition, Airline shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of this Agreement.

C. Non-Discrimination in Benefits. Airline does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco on real property owned by City, or where work is being performed for City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

D. Conditions to Contract. As a condition to this Agreement, Airline shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission. Airline hereby represents that prior to execution of this Agreement, (i) Airline executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

E. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Airline shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including, but not limited to, the remedies provided in such Chapters. Without limiting the foregoing, Airline understands that pursuant to Sections 12B.2(h), 12C.3(g) of the San Francisco Administrative Code, a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Airline and/or deducted from any payments due Airline.

Section 1802 Conflict of Interest. Through its execution of this Agreement, Airline acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter,

Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

Section 1803 Tropical Hardwoods and Virgin Redwoods. The City urges companies not to import, purchase, obtain or use for any purpose any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(B) and 803(B) of the San Francisco Environment Code, Airline shall not provide any items to the construction of Airline tenant improvements or the Alterations, or otherwise in the performance of this Agreement, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Airline fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Airline shall be liable for liquidated damages for each violation in any amount equal to Airline's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

Section 1804 Drug-Free Workplace Policy. Airline acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on City premises. Airline agrees that any violation of this prohibition by Airline, its employees, agents or assigns shall be deemed a material breach of this Agreement.

Section 1805 Compliance with Americans With Disabilities Act and Air Carrier Access Act. Airline acknowledges that, pursuant to the ADA and the 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.

Section 1806 Pesticide Prohibition.

A. Airline shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Airline to submit to the Airport an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Airline may need to apply to the Demised Premises during the terms of this Agreement, (b) describes the steps Airline will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address, and telephone number, an individual to act as the Airline's primary IPM

contact person with the City. In addition, Airline shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

B. Nothing herein shall prevent Airline, through the Director, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

Section 1807 MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Airline acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

Section 1808 No Advertising or Promotions; Prohibition of Tobacco Advertising. Airline shall have no right to conduct any advertising or promotional activities on the Airport. Airline acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the Demised Premises and the Airport. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Section 1809 First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 -98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified, economically disadvantaged individuals for entry level positions. Within thirty (30) days after the Real Estate Division of the Department of Administrative Services adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Airline shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

Section 1810 [Reserved]

Section 1811 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Solicitations, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

Section 1812 Charter Provisions. This Agreement is governed by and subject to the provisions of the City Charter.

Section 1813 Requiring Health Benefits for Covered Employees.

A. Unless exempt, Airline agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

B. For each Covered Employee, Airline shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Airline chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

C. Notwithstanding the above, if the Airline is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (A) above.

D. Airline's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Airline if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Airline fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Airline fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Sections 12Q.5.1, 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

E. Any Subcontract entered into by Airline shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Airline shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Airline shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Airline based on the Subcontractor's failure to comply, provided that City has first provided Airline with notice and an opportunity to obtain a cure of the violation.

F. Airline shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Airline's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

G. Airline represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

H. Airline shall maintain employee and payroll records in compliance with California Labor Code and Industrial Welfare Commission orders.

I. Airline shall keep itself informed of the current requirements of the HCAO.

J. Airline shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

K. Airline shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten (10) business days to respond.

L. Airline shall allow City to inspect Airline's Demised Premises and to have access to Airline's employees in order to monitor and determine compliance with HCAO.

M. City may conduct random audits of Airline to ascertain its compliance with HCAO. Airline agrees to cooperate with City when it conducts such audits.

N. If Airline is exempt from the HCAO when this Agreement is executed because its amount is less than twenty-five thousand dollars (\$25,000), but Airline later enters into an agreement or agreements that cause Airline's aggregate amount of all agreements with City to reach seventy-five thousand dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Airline and the Contracting Department to be equal to or greater than seventy-five thousand dollars (\$75,000) in the Fiscal Year.

Section 1814 Requiring Minimum Compensation for Covered Employees.

A. Airline agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Airline's obligations under the MCO is set forth in this Section. Airline is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

B. The MCO requires Airline to pay Airline's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Airline is obligated to keep informed of the then-current requirements. Any sublease entered into by Airline shall require the subtenant to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Airline's obligation to ensure that any subtenants of any tier under this Agreement comply with the requirements of the MCO. If any subtenant under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Airline.

C. Airline shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

D. Airline shall maintain employee and payroll records as required by the MCO. If Airline fails to do so, it shall be presumed that the Airline paid no more than the minimum wage required under State law.

E. The City is authorized to inspect Airline's job sites and conduct interviews with employees and conduct audits of Airline.

F. Airline's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Airline fails to comply with these requirements. Airline agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Airline's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

G. Airline understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Airline fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Airline fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

H. Airline represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

I. If Airline is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the Fiscal Year is less than \$25,000, but Airline later enters into an agreement or agreements that cause contractor to exceed that amount in a Fiscal Year, Airline shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Airline and Commission to exceed \$25,000 in the Fiscal Year.

Section 1815 Notification of Limitations on Contributions. Through its execution of this Agreement, Airline acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction

would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

Section 1816 Compliance with Laws. Airline shall keep itself fully informed of the City Charter, codes, ordinances and regulations of the City and of all State, and federal laws in any manner applicable to the performance of this Agreement, and must at all times comply with such applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

Section 1817 Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, with the Airport Director's prior consent.

Section 1818 Food Service Waste Reduction. If and to the extent applicable, the Airline agrees to comply fully with and be bound by all of the applicable provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. Accordingly, Airline acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Agreement. By entering into this agreement, Airline agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Airline agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Airline's failure to comply with this provision.

Section 1819 Labor Disputes. Airline agrees to use commercially reasonable efforts to avoid disruption to City, other Air Carriers, Airport 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 commercially reasonable efforts, including the utilization of available legal remedies, to minimize or eliminate any disruption to City, other Air Carriers, Airport tenants, or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

Section 1820 Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Airline may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Airline may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Airline from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

ARTICLE 19. MISCELLANEOUS PROVISIONS

Section 1901 No Individual Liability. No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 1902 Agreements With Governments. Except for the payment of rentals and fees provided for herein, this Agreement is subject and subordinate to the provisions of any agreement and amendments thereto heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time.

Section 1903 Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with, the laws of the State and the City Charter.

Section 1904 Notices. Any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Airline, (i) at Airline's address set forth in the Airline's Address Notice, or (ii) at any place where Airline or any agent of Airline may be found if sent subsequent to Airline's vacating, abandoning or surrendering the Demised Premises; or (b) City, at City's address set forth in the City's Notice Address; or (c) to such other address as either City or Airline may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the telephone number set forth in the City's Notice Address and the Airline's Notice Address or such other number as may be

provided from time to time; however, neither party may give official or binding notice by facsimile. Airline shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice related to Airline's use of, or its operations at, the Airport. Any provision herein that one party shall notify the other of some matter is to be construed as a requirement that notice is to be given in accordance with the provisions of this Section.

Section 1905 No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Airline under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, prior to the expiration of the Term by any City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Agreement. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by City hereunder shall not relieve Airline of any obligation to secure the consent of City in any other or future instance under the terms of this Agreement.

Section 1906 Federal Grant Agreement Covenants. Airline acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to be bound by the following covenants provided by the FAA, as they may apply to Airline.

A. Airline for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated at the Airport for a purpose for which a DOT program or activity is extended, or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

B. Airline for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, 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 the Airport and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation or denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline shall use all City premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

C. That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement, to re-enter and repossess any of said Airport premises and the facilities thereon, and to hold the same as if this Agreement had never been made or issued. This provision shall not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

D. Airline shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that Airline may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

E. Non-compliance with Subsection (D) above shall constitute a material breach of this Agreement and in the event of such non-compliance City shall have the right to terminate this Agreement and any estate hereby created without liability therefor or, at the election of City or the United States, either or both said governments shall have the right to judicially enforce Subsections (A), (B), (C), and (D) of this Section.

F. Airline agrees that it shall insert or incorporate by reference the provisions in Subsections (A)-(E) of this Section in any agreement by which Airline grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public at the Airport.

G. Airline assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, 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.

H. Notwithstanding anything set forth herein to the contrary, to the extent required: (a) under the Master Bond Documents; or (b) by the FAA, the DOT, the TSA or a similar governmental authority, other than City, having jurisdiction over the Airport, City reserves the right to further develop or improve the landing area of the Airport as required, regardless of the desires or views of Airline and without interference or hindrance.

I. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation or maintenance of the Airport.

J. Airline agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Airport premises or in the event of any planned modification or alteration of any present or future building or structure situated on the permitted premises.

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

L. Airline, by accepting this Agreement, expressly agrees for itself and 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 Airport premises, above the main sea level elevation that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon the permitted premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Airline.

Section 1907 Contracting on More Favorable Terms.

A. City covenants and agrees that in the event it enters into any lease, contract or any other agreement with any other Air Carrier containing more favorable terms than this Agreement, or grants to any Air Carrier rights, privileges, or concessions at the Airport which are not accorded Airline hereunder, it shall advise Airline of such action and this Agreement shall, at Airline's option, be amended to incorporate such rights, terms, privileges and concessions, or any of them, as part of this Agreement; provided, however, that this covenant shall not extend to any intrastate Air Carrier operating only aircraft of less than 30,000 pounds maximum gross weight nor shall it require City to permit international flights from any Domestic Terminal.

B. In the event that any Air Carrier shall undertake any operations at the Airport for the carriage of passengers, cargo or mail by air, City shall require, to the extent legally permissible, such Air Carrier to execute and deliver an agreement, lease, permit or contract with City providing for:

(i) the payment of Landing Fees at rates not less than those rates then in effect for the Signatory Airlines, and on such other terms and conditions that are not more favorable than those terms and conditions then in effect for the Signatory Airlines; and

(ii) the payment of (a) rentals, for any space leased from City in the Terminal Area at rates not less than those rates then payable by the Signatory Airlines for similar space; provided, however, that if space has been constructed by City for such Air Carrier and the rental rates then payable by the Signatory Airlines for similar space would not fairly compensate City for the cost of providing, maintaining, operating and administering such space over the term of its agreement with such Air Carrier, then at rental rates that will fairly compensate City; or (b) terminal operations charges, if such Air Carrier does not lease, sublease or hold space pursuant to

a permit in the Terminal Area, which charge shall be payable for each aircraft arrival in the Terminal Area in an amount that will fairly compensate City; and

(iii) the payment of fees (including those described in Section 405) for use by such Air Carrier of Common Use areas, including operating costs of all baggage handling, public address, porter service or other passenger service systems, calculated and billed to such Air Carrier as in the case of the Signatory Airlines.

Section 1908 Force Majeure. Neither City nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of terrorism, riots, rebellion, sabotage or any other casualty which is not within its control; provided, however, that these provisions shall not excuse Airline from payment of the Terminal Area Rentals and Landing Fees specified in Articles 4 and 5 hereinabove, and other fees, rates, and charges specified in this Agreement.

Section 1909 Invalid Provisions and Severability. In the event any covenant, condition or provision herein contained is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity or unenforceability of any such covenant, condition or provision does not materially prejudice either City or Airline in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1910 Headings. The headings of the several Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the term and provisions hereof or the interpretation or construction thereof.

Section 1911 Exclusiveness of Airline's Rights. Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. Section 40103(e) or 49 U.S.C. Section 47107(a)(4) for activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of this Agreement.

Section 1912 Withholding Required Approvals. Whenever the approval of the Director, Commission, City or Airline is required herein, no such approval shall be unreasonably refused, withheld or delayed.

Section 1913 Majority-in-Interest Decisions. Whenever decisions of a Majority-in-Interest are required hereunder, such decisions may be evidenced by a letter mailed pursuant to the provisions of Section 1904 from the then-current Chairman of the SFAAAC to Director, or his successor or designee.

Section 1914 Declaration Regarding Airport Private Roads. Airline hereby acknowledges and agrees that all roads existing at the date of execution hereof within the boundaries of the Airport, as shown on Exhibits A and B, attached hereto, are the private property and private roads of City, with the exception of that portion of the Old Bayshore Highway which runs through the southern

limits of the City of South San Francisco and through the northern portion of the Airport to the intersection with the North Airport Road, and with the exception of that portion of the North Airport Road which runs from the off- and on-ramps of the State Bayshore Freeway to the intersection with said Old Bayshore Highway. It further acknowledges that any and all roads hereafter constructed or opened by City within the Airport boundaries will be the private property and roads of City, unless otherwise designated by appropriate action.

Section 1915 Subordination of Agreement.

A. Subject to the provisions of Section 1510, this Agreement and all rights of Airline and City hereunder are expressly subject to the lien of any pledge, transfer, hypothecation or assignment made at any time by City to secure Airport Revenue Bonds and to the terms and conditions of the Master Bond Documents. Airline acknowledges that any failure by Airline to make payments under this Agreement as and when such payments are due may result in a default by City on such Airport Revenue Bonds and related agreements.

B. With respect to property leased by City to Airline hereunder which was or is to be acquired by City with proceeds of Airport Revenue Bonds, the interest on which is, or is intended to be, excludable from the gross income of the holders of such Airport Revenue Bonds for federal income tax purposes, the parties hereby covenant not to take or fail to take any action that would impair the tax-exempt status of such Airport Revenue Bonds. In particular, Airline shall make an irrevocable election not to claim depreciation or an investment credit with respect to any property leased to Airline hereunder.

C. Airline agrees to execute all instruments, certificates, or other documents reasonably requested by City to assist City and bond counsel in determining and assuring that Airport Revenue Bonds are issued in compliance with applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission, and Airline shall provide whatever additional relevant information is reasonably requested by City initially or on an ongoing basis in connection with complying with any of those rules and regulations.

Section 1916 Inspection of Records. Airline and City, each at its own expense and upon reasonable notice, shall have the right to inspect the books, records and other data of the other party relating to the provisions and requirements hereof, provided such inspection is made during regular business hours. City agrees to provide Airline with a copy of the report of the annual audit covering the Airport.

Section 1917 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, sublessees (except as to the rentals, fees and other charges), and assigns of the respective parties hereto.

Section 1918 Taxes, Assessments and Liens.

A. Airline shall pay all taxes, assessments and charges of a like nature, if any (including any possessory interest tax), which at any time during the term of this Agreement may be levied against Airline or become a lien by virtue of any levy, assessment or charge against Airline by the federal government, the State, San Mateo County or any governmental successor

in authority to the foregoing, or any other tax- or assessment-levying bodies, in whole or in part, upon or in respect to (a) the Demised Premises or such facilities of the Airport as are made available for use by Airline hereunder or (b) any personal property belonging to Airline situated on or in the Demised Premises. The property interest of Airline, if any, created by this Agreement may be subject to property taxation, and Airline may be subject to the payment of property tax levied on such interest. Payment of such additional charges for all such taxes, assessments and charges, when and if levied or assessed, shall be made by Airline directly to the taxing or assessing authority charged with collection thereof, in which event Airline shall be responsible for obtaining bills for all of said taxes, assessments and charges and promptly providing City with evidence of payment therefor.

B. Airline may, at its expense, contest the amount or validity of any tax or assessment or the inclusion of the Demised Premises as taxable or assessable property directly against the taxing or assessing authority. Airline shall indemnify City from all taxes, penalties, costs, expenses, and attorneys' fees incurred by City resulting directly or indirectly from all such tax contests other than contests of City-imposed taxes.

C. Upon any termination of this Agreement, all lawful taxes then levied or a lien upon any of such property or taxable interest therein shall be paid in full by Airline forthwith or as soon as a statement thereof has been issued by the tax collector if termination occurs during the interval between the attachment of the lien and the issuance of the statement.

Section 1919 Appendices, Exhibits and Schedules. All exhibits referred to herein and all exhibits and schedules referred to in any appendices, and any appendices, exhibits or schedules which may, from time to time, be referred to in any duly executed amendment hereto are (and including future amendments, shall be) by such reference incorporated herein and shall be deemed a part of this Agreement as fully as if set forth herein. In the event of any inconsistency between an exhibit or schedule and any provision of this Agreement, such provision shall prevail.

Section 1920 Entire Agreement. The parties intend that this Agreement (including all of the attached exhibits, which are made a part of this Agreement) shall be the final expression of their agreement concerning the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement. Airline hereby acknowledges that neither City nor City's agents have made any representations or warranties concerning the Demised Premises or this Agreement except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Airline by implication or otherwise unless expressly set forth herein.

Section 1921 Approvals. All approvals, consents, waivers, and determinations to be made by City or Commission hereunder can be given, withheld, or made by Director, unless otherwise provided or required. All approvals, consents, waivers, and determinations to be made by Airline can be made by the Airline Representative, unless otherwise provided or required. Without limiting the generality of the foregoing, if a Terminal Company of which Airline is a

member is representing Airline for certain limited purposes under this Agreement and such representation is consistent with the organizational documents of such Terminal Company, City may rely on an approval, consent, waiver, or determination of such corporation or committee for such purposes. In no event shall a Terminal Company be authorized to amend or modify this Agreement on behalf of Airline.

Section 1922 Amendments. Neither this Agreement nor any terms or provisions hereof 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. Whenever this Agreement requires or permits the giving by City of its consent or approval, the Director, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Agreement, including, without limitation, amendments to or modifications to the exhibits to this Agreement, shall be subject to the mutual written agreement of City and Airline, and City's agreement may be made upon the sole approval of the Director, or his or her designee; provided, however, material amendments or modifications to this Agreement (i) increasing the Term, (ii) increasing the rental payments required and payable by Airline by more than ten percent (10%) under this Agreement, (iii) changing the general use of the Demised Premises from the uses authorized in Section 202, and (iv) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Agreement shall additionally require the approval of the Commission and the Board.

Notwithstanding anything to the contrary:

A. To the extent Airline's Demised Premises in any Terminal are reduced or relocated pursuant to this Agreement, such reduction/relocation shall be memorialized by City's issuance of a Space Change Summary Notice and shall not require or constitute a formal amendment to this Agreement; and

B. To the extent the Preferential Use Gates assigned to Airline are changed in accordance with Article 3, such annual reallocation shall be memorialized by City's issuance of the annual Preferential Use Gate allocation notice which shall be deemed to form a part of this Agreement and shall not require or constitute a formal amendment to this Agreement.

Section 1923 Interpretation of Agreement. As amended hereby, each and every of the terms, conditions, and covenants in this Agreement shall remain in full force and effect. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. Provisions in this Agreement relating to number of days shall be calendar days, unless otherwise specified; provided, however, that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any

general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

Section 1924 Duty Free Merchandise and International Travel Merchandise. Airline shall not sell, take orders, deliver, or transport duty free merchandise and/or international travel merchandise ("ITM") as such terms are defined by the United States Department of the Treasury/U.S. Customs Service, and its applicable regulations and directives, on any flight into or out of the Airport under a program in which Airline solicits or accepts orders for purchase by passengers of, or delivers, ITM at any time prior to the departure of Airline's aircraft on the outbound flight from the Airport. The foregoing restriction shall apply to Airline and its Affiliate Airlines, and their respective officers, employees, affiliates, agents, and assigns. In the event City grants any other Air Carrier permission to conduct such activity, City shall offer no less favorable rights to Airline relating to ITM.

Section 1925 No Third-Party Beneficiaries. Except as expressly stated herein, there are no third-party beneficiaries to this Agreement.

Section 1926 No Joint Venture. It is expressly agreed that City is not, in any way or for any purpose, a partner of Airline in the conduct of Airline business or a member of a joint enterprise with Airline, and does not assume any responsibility for Airline's conduct or performance of this Agreement.

Section 1927 Nature of Agreement. Under no circumstances will City be expected or required to make any payment of any kind for Airline's use or occupancy of the Demised Premises, except as may be otherwise expressly set forth herein. Except as otherwise expressly provided herein, this Agreement shall continue in full force and effect, and the obligations of Airline hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to City, Airline or any constituent partner of Airline or any sublessee, licensee or concessionaire or any action taken under this Agreement by a trustee or receiver, or by any court, in any proceeding; (b) any claim that Airline or any other person has or might have against City; (c) any failure on the part of City to perform or comply with any of the terms hereof or of any other agreement with Airline or any other person; (d) any failure on the part of any sublessee, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Airline and any such person; (e) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (f) any other occurrence whatsoever, whether similar or dissimilar to the foregoing in each case whether or not Airline shall have notice or knowledge of any of the foregoing. The obligations of Airline hereunder shall be separate and independent covenants and agreements. Except as otherwise provided for in this Agreement, Airline hereby waives to the full extent permitted by applicable law, all rights now or hereafter conferred by statute, including without limitation the provisions of Civil Code Sections 1932 and 1933, to quit, terminate or surrender this Agreement or the Demised Premises or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of any rent hereunder.

Section 1928 Required Approvals. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, AIRLINE ACKNOWLEDGES AND

AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY AND THE MAYOR SIGNS THE RELATED RESOLUTION. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS AGREEMENT, EACH ACTING IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS AGREEMENT BY THE AIRPORT OR THE AIRPORT COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

Section 1929 Airline Operations Information and Planning. For planning purposes, Airline shall upon request cooperate to the greatest extent possible to furnish to City any and all pertinent information regarding Airline's current and future operations (including forecasts) at Airport. City will not disclose such information unless required to by law without first having Airline's consent, unless disclosure of such information is, in the Director's sole discretion, required for the sale of bonds or other indebtedness. Notwithstanding the foregoing, City shall be entitled, from time to time, to release consolidated statistics for all Air Carriers operating at the Airport.

Section 1930 Waiver of Visual Artists Rights. Airline shall not install any object in the Demised 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 Director and (b) provided City with a written waiver from the author of such work of visual art, in form and substance reasonably satisfactory to City, 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 City with a similar written waiver that is effective to bar any claim by an artist for a work of fine art under the California Art Preservation Act, Cal. Civ. Code §§ 987-989.

Section 1931 Airport Functions. All Airport-related functions provided as of July 1, 2009, by City employees assigned to the Commission and working under the direct authority and control of the Director, including but not limited to Airport operations, custodial cleaning and facilities maintenance, planning, development, construction, financial management and accounting, information technology and telephony, parking management and operations, human resources, marketing, public relations and other administrative and governmental functions, shall continue to be provided by employees assigned to the Commission and may only be transferred to other City departments in accordance with the following procedure:

A. City shall give Signatory Airlines sixty (60) days notice of any proposed transfer of functions from Commission employees to other City departments.

B. Signatory Airlines shall forward any comments, questions or objections to the proposed transfer of functions in writing to the Director within sixty (60) days of receipt of

such notice.

C. City shall consider and respond to such comments, questions or objections within forty-five (45) days of receipt thereof, following which the City may implement the proposed transfer.

D. Any City department head whose department receives work relating to the Airport in such transfer of functions shall coordinate and consult with the Director at least annually to ensure that the work is performed in a manner that is efficient, meets the needs of the Airport and conforms to sound business and airport management principles. Furthermore, such work (including work orders and billings) and any payments therefor shall be properly documented to comply with interdepartmental memoranda of understanding and billing procedures established from time to time by the Commission, and FAA rules and regulations.

ARTICLE 20. HAZARDOUS MATERIALS

Section 2001 Definitions. As used herein, the following terms shall have the meanings hereinafter set forth:

A. “**Environmental Laws**” shall mean any federal, State, local or administrative law, rule, regulation, order, or requirement relating to industrial hygiene, protection of human health and safety, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted or amended from time to time, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.); and applicable and controlling federal or state court decisions.

B. “**Hazardous Materials**” shall mean (a) any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, State or local governmental authority to pose a present or potential hazard to human health or safety or to the air, water, soil or environment; and (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 Laws or permits. "Hazardous Material" includes any material or substance identified, listed, or defined as a "hazardous waste" "hazardous substance," or "pollutant" or "contaminant" or term of similar import, or 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.

C. **“Release”** when used for Hazardous Materials 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.

D. **“Pre-Existing Condition”** means the existence of any Hazardous Materials on the Demised Premises immediately prior to the Effective Date, including, without limitation, those conditions described in the reports listed in Exhibit M attached hereto that are applicable to the Demised Premises. A "Pre-Existing Condition" shall not include the existence of any Hazardous Materials caused or contributed to by the act or omission of Airline or any Airline Entity at any time.

Section 2002 Airline’s Covenants. Airline covenants the following:

A. Airline and any Airline Entity shall at all times and in all respects comply with all Environmental Laws and permits applicable to Airline’s operations on the Airport. The Release of Hazardous Materials is strictly prohibited, except in compliance with applicable Environmental Laws or permits issued pursuant to applicable Environmental Laws.

B. Neither Airline nor any Airline Entity shall cause any Hazardous Material to be brought upon, kept, used, stored, generated, treated, managed, or disposed of in, on or about the Airport, or transported to or from or within the Airport, except to the extent that such Hazardous Material, in kind and quantity, is normally necessary or useful to Airline’s conduct of the Permitted Uses under Section 202 and will be used, kept, and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules, and all other applicable laws. At all times, Airline shall ensure and certify that to the extent Airline is required to decontaminate the Demised Premises and/or dispose of Hazardous Materials under this Agreement or applicable law, including Environmental Laws, that such decontamination of the Demised Premises and/or disposal of Hazardous Materials shall be performed in compliance with the foregoing and any relevant permits. Any reuse of contaminated soil by Airline at the Airport shall be subject to: (a) this Section and considered a Release of Hazardous Materials caused by Airline and not a Pre-Existing Condition, and (b) Director's approval in writing to the reuse of contaminated soil.

C. Airline, at Airline’s sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws and permits, any Release of Hazardous Materials on the Airport, including, but not limited to, any Release into soil or groundwater, which was caused or results in whole or in part from the activities of Airline or any Airline Entity, but excluding: (a) the disposal of Hazardous Materials through the Airport’s sewage system so long as such disposal complies with all applicable Environmental Laws and any predischage treatment requirements issued by the Airport; or (b) the portions of said Release that the Airline demonstrates to the reasonable satisfaction of the City was caused exclusively by the City or City Entity.

In addition to any remedy provided in this Agreement, City, in its discretion, may after reasonable written notice to Airline (except that notice is not required for any Release that poses an imminent harm to the environment or other emergency situation), pay to have such Release

investigated and remediated as required by applicable Environmental Laws, and Airline shall reimburse City for its share of the documented costs within thirty (30) days of City's demand for payment if: (a) Airline does not promptly commence investigation of any such Release; (b) Airline does not diligently pursue appropriate remedial activities as required by applicable Environmental Laws and permits; or (c) City determines that its performance of the investigation and/or remediation is needed to achieve the City's operational needs or construction objectives. The failure to commence investigation and provide City with a preliminary schedule for diligent pursuit of any required remediation within thirty (30) business days after (a) Airline's discovery of such Release or (b) notice of such Release shall constitute prima facie evidence of failure to promptly commence investigation and remediation.

D. Airline shall provide Director with a copy of any application for a permit, if required, for use or storage of Hazardous Materials on the Airport from any regulatory agency responsible for enforcement of applicable Environmental Laws and shall also provide a copy of any permit received from such agency.

Section 2003 Access for Environmental Inspection. City shall have reasonable access to the Demised Premises to inspect the same in order to confirm that Airline is using the Demised Premises in accordance with all applicable Environmental Laws or permits. City will, where practical, give Airline the opportunity to have an Airline representative present during the inspection. Airline shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Airline's operations.

Section 2004 Liability. In addition to any remedy provided in this Agreement, Airline shall be solely and fully responsible and liable for costs, including without limitation costs of clean-up or other remedial activities, fines or penalties assessed directly against the Airport, attributable to (a) storage, use or disposal of Hazardous Materials on the Airport by Airline or any Airline Entity; or (b) any Hazardous Material release or discharge which is caused or results from the activities of Airline or any Airline Entity.

Section 2005 Environmental Indemnity. Airline shall indemnify, defend, and hold harmless City from and against any and all losses resulting or arising from: (a) a breach by Airline of its obligations contained in Section 2002; (b) any Release of Hazardous Material from, in, on or about the Airport caused by the act or omission of Airline or any Airline Entity or otherwise arising from Airline's operations hereunder; or (c) the existence of any Hazardous Materials on the Demised Premises, except to the extent that (i) Airline can demonstrate to the reasonable satisfaction of City that such Hazardous Materials constitutes a Pre-Existing Condition and Airline or Airline Entity did not exacerbate such Pre-Existing Condition, or (ii) such Hazardous Material was exclusively caused by City or a third party other than an Airline Entity. Nothing herein shall constitute a release of Airline for any losses arising out of any Pre-Existing Conditions to the extent Airline is responsible therefore pursuant to any other agreement or under applicable law.

Section 2006 Environmental Audit. Upon reasonable written notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director, an environmental audit of the Demised Premises and Airline's operations, equipment and fixtures thereon for the purpose of assessing Airline's compliance with Environmental Laws and permits.

City will give Airline an opportunity to have an Airline representative present during the audit. Airline shall pay all reasonable costs associated with said audit, but only to the extent City's actions are consistent with Section 2002(C), in the event such audit shall disclose any Hazardous Materials contamination as to which Airline is liable hereunder. Airline shall be provided the opportunity to review and comment on the report of the audit results prior to finalization. Airline will promptly correct any deficiencies associated with its compliance with this Lease or Environmental Laws or permits as identified in the final audit report.

Section 2007 Notice by Airline. Airline shall give City verbal and written notice of any unauthorized Release of any Hazardous Material, except for Releases considered to be de minimis under Environmental Laws, known to Airline. Such report shall be made in conformance with those procedures established in the Airport Rules. In addition, to the extent known to Airline, Airline shall notify City in writing, to the extent related to the Airport, of: (a) a pre-existing condition of contamination other than such conditions previously disclosed to the Airline by City; (b) any enforcement, clean-up, removal or other government or regulatory action instituted, completed or threatened against Airline or the Airport pursuant to any Environmental Laws; (c) any claim made or threatened by any person against Airline or the Airport relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Demised Premises; and (d) any reports made by Airline to any environmental agency arising out of or in connection with any Hazardous Materials or pursuant to any Environmental Laws or permits on or about the Demised Premises. Airline shall also supply to City as promptly as possible, and in any event within ten (10) business days after Airline first receives or sends the same, with copies of all claims, reports, complaints, notices or warnings of, and any other communications related to asserted violations of Environmental Laws or permits by Airline relating in any way to the Demised Premises or Airline's use thereof.

Section 2008 Stormwater. Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that certain properties within the Airport are subject to federal and State stormwater rules and regulations. Airline agrees to observe and abide by such stormwater rules and regulations as may be applicable to City's property and Airline's use thereof.

A. City and Airline both acknowledge that cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize cost of compliance. Airline acknowledges further that it may be necessary to undertake such actions to minimize the exposure of stormwater to "significant materials" generated, stored, handled or otherwise used by Airline, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable stormwater rules and regulations.

B. City will provide Airline with written notice of any stormwater discharge permit requirements applicable to Airline and with which Airline may be obligated to comply from time-to-time, including, but not limited to: certification of non-stormwater discharges; collection of stormwater samples if required by law; preparation of stormwater pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline shall agree

that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the stormwater permit requirements it is directed to undertake. If Airline does not provide such timely notice, Airline will be deemed to assent to undertake such stormwater permit requirements applicable to Airline's operations. In that event, Airline agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Airline, those stormwater permit requirements applicable to Airline's operations for which it has received written notice from City, and Airline agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements. Additionally, City will endeavor, where practical, to notify Airline in advance of negotiations with federal or state regulators concerning new or revised stormwater permit conditions that directly affect the Airline.

Section 2009 Airline Obligations Upon Termination. Prior to vacating the Demised Premises, and in addition to all other requirements under this Agreement and without limiting Airline's indemnification obligations herein, Airline shall:

A. Remove any Hazardous Materials on the Demised Premises except (i) to the extent Airline demonstrates to the reasonable satisfaction of City that said Hazardous Material constitutes a Pre-Existing Condition and Airline or Airline Entity did not exacerbate said Pre-Existing Contamination; (ii) to the extent the Airline can demonstrate to the reasonable satisfaction of City that said Hazardous Material was exclusively caused by City or a third party other than an Airline Entity; or (iii) said Hazardous Material is addressed pursuant to Section 2009(B). Moreover, Airline shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws and permits, including without limitation conducting any environmental audits and/or site investigations as may be reasonably required by City to demonstrate such removal has been completed according to the terms of this Agreement. This removal and demonstration shall be a condition precedent to City's return of the Deposit, if any, to Airline upon termination or expiration of this Agreement.

B. With respect to any Release of Hazardous Materials on the Demised Premises not removed pursuant to Section 2009(A) above and not subject to the exceptions therein, Airline shall promptly investigate and remediate it in accordance with the requirements of all applicable Environmental Laws and permits ("Airline's remediation"). If Airline's remediation will leave Hazardous Materials at the Airport (including but not limited to in the soil or groundwater), prior to completion of the remediation, the Airline shall: (i) obtain the City's written determination that such Hazardous Materials will not interfere with any reuse of the Demised Premises reasonably contemplated or anticipated by the City; (ii) provide the City with a plan for long-term care and surveillance of any such Hazardous Material and (iii) provide the City with a written acknowledgement of responsibility and indemnification for any and all losses or disruption associated with such contamination. The Airline's full compliance with this Section 2009 shall be a condition precedent to the City's return of the Deposit, if any, to Airline upon termination or expiration of this Agreement.

Section 2010 Cumulative Remedies. All remedies of the City as provided herein with regard to Hazardous Materials or any actual or threatened violations of any Environmental Laws and permits are deemed to be cumulative in nature. The City's right to indemnification as provided

in this Section shall survive the expiration or early termination of this Agreement with respect to occurrences during the Term of this Agreement.

Section 2011 Prior Agreements. Notwithstanding any provisions in this Agreement, nothing herein shall affect the terms and conditions of any prior settlement agreements reached between City and Airline relating to Hazardous Materials at the Airport, including the civil action captioned City and County of San Francisco v. Atlantic Richfield et al (N.D. Cal. Case No. C97-2965), and nothing herein shall be construed in any way to limit the releases granted by the parties in those prior agreements.

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