

AIRLINE USE AGREEMENT & LEASE OF PREMISES

BY AND BETWEEN

**THE COMMONWEALTH PORTS
AUTHORITY**

AND

SAIPAN INTERNATIONAL AIRPORT
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

(Revised June 15, 2006)

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AIRLINE USE AGREEMENT AND LEASE OF PREMISES

AIRLINE USE AGREEMENT AND LEASE OF PREMISES, hereinafter referred to as (“Agreement”), made this ____ day of _____, 20____, by and between the Commonwealth Ports Authority, hereinafter referred to as (“Authority”), and _____, a corporation permitted to do business under the laws of the Commonwealth of the Northern Mariana Islands, with its principal office at _____, hereinafter referred to as (“Airline”).

WITNESSETH:

WHEREAS, the Authority owns and operates all airports located within the Commonwealth of the Northern Mariana Islands, including the Saipan International Airport, hereinafter referred to as (“Airport”); and

WHEREAS, the Authority has the right to lease property at the Airport, together with the facilities, rights, licenses, and privileges hereinafter granted, and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline is engaged in the business of air transportation by aircraft with respect to persons, property, cargo, mail; and

WHEREAS, Airlines desires to lease certain premises, facilities, rights and privileges in connection with the use of the Airport, and Authority is willing to lease and grant the same to Airline upon the terms and conditions hereinafter stated.

NOW THEREFORE, for and in consideration of the mutual covenants hereof, Authority hereby leases to Airline and Airline hereby hires and takes from Authority certain Preferential Use Premises and Common Use Premises (hereinafter jointly called “Leased Premises”), and certain non-exclusive facilities, rights and privileges in connection with and on the Airport, as hereinafter described upon the terms and conditions as follows:

ARTICLE 1: DEFINITIONS

The following words, terms, and phrases wherever used in this Agreement

shall for the purposes of this Agreement have the following meanings:

- 1.01. Administrative Cost and Revenue Center shall include all direct, indirect and general administrative Operation and Maintenance Expenses and Revenues for all administrative functions of the Airport System. The Administrative Cost and Revenue Center shall be allocated to all other Cost Centers and Cost and Revenue Centers of the Airport System based on their proportionate share of all other direct and indirect Operation and Maintenance Expenses.
- 1.02. Affiliated Airline Company shall mean any Air Transportation Company that is regarded or appears to operate as a related entity and is now or hereafter (a) a subsidiary of Airline, (b) owned in whole or in part by Airline or its parent company, (c) owns Airline in part, or (d) so affiliated with Airline or its parent company by virtue of a code sharing agreement and in any case shall have been designated in writing by Airline as an Affiliated Airline Company. For purposes of this Agreement, Airline shall be responsible for and unconditionally guarantees the payment of rentals, fees, and charges, including Passenger Facility Charges under this Agreement by its Affiliated Airline Company. An Affiliated Airline Company hosted by a Signatory Airline will pay rates, fees, and charges at the rate charged to Signatory Airlines.
- 1.03. Agreement shall mean this Airline Use Agreement & Lease of Premises between Authority and Airline, as the same may be amended, modified or altered from time to time pursuant to the terms hereof.
- 1.04. Air Transportation Business shall mean that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels and cargo.
- 1.05. Air Transportation Company shall mean a legal entity engaged in the business of scheduled or non-scheduled commercial transportation by air of person, property, mail, parcels and cargo.
- 1.06. Airfield shall mean the Landing Area and the Ramp Area.
- 1.07. Airfield Cost and Revenue Center shall include all Capital Charges,

all direct and indirect Operation and Maintenance Expenses, and Revenues for the Airfield as may be revised from time to time.

- 1.08. Airline shall mean the Air Transportation Company executing this Agreement.
- 1.09. Airline Leased Premises shall mean those areas in the Terminal leased to Airline as Preferential Use Premises or Common Use Premises, as defined herein, and as shown on Exhibits A and B, attached hereto.
- 1.10. Airline Supported Areas shall mean the direct and indirect Operation and Maintenance Expenses and Capital Charges charged to the Airfield Cost and Revenue Center and the Terminal Cost and Revenue Center.
- 1.11. Airport shall mean an airport within the Airport System owned and operated by the Authority that is the subject of this Agreement and described on Exhibits A and B, attached hereto, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned leased or operated by Authority. Exhibits A and B may be revised from time to time by Authority without the necessity of amending this Agreement.
- 1.12. Airport Affairs Committee (AAC) shall mean collectively the authorized representatives of each Signatory Airline that shall meet from time to time with representatives of Authority to receive information and provide input from the Signatory Airlines with regard to selected operation and development matters of the Airport.
- 1.13. Airport Management shall be the Executive Director of the Authority and shall include such person or persons as may from time to time be authorized in writing by Authority, or by its Board of Directors or the Executive Director or applicable law to act for the Executive Director with respect to any or all matters pertaining to this Agreement.
- 1.14. Airport System shall mean all Airports owned and operated by the

Authority and which includes Rota International Airport, Saipan International Airport, and Tinian International Airport, together with all appurtenances thereto, structures, buildings, fixtures and all tangible personal property now or hereafter owned, leased or operated by the Authority.

- 1.15. Authority shall mean the Commonwealth Ports Authority, a public corporation created, organized and existing under Title 2, Section 2101 et seq., Commonwealth Code, Commonwealth of the Northern Mariana Islands.
- 1.16. Bond Resolution shall mean Resolution No. 02-98, dated March 4, 1998, as supplemented and amended from time to time authorizing the issuance by the Authority of Bonds or other financing obligations with respect to the Airport or any successor resolution, indenture or trust agreement.
- 1.17. Bonds shall mean any bonds or other financing instrument or obligation of the Authority, other than Subordinated Bonds, issued for the purposes of improving the Airport, all pursuant to the Bond Resolution.
- 1.18. Capital Charges shall mean with respect to any Fiscal Year, the sum of (1) Debt Service (exclusive of capitalized interest) and Other Debt Service payable by Authority in that Fiscal Year; plus (2) Return on Authority Investment; plus (3) Coverage.
- 1.19. Capital Expenditure shall mean an expenditure net of federal or commonwealth grants, or PFC, made to acquire equipment or to, purchase or construct a single capital item or project for the purpose of improving, maintaining or developing the Airport System, and shall include expenses incurred for development, study, analysis, review, design, and planning.
- 1.20. Common Use Formula shall mean that formula which prorates one hundred percent (100%) of the cost of a service or space as defined in Exhibit C based on the ratio of each Scheduled Air Carrier's Enplaned Passengers using the service or space at the Airport during the month, to the total of all Enplaned Passengers using the service or space at the Airport during the month. Notwithstanding the

foregoing, Authority shall, after completion of any promotional offering, adjust the computation to reflect enplanements of additional Scheduled Air Carrier at the Airport or after the deletion of a Scheduled Air Carrier at the Airport.

- 1.21. Common Use Premises shall mean those non-preferential areas of the Airport (excluding Public Space) used in common by Airline, along with other authorized users of the Airport, along with all facilities, improvements, equipment and services which are, or hereafter may be, provided for such common use, as shown in Exhibit B, attached hereto.
- 1.22. Cost and Revenue Centers shall mean those areas of functional activities of the Airport used for the purposes of accounting for Revenues, Operation and Maintenance Expenses, and Capital Charges.
- 1.23. Cost Centers shall mean those areas or functional activities of the Airport used for the purposes of accounting for Operation and Maintenance Expenses and Capital Charges.
- 1.24. Coverage shall mean twenty-five percent (25%) of the Debt Service payable for Bonds in each Fiscal Year (adjusted as may be permitted under the Bond Resolution).
- 1.25. Debt Service shall mean with respect to any series of Bonds or Subordinated Bonds the total, as of any particular date of computation and for any particular period or year, of the aggregate amount required pursuant to the Resolution to be deposited during such period or year in the Bond Fund.
- 1.26. Debt Service Reserve Fund shall mean the fund created by the Indenture for maintaining a balance equal to the maximum annual Debt Service on all outstanding Bonds (or such lesser amount as may be permitted by the Indenture).
- 1.27. Deplaned Passenger shall mean any passenger disembarking an aircraft at the Terminal Complex, including any such passenger that shall subsequently board another aircraft of the same or a different Air Transportation Company or the same aircraft, previously

operating under a different flight number.

- 1.28. Enplaned Passenger shall mean any passenger boarding an aircraft at the Terminal Complex, including any such passenger that previously disembarked from another aircraft of the same or a different Air Transportation Company or from the same aircraft, previously operating under a different flight number.
- 1.29. Extraordinary Coverage Protection shall mean the requirements set forth in Section 7.09.
- 1.30. FAA shall mean the Federal Aviation Administration, or its authorized successors.
- 1.31. Fiscal Year shall mean the annual accounting period of Authority for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve consecutive months, ending with the last day of September of any year.
- 1.32. Hazardous Material shall mean: (a) any oil petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which pose a hazard to the Airport premises or to the safety and/or health of persons on or about the Airport and/or cause Airline Premises to be in violation of federal, commonwealth, or local laws governing or regulating hazardous materials; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid containing regulated levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “hazardous substances”, “hazardous waste”, “hazardous material”, “extremely hazardous waste”, “restricted hazardous waste”, “toxic substance” or similar words under any applicable local, commonwealth, or federal laws, or any regulations promulgated pursuant thereto, including, but not limited to: the Comprehensive Environmental Response, Compensation Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9601 et seq; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801, et. Seq.; the Federal Water Pollution Control Act (CWA), 33

U.S.C. §§ 1251 et.seq.; The Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §§ 6901 et.seq.; the Toxic Substances Control Act (TSCA), as amended, 15 U.S.C. §§ 32601 et.seq; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by government authority, and which may or could pose a hazard to the health and safety of occupants of the Airport, and or to any person entering upon the Airport or adjacent property; and/or (e) any other chemical, material or substance which may or could pose a hazard to the environment or a person.

- 1.33. Indenture shall mean that certain bond indenture dated March 1, 1998 authorizing the issuance of \$20,050,000.00 Senior Series A, Airport Revenue Bonds, authorized by the Bond Resolution, and successor indentures.
- 1.34. Landing Area shall mean those portions of the Airport provided for the landing, taking off, and taxiing of aircraft, including without limitation, approach and turning zones, aviation or other easement, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith.
- 1.35. Landing Fee shall mean a fee expressed in tenths of a cent per thousand pounds of the Maximum Gross Landed Weight of each type of Airline's aircraft and shall be multiplied by the total of all Maximum Gross Landed Weight for all Revenue Landings of each type of aircraft land at the Airport by Airline.
- 1.36. Maintenance and Operation Expenses shall mean Maintenance and Operation Expenses as defined in the Indenture including the current expenses, paid or accrued, of operation, maintenance, and ordinary current repairs of said Airport and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of the Authority relating solely to the Airport, including engineering, architectural, legal, airport consultants, and accounting fees and expenses as shall be in accordance with sound accounting practice. Maintenance and Operation Expenses shall not include any allowance for depreciation or renewals or replacements or obsolescence of capital assets of the Airport, or any operation and maintenance expenses of Special Purpose facilities buildings where

the lessees thereof are obligated to pay such operation and maintenance expenses.

- 1.37. Maintenance and Operation Fund shall mean that fund established for the payment of Maintenance and Operation Expenses, as defined under the Indenture, incurred from operation of the Airport.
- 1.38. Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each aircraft operated at the Airport by Airline as certificated by the FAA or its successor.
- 1.39. Net Requirement shall mean, with respect to the Terminal, the direct and indirect Maintenance and Operation Expenses for the Terminal and reserves required by the Indenture, plus its proportional share of Capital Charges, less reimbursements; with respect to the Airfield, the direct and indirect Maintenance and Operation Expenses for the Airfield and reserves therefore, plus its proportional share of Capital Charges.
- 1.40. Non-Airline Revenues shall mean those rentals, fees and charges received by Authority from Airport lessees, permittees, concessionaires, users, and patrons other than Air Transportation Companies, but does not include PFC's.
- 1.41. Non-signatory Airline shall mean any Air Transportation Company providing service at the Airport and has not signed this Agreement or a similar agreement and is operating under terms of a resolution or shorter term agreement.
- 1.42. Other Cost and Revenue Center shall include all Capital Charges, all direct, indirect and general administrative Operation and Maintenance Expenses, and Revenues for the areas other than areas in the Airfield Cost and Revenue Center, Ground Transportation Cost and Revenue Center, and Terminal Cost and Revenue Center.
- 1.43. Other Debt Service shall mean any principal, interest, premium, and other fees and amounts, either paid or accrued, on Other

Indebtedness of Authority.

- 1.44. Other Indebtedness shall mean any debt incurred by Authority for Airport purposes that is outstanding and not authenticated and delivered under and pursuant to the Indenture.
- 1.45. Passenger Facility Charge (PFC) shall mean the fees authorized by 49 U.S.C. Appx. 1513(e) and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended during the term of this Agreement.
- 1.46. Preferential Use Premises shall mean those portions of the Terminal and Terminal Aircraft Aprons assigned to Airline, as shown in Exhibit A, attached hereto, to which Airline shall have priority over other users, subject to the provisions of Article 2.
- 1.47. Public Space shall mean all utility rooms, duct-ways, janitorial rooms and closets, stairways, hallways, elevators, escalators, entrance-ways, public or common use lobbies and areas, public toilet areas and other areas used for the operation, maintenance or security of the Terminal Complex, even if used solely by Authority.
- 1.48. Ramp Area shall mean the aircraft parking and maneuvering areas adjacent to the Terminal Complex, and shall include within its boundaries all Terminal Aircraft Aprons.
- 1.49. Recognized Net Investment shall mean Authority's cost of an improvement, equal to or greater than one hundred thousand dollars (\$100,000.00), or an acquisition made on or for the Airport (including without limitation the cost of construction, testing, architects' fees, consultants' fees, construction management fees, inspection and surveillance by Authority engineer, condemnation, relocation expenses, brokers' fees), reduced by the amount of any federal or commonwealth grant or PFC received by Authority therefor, shall be considered Recognized Net Investment.
- 1.50. Renewal and Replacement Fund shall mean the fund requested by the Authority's bond rating agency to pay the cost of unanticipated repairs and replacements of major components of the Airport, for the cost of acquisition or construction of improvements, extensions, or

additions, or replacement required to be charged to a capital account, to purchase Bonds for cancellation, and to redeem Bonds at the earliest possible date.

- 1.51. Return on Authority Investment shall mean the return on Recognized Net Investment made by Authority after September 30, 2005 with its own Authority funds (not Bond proceeds; not proceeds from insurance resulting from casualty damage to or destruction of improvements on the Airport; not federal or commonwealth grant funds; not Airline generated funds; and not PFC's) for new capital improvements or acquisitions on the Airport equal to the total of the annual amortization of the amount of each item of Recognized Net Investment over the annual economic life of the improvement or acquisition in equal annual amounts of principal plus interest, with interest computed at Authority's True Interest Cost on the declining principal balance.
- 1.52. Revenue Fund shall mean that fund for the deposit of Revenues, as defined under the Indenture, derived from the operation of the Airport.
- 1.53. Revenue Landing shall mean any aircraft landing by Airline at the Airport for which Airline receive revenue and those non-Revenue Landings whenever the same aircraft departs the Airport as a revenue flight plus non-Revenue Landings exceeding ten (10%) in number of Airline's Revenue Landings during the period.
- 1.54. Revenues shall mean Revenues as defined in the Indenture including income accrued by Authority in accordance with generally accepted accounting principles, including investment earnings, from or in connection with the ownership or operation of the Airport or any part thereof, or the leasing or use thereof, but do not include PFC's except as authorized for the payment of Debt Service and Coverage.
- 1.55. Scheduled Air Carrier shall mean any Air Transportation Company performing or desiring to perform, pursuant to published schedules, seasonal or non-seasonal commercial air transportation services over specified routes to and from the Airport and holding the necessary authority from the appropriate federal or commonwealth agencies to provide such transportation.

- 1.56. Scheduled Landings shall mean all Revenue Landings at the Airport published by Airline in either the Official Airline Guide or on the Airline's web site.
- 1.57. Signatory Airline shall mean an Air Transportation Company that leases a minimum of two ticket counter positions, associated office and operations space in the Terminal deemed sufficient by Airport Management to support its operation, and has an agreement with Authority substantially similar to this Agreement.
- 1.58. Subordinated Bond Indenture shall mean an indenture or trust agreement subordinated to the Indenture authorizing the issuance by Authority of Subordinated Bonds, as such may be supplemented or amended from time to time.
- 1.59. Subordinated Bonds shall mean any bonds or other financing instrument or obligation subordinate to the Bonds, issued pursuant to any Subordinated Bond Indenture.
- 1.60. Substantial Completion shall mean the date on which the Authority's architects or engineers certify any premises at the Airport to be substantially complete as to permit use and occupancy by Airline.
- 1.61. Term shall mean the period of time during which Airline's activities at the Airport shall be governed by this Agreement. Said Term shall begin on the Effective Date, and, except as otherwise set forth herein, terminate on the date set forth in Article 5.
- 1.62. Terminal Aircraft Aprons shall mean those areas of the Airport that are designated for the parking of passenger aircraft and support vehicles, and the loading and unloading of passenger aircraft.
- 1.63. Terminal shall mean the passenger terminal building and appending structures, law enforcement and security activities, paging systems, multi-user flight information display systems, and the terminal roadway system including entrance/exit/recirculating roadways, terminal curb front, and taxi/bus/ staging areas, but excluding roadways exclusively serving the public parking areas.
- 1.64. Terminal Cost and Revenue Center shall include all Capital Charges,

all direct, indirect, and general administrative Operation and Maintenance Expenses, and Revenues for the Terminal Complex.

- 1.65. True Interest Cost shall mean the index as of September 30th of the previous Fiscal Year provided by the Bond Buyer's 25 Bond Revenue Index.
- 1.66. TSA shall mean the Office of Homeland Security and Transportation Security Administration, or their authorized successors.
- 1.67. Working Capital Development Fund shall mean the fund established by Authority for deposit of Revenues remaining after making required deposits to the Revenue Fund, Operation and Maintenance Fund, Bond Fund, Debt Service Reserve Fund, Maintenance and Operation Reserve Fund, and Renewal and Replacement Fund to be used for any corporate purpose of the Authority.

Words and phrases used in this Agreement but not defined herein shall have the meanings as defined in the Indenture or, if not so set forth, shall have their usual and customary meaning.

ARTICLE 2: LEASED PREMISES AND USES

SECTION 2.01 - DESCRIPTION OF AIRLINE'S PREFERENTIAL USE PREMISES

The Airline's Preferential Use Premises shall be comprised of _____ square feet, more or less.

The Preferential Use Premises is designated in red on Exhibit A, attached hereto and by this reference made a part hereof.

SECTION 2.02 - DESCRIPTION OF AIRLINE'S COMMON USE PREMISES

The Airline's Common Use Premises shall be comprised of _____ square feet, more or less. The location of the Common Use Premises is designated in red

on Exhibit B, attached hereto by this reference made a part hereof.

SECTION 2.03 - DESCRIPTION OF NON-EXCLUSIVE USE PREMISES

In addition to the Airline's Leased Premises hereinabove defined, Airline is hereby granted the non-exclusive use, in common with others authorized to do so, of such space and facilities as may be designated by Authority, which space and facilities, without limiting the generality hereof, shall consist of:

- a) Ramp Area for the taxing of aircraft;
- b) Space for a reasonable amount of Airlines' apron equipment;
- c) Loading gates; and
- d) Available automobile parking spaces in common with other users, for use by persons that are employed by the Airline. The location and number of spaces, together with the parking rate for use thereof, if any, shall be designated by Authority from time to time during the term hereof. Any such rate imposed by Authority hereafter shall not exceed the then current automobile-parking rate charged to all other terminal-building tenants at the Airport.

SECTION 2.04 - DESCRIPTION OF PRIVILEGES, USES AND RIGHTS

Airline shall be entitled, in common with others authorized by the Authority, to the general use of all public airport facilities and improvements which now are or may hereafter be connected with or appurtenant to the Airport, except as hereinafter provided. For the purpose of this Agreement, "public airport facilities" shall include, but not be limited to runways, taxiways, aprons, aircraft parking areas, roadways, sidewalks, navigational aids, lighting facilities or other public facilities at the Airport.

Airline's use of said public airport facilities shall be for the sole purpose of operating its Air transportation Business, which use, without limiting the generality hereof, shall include:

- a) The handling, ticketing, billing and manifesting of passengers, baggage, cargo, mail and Airline's property, in air transportation by Airline.

- b) The repairing, maintaining, conditioning, servicing, testing, parking or storing of aircraft or other equipment operated by Airline.
- c) The training on the Airport of personnel in the employ of or to be employed by Airline.
- d) The sale, lease, transfer, disposal or exchange of Airline's aircraft engines, accessories, and other equipment or supplies. Said right shall include the sale lease, transfer or disposal of any article or goods used by or brought for use by Airline in connection with its conduct of its Air Transportation Business; provided, however, that Airline shall not:
 - 1) Sell food or beverages, except for consumption aloft, as provided in Paragraph (h) of this Section 1.04.
 - 2) Sell gasoline, fuel, propellants, greases or other lubricants except when said products are of particular grade desired by others and are not otherwise available at the Airport.
- e) Upon approval from the Authority, and subject to Airport Rules and Regulations, Airline may provide technical and mechanical services to airlines not having a valid agreement with the Authority.
- f) The landing, taking off, flying, taxiing, towing, parking, loading and unloading of Airline's aircraft or other equipment operated by Airline used in the operation of schedules, shuttle, courtesy, test, training, inspection and emergency flights. Said right shall include, without limiting the generality hereof, the right to load and unload airline's aircraft adjacent to a convenient entrance to the terminal building at loading gates located on the Airport Apron at points to be designated by Authority; provided, however, that flights carrying cargo or freight only shall load and unload at convenient and accessible points to be designated by Authority.
- g) The loading and unloading of property, cargo and mail at the Airport by such motor vehicles or other means of conveyance as Airline may desire or require in the operation of its air transportation service, with the right to designate the particular carrier or carriers who shall transport Airline's property, cargo and mail to and from the Airport.
- h) The right to provide food and beverage for consumption aloft by passengers and crews of Airlines. Nothing in this Agreement shall be deemed to give Airline the right, without prior written approval from the Authority, to maintain or operate on the Airport a cafeteria, restaurant, vending machine, bar or cocktail lounge or club for the

- purpose of selling or in any manner otherwise providing food or beverage to the public or to its employees and passengers.
- I) The right to replace existing signs identifying Airline's business on and in the terminal building. Signs shall be substantially similar to existing signs in size, type design and location shall be subject to the written approval of Authority prior to installation. Such installation and operation shall be without cost to the Authority.
 - j) The right to install, maintain and operate by Airline alone, by Airline in conjunction with any other scheduled passenger Air Transportation Companies who are lessees at the Airport, or through a nominee, radio communication, meteorological and air navigation equipment and facilities in or on Airline's Preferential Use Premises. The installation, maintenance and operation of such equipment shall be without cost to Authority and shall require the prior written approval of Authority as to location, method and type of installation.
 - k) The right, except as herein otherwise specifically provided, to purchase or otherwise obtain personal property of any nature (including, but not limited to, gasoline, fuel, propellants and supplies) deemed by Airline necessary or incidental to its operation, its exercise of the rights herein imposed. These purchases may be made through any person, partnership, firm association or corporation airline may choose.
 - l) Airline may, upon receiving prior written approval from the Authority, and subject to the provisions of this Agreement and the Authority's Airport Rules and Regulations, exercise on behalf of any other Air Transportation Company having an operating agreement or permit with the Authority any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation Business at the Airport.

SECTION 2.05 - RIGHTS AND PRIVILEGES SPECIFICALLY EXCLUDED

Except as specifically provided for in Section 2.04, nothing herein shall be deemed to give Airline any right or permission to sell at the Airport any goods or services to the public or to its employees and passengers, other than air transportation services and related services sold in conjunction therewith, without the prior written approval of the Authority. Without limiting the generality of the foregoing, the parties specifically understand and agree that Airline will not

exercise, or take any action inconsistent with, any right granted to any food-beverage-merchandise concessionaire of the Authority at any airport of the Commonwealth.

Nothing herein shall be deemed to give Airline the right to receive and dispatch property, cargo or freight (except that owned by Airline) within Airline's Preferential Use Premises as provided for in Section 2.01 of this Agreement, except packages normally tendered to Airline in small, single shipment packages for counter-to-counter express delivery services.

Nothing herein shall be deemed to give Airline the right to operate any business providing a service to third parties which requires permits or licenses pursuant to the Authority's Airport Rules and Regulations, without complying with those Rules and Regulations.

SECTION 2.06 - RIGHT TO INGRESS AND EGRESS

Authority hereby grants the right of ingress to and egress from the Leased Premise and facilities referred to in Sections 2.01, 2.02, and 2.03 for Airline, its employees, agents, nominees, passengers, guests, patrons its suppliers of materials or furnisher of services, its aircraft, equipment, vehicles, machinery or other property. These rights shall be subject to such lawful rules and regulations as may now or hereafter have application at the Airport.

SECTION 2.07 - ACCOMMODATION OF OTHER AIRLINES

If a scheduled air carrier not now serving the Airport wishes to initiate Scheduled Air Carrier service to the Airport, and such air carrier has a requirement for preferential leased space such as is provided to Airline pursuant to Section 2.01 of this Agreement, and Authority has insufficient space to offer for lease to such air carrier, then Authority shall in writing request Airline, and all other air carriers having substantially similar agreements with Authority, to accommodate such other air carrier, either individually or jointly. Such accommodation may consist of an agreement between Airline and such other air carrier whereby;

- a) Airline will handle the operations of such carrier, or;
- b) Airline will share its preferential Leased Premise, as defined in Section 2.01 of this Agreement, with such other carrier.

If the reasonable requirements of such other carrier are not met in the foregoing

manner within thirty (30) days of such request of Authority to Airline, then Authority shall have the right to direct any airline having substantially similar preferential leased space at the Airport to share its preferential leased space with such other carrier, in accordance with the following criterion. For each Airline occupying similar preferential leased space at the Airport, the number of revenue passengers carried by such airline and any other carrier it handles at its preferential leased space or with which it shares its preferential leased space during the previous six (6) months shall be divided by the number of linear feet of ticket counter space preferentially leased by such airline. The airline having the lowest quotient shall be required to share so much of its preferential leased space with such other air carrier as shall be necessary to accommodate the reasonable requirements of such other carrier, but in no event more than one-half of its preferential leased space.

ARTICLE 3: AIRLINE IMPROVEMENTS

SECTION 3.01 - INSTALLED IMPROVEMENTS AND PROPERTY

All improvements, fixtures, equipment and other property bought, installed, erected or placed by Airline in, on, or about the Airport and the Leased Premises shall be deemed to be personal and remain the property of Airline.

SECTION 3.02 - SURRENDER OF PREMISES

Upon termination or cancellation of this Agreement, Airline shall promptly and peaceably surrender to the Authority its Leased Premises and all improvements thereon to which the Authority is entitled in good and fit condition, reasonable wear and tear as well as damage or repair which is the responsibility of Authority hereunder excepted.

Provided Airline is not in default for payment of rentals, fees, and charges hereunder, Airline shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft, tools, equipment, trade fixtures, and other personal property, title to which shall remain in Airline, unless otherwise set forth in this Agreement, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) business days following termination of this Agreement, whether by expiration of time or otherwise, as

provided herein, subject to any valid lien which Authority may have thereon for unpaid rentals, fees, and charges. Airline shall not abandon any portion of its property at the Airport without the written consent of Authority. Any and all property not removed by Airline within thirty (30) business days following the date of termination of this Agreement shall, at the option of Authority, (i) become the property of Authority at no cost to Authority; (ii) be stored by Authority at no cost to Authority; or (iii) be sold at public or private sale at no cost to Authority. Except as may be agreed to otherwise by Authority and Airline, all Authority property damaged by or as a result of the removal of Airlines's property shall be restored by Airline to the condition existing before such damage at Airline's expense.

In the event Airline uses its Leased Premises without the written consent of Authority after this Agreement has been canceled or expires, Airline shall be deemed a tenant at sufferance during the period of such use and shall pay the rate for rental, fees, and charges established by Authority for Air Transportation Companies which are not Signatory Airlines during such period. In such event, Authority shall have the right to all remedies provided under applicable laws.

ARTICLE 4: OBLIGATIONS OF AUTHORITY

SECTION 4.01 - RIGHT TO LEASE PROPERTY

Authority represents that it has the full right to lease those portions of the Airport referred to herein, together with all premises, facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Agreement.

SECTION 4.02 - MAINTENANCE AND OPERATION OF AIRPORT

Except as otherwise specifically provided herein, Authority shall, during the term of this Agreement, maintain, operate and keep in good repair the terminal building, terminal apron and all public airport facilities and services now or hereafter connected with the Airport, which Authority has agreed to furnish and supply hereunder.

Authority shall take all action reasonably necessary, with reasonable promptness, to keep the Airport runways, taxiways and loading areas free and clear in order to insure the safe, convenient and proper use of the Airport by the Airline. Authority

shall maintain and operate the Airport in a reasonably prudent manner and in all respects in a manner at least equal to the highest standards or rating issued by the Federal Aviation Administration for Airports of substantially similar size and activity and in accordance with all rules and regulations of the Federal Aviation Administration, or its successor organization.

Nothing herein contained shall be deemed to require Authority to enlarge the Airport or to make extensions or additions to the landing areas, runways, taxiways or other appurtenances of the Airport. It is further understood and agreed that Authority may abandon certain facilities which are no longer reasonably justified for proper and adequate operation of the Airport.

Authority shall keep the public and passenger space in the terminal building adequately supplied, equipped, furnished, and decorated, and shall provide signs in said spaces and in all other public spaces on the Airport. Said signs shall include, but not be limited to, signs indicating the location of all public restaurants, rest rooms, shops, telephones, customs area, baggage area, security office, holding room and all other facilities for passenger or public use in the terminal building or elsewhere on the Airport.

Authority shall also provide and supply adequate lighting for ramps and adequate airfield lighting.

Authority shall also provide janitors and other cleaners necessary to keep the Airline's Common Use Premises, public and passenger space and the landing area of the Airport clean, neat, orderly, sanitary and presentable at all times.

SECTION 4.03 - MAINTENANCE AND SERVICE IN AIRLINE'S PREFERENTIAL USE PREMISES

Authority shall provide, at no additional charge, the following services to Airline in the Airline's Preferential and Common Use Premises: exterior building maintenance, structural maintenance, mechanical and electrical systems maintenance, and exterior window washing.

Any additional use of electricity and water, other than for normal use, must be approved by Authority.

SECTION 4.04 - GOVERNMENTAL FACILITIES

It is expressly agreed that if funds for the provision, and maintenance and operation of air navigation aids or other facilities required or permitted by the United States and/or Authority and needed by Airline for its operation at the Airport and which are now or may hereafter be furnished by the United States and/or Authority are discontinued by the United States and/or Authority, Authority shall not be required to furnish said facilities.

SECTION 4.05 - AIRPORT SECURITY

Authority shall provide, during the term hereof, security in the air operations area necessary to meet the obligation of Authority in accordance with the provisions of 49 CFR CH. XII, Regulations of the Transportation Security Administration, Department of Homeland Security, as hereafter amended or constituted.

Airline shall be responsible for obtaining a coordinating any Airport badging, vehicle decal, training an/or other activities required to ensure their agents, employees, vendors, supplier, service providers, directors, or officers are in compliance with the Airports security plan, TSA Regulations 49 CFR Parts 1500, 1520, 1540, 1542, 1544, 1546, 1548, and 1550, as promulgated, and the terms and conditions of this Agreement. Airline shall be responsible to pay any and all related costs associated with such badge and/or access privilege. Said badges shall be valid only for the period of issuance and in no event shall said badges and the access privileges which they authorize exist beyond the term of this Agreement. Badges shall be returned within twenty-four (24) hours or the next business day after expiration of the badge, termination, suspension or other cessation of employment, or termination of this Agreement, whichever shall occur first.

Airline shall be responsible for the proper certification and background check for all its employees, agents, vendors, supplier, service providers, contractors, subcontractors, officers, and directors for which it requests and/or obtains an Airport Security Badge. In the event Airline, or any of its employees, agents, vendors, suppliers, service providers, contractors, subcontractors, officers, and directors fails to return such badges upon cessation of employment or other similar circumstances, and/or any cause of action that either singularly or collectively would require Authority to re-badge all badged personnel, as required under TSA Regulations and the Airport's security plan, Airline shall bear the total cost of such re-badging process.

Airline covenants that it will at all times preserve the integrity of the Airport's security plan and TSA Regulations 49 CFR Parts 1500, 1520, 1540, 1542, 1544,

1546, 1548, and 1550, as promulgated and that it will always preserve the security of any airfield access which Airline maintains. Airline shall be responsible for any and all of the actions of its employees, contractors, subcontractors, suppliers, agents, and/or representatives and shall provide any and all escorts, as outlined in the Airport's security plan, at all times.

Should Airline, its employees, contractors, subcontractors, suppliers, agents, and/r representatives cause any security violation, and should Authority be cited for a civil penalty for such violation, Airline shall reimburse Authority for any monetary civil penalty which may be imposed by the FAA and/or TSA. Airline may have badge/access privileges immediately suspended and/or revoked by the Airport security administrator for failure to adhere to the Airport's security plan or for failure to return all badges within the time frame specified herein. In the event of a severe incident, such actions may also result in the suspension and/or termination of this Agreement, at the sole discretion of the Authority.

SECTION 4.06 - UTILITY CHARGES

Airline will pay to the Authority a charge for the use of electricity, water, and sewer on Airline's Leased Premises. Such charges will not be more than the actual charge to Authority by Authority's supplier of electrical, water, and sewer services. Telephone services are the sole responsibility of the Airline.

ARTICLE 5: OBLIGATION OF AIRLINE

SECTION 5.01 - MAINTENANCE OF AIRLINE'S PREFERENTIAL USE PREMISES

Except for exterior building, structural, and electrical mechanical systems maintenance, and exterior window washing by Authority, as provided In Section 4.03, Airline shall be obligated, without cost to Authority, to maintain its Preferential Use Premises and every part thereof in good order, repair and safe condition.

Airline shall, at its own expense, provide janitorial services in Airline's Preferential Use Premises. Said services may be provided by Airline alone, by Airline in conjunction with other firms or companies who may hereafter be lessees at the Airport, or by a nominee approved by Authority.

Airline shall re-lamp light fixtures as necessary, shall repaint the interior of the Airline's Preferential Use Premises as necessary, and shall provide for interior window washing at periodic intervals. All such maintenance, repairs and replacement shall be of quality equal to the original in materials and workmanship. All paint colors shall be subject to the prior approval of Authority.

SECTION 5.02 - ALTERATIONS, ADDITIONS OR REPLACEMENTS

During the Term of this Agreement or any extension thereof, Airline shall make no alterations, additions or replacements to the Leased Premises without the prior written approval of Authority.

Airline shall likewise obtain prior approval from Authority before installing, at its own expense, any additional equipment which requires new electrical or plumbing connections or changes in those already installed on the Leased Premises.

SECTION 5.03 - TRASH GARBAGE AND AIRCRAFT SEWAGE

Airline shall provide and use suitable receptacles that meet local health standards for all trash, garbage, aircraft sewage and all other refuse on or in connection with Leased Premises or in the operation of Airline's aircraft. Piling of receptacles, boxes, cartons, barrels or other similar items in an unsafe or unsightly manner in or about the leased premises shall not be permitted. The removal or disposal of such trash, garbage and aircraft sewage containers from the Airport will be at the expense of the Airlines.

Airline shall utilize the Authority's incinerator and triturator for the disposal of aircraft trash and sewage and will pay applicable service fees as established in Authority's Airport Rules and Regulations.

SECTION 5.04 - TAXES AND LICENSES

Airlines shall pay all taxes of whatever nature that may be levied or charged upon Airline's leasehold improvements or operations hereunder and upon Airline's right to use the Leased Premises. Airline shall obtain and pay for all licenses or permits necessary or required by law for the construction of any additional improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its air transportation services. Authority shall assist Airline where necessary in obtaining said permits. Authority shall not be required to pay any

taxes by reasons of Airline's use of the Leased Premises. Airline shall indemnify fully and save harmless Authority from any taxes imposed or levied against Authority by reason of Airline's use of the Leased Premises.

SECTION 5.05 - PUBLIC ADDRESS SYSTEM AND FLIGHT INFORMATION DISPLAY SYSTEMS

A public address system and flight information display systems may be provided by Authority at the Airport to all airlines on a nondiscriminatory basis. The use of such facilities may be provided for in one or more separate agreements between the Authority and one or more airlines, and any airline desiring the use of such facilities may have such use in accordance with the terms of such agreement or agreements. Copies of such agreements are available for inspection at the offices of the Authority.

SECTION 5.06 HAND-CARRIED ITEMS

Airline agrees that it will accept, free of charge, as accompanying baggage, merchandise purchased by a passenger from, or delivered to a passenger by, any concessionaire of the Authority, subject only to Airline's usual size and weight limitations on accompanying baggage, and to any and all governmental limitations on accompanying baggage.

ARTICLE 6: TERM

SECTION 6.01 - TERM

The Term of this Agreement shall be for a period of 12 months, commencing on the ____ day of _____ through the ____ day of _____, and on a year-to-year basis thereafter. This Agreement may be terminated as of September 30th in each year by written notice from either party to the other given on or prior to August 31st of the year.

ARTICLE 7: CHARGES AND FEES

SECTION 7.01 - CHARGES FOR AIRLINE'S LEASED PREMISES

For the use of Airline's Preferential Use Premises as described in Section 2.01 of this Agreement, its Common Use Premises as described in Section 2.02 of this Agreement, and its Non-Exclusive use Premises as described in Section 2.03 of this Agreement, Airline shall pay to the Authority a Departure Facility Service Charge, an International Arrival Facility Charge, and an In-Transit Passenger Service Charge, in the amounts specified in Parts 12.3, 12.4, and 12.6 of the Authority's Airport Rules and Regulations.

The parties expressly understand and agree that such charges are and may be computed on a per-passenger basis; that such charges do not constitute a tax, fee, head charge, or other charge, directly or indirectly on persons traveling in air commerce or on the carriage of persons in air commerce or on the sale of air transportation, within the meaning of 49 U.S.C. Appx. §1513 (a), but are rather reasonable rental charges or other service charges from aircraft operators for the use of Airport facilities, within the meaning of 49 U.S.C.Appx. §1513(b); and that such charges, when computed on a per passenger basis, do not constitute discrimination against any airline within the meaning of 49 U.S.C.Appx. §1715 or any other provision of the laws of the United States.

SECTION 7.02 - OTHER FEES AND CHARGES

In addition to the charges provided for in Section 7.01 of this Agreement, Airline shall pay to Authority the other fees and charges set forth in Part 12 of the Authority's Airport Rules and Regulations which is attached hereto and incorporated herein as Exhibit C; provided however, such regulations and the charges and rates contained therein may be amended from time to time pursuant to 2 CMC §2141 et.seq. Such amended rates and charges shall be incorporated herein upon such amendments taking effect. Other fees and charges include, but are not limited to:

Aircraft Landing Fees based upon and expressed to the nearest cent per thousand pounds of Maximum Gross Landed Weight of each type of Airline's aircraft and shall be multiplied by the total of all Maximum Gross Landed Weight for all Revenue Landings of each type of aircraft landed at the Airport by Airline.

Airport security recovery fees and incinerator and triturator use fees incorporated into the Authority's Airport Rules and Regulations.

Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by Authority or its contractors and utilized by Airline.

Pro rate shares of any charges for the provision of any services or facilities which Authority is required or mandated to provide by any governmental entity (other than Authority acting within its proprietary capacity) having jurisdiction over the Airport.

The Authority reserves the right to assess and collect Passenger Facility Charges ("PFC") subject to the terms and conditions and such methods of collection set for in the Aviation Safety and Capacity Expansion Action of 1990, Section 9110 (the "PFC Act") and its implementing rules and regulations as may be amended or replaced. Failure by Airline to remit PFC's within the time frame required by 14 CFR Part 158 shall be deemed an event of default of this Agreement.

Pursuant to the requirements of 14 CFR Part 158, Authority shall have the right to terminate this Agreement in the event any portion of Leased Premises is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers. The foregoing provision shall apply only if and to the extent required by 14 CFR Part 158 or by any PFC assurance executed by Authority pursuant to said regulation.

As long as a PFC is being collected at the Airport, this Agreement may be canceled in whole or in part, if Airline has an exclusive use for existing facilities and any portion of Airline's said facilities is not fully utilized and not made available for use by potentially competing air transportation companies.

SECTION 7.03 - AMENDMENT OF FEES AND CHARGES

Authority may, in the manner provided in this Article 7, amend any of the fees and charges specified in its Rules and Regulations. Except when Authority acts pursuant to the provision of Section 7.09 on this Agreement, all amendments of such fees and charges shall take effect at the beginning of the Authority's fiscal year (October 1st), and shall continue thereafter until revised in accordance with this Agreement.

SECTION 7.04 - AIRLINE REPORTS

Airline shall file with Authority on forms prescribed by Authority, no later than the tenth (10th) day of each month, Airline's report showing the actual landings made at the Airport during the preceding month, which report shall include the number and type of aircraft. The Airline shall provide the Authority with FAA-approved certified maximum gross landing weights for each type of aircraft it operates at the Airport.

Airline shall also file with the Authority, no later than the tenth (10th) day of each month, Airline's report showing the actual number of Enplaned and Deplaned Passengers and the amount of enplaned and deplaned cargo and enplaned mail at the Airport during the preceding month. Airline shall also provide to the Authority copies of other public statistical reports pertinent to the Airport as may be requested by the Authority, without charge to the Authority, and within a reasonable time after such request.

Authority shall have the right to audit Airline's books and records, at any or all mutually convenient times, to determine the accuracy of Airline's reports to Authority pursuant to the provisions of the Section 6.04. All costs of such audit shall be borne by Authority; provided, that if such audit discloses an underpayment of fees or charges due from the Airlines to the Authority of a magnitude of 3% or greater, Airline shall promptly reimburse the Authority for the total cost of such audit.

Airline shall have the right to audit the Authority's books and records, at any or all mutually convenient times, to determine whether the fees and charges paid by the Airline, and other airlines operating at the Airport, are consistent with the provisions of this Agreement. All cost of such audit shall be borne by Airline.

SECTION 7.05 - ACCOUNTING PROCEDURE

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

Authority shall operate the Airport System in a manner so as to produce revenues from concessionaires, tenants, and other users of the Airport System of a nature and amount which would be produced by a reasonably prudent operator of an

airport system of substantially similar size, use and activity, with due regard for the interests of the public, subject to existing leases.

All rates and charges shall be at reasonable and non-discriminatory rates and adjusted annually based on Authority's cost, as defined in this Agreement, of the facility or service provided to and used by Airline.

Indirect and general administrative costs shall be allocated in a reasonable, transparent cost allocation formula calculated consistently for all cost centers of the Authority.

SECTION 7.06 - CALCULATION OF LANDING FEES AND PASSENGER CHARGES

Factors that shall be considered in the annual calculation of fees and charges and provided with the budget are:

The annual total requirement for facility service charges shall be determined by computing the sum of the Airport System's Terminal Cost Center's direct and indirect Maintenance and Operating Expenses, the Terminal Cost Center's annual Debt Service payment requirements, annual Debt Service Coverage, Other Debt Service, required reserve and capital fund deposits, Return on Authority's Investment, and Capital Expenditures for equipment or projects having a net cost to Authority of less than \$100,000.00. To determine the Net Requirement to be paid through facility service charges the total requirement for facility service charges will be reduced by the total amount of Terminal Cost and Revenue Center Non-airline revenue.

The annual total requirement for Landing Fees shall be determined by computing the sum of Authority's Airport System direct and indirect Maintenance and Operating Expenses, annual Debt Service payment requirements, annual Debt Service Coverage, Other Debt Services, required reserve and capital fund deposits, Return on Authority's Investment, and Capital Expenditures for equipment or projects having a net cost to Authority of less than \$100,000.00. To determine the Net Requirement to be paid through air carrier Landing Fees, the total requirement will be decreased by the total of all Non-Airline revenues received and facility service charges. The Landing Fee rate will be determined by dividing the Net Requirement by the estimated total of all air carriers' Maximum Gross Landed Weight in one thousand pound units.

The annual requirement for determining incinerator fees will be based upon the Authority's Recognized Net Investment in such facilities together with ongoing Operating and Maintenance Expenses such as fuel, personnel, overhead, repairs and maintenance, insurance, and environmental compliance costs.

The annual requirement for determining triturator use fees will be based upon the Authority's Recognized Net Investment in such facilities together with ongoing Operating and Maintenance Expenses such as fuel, personnel, overhead, repairs and maintenance, insurance, and environmental compliance costs.

Security facility fees will be based on Authority's Recognized Net Investment for the cost of providing EDS equipment, baggage belts, and facilities, plus Operating and Maintenance Expenses, not paid by either the FAA or TSA.

SECTION 7.07 - COST EXCLUDED

The portion of capital costs of facilities and improvements paid by the Federal or other governmental gifts or grant-in-aid, and depreciation, shall not be included in the cost factors herein.

SECTION 7.08 - ANNUAL AIRPORT BUDGET

Authority shall mail to Airlines, at least forty-five (45) days prior to final adoption by the Authority, a copy of the proposed Airport budget for the next succeeding Fiscal Year commencing October 1st. The Authority shall give due consideration to the AAC's written comments if comments are received by Authority fifteen (15) days prior to final adoption. Authority shall promptly furnish Airlines a copy of the adopted Airport budget.

After giving due consideration to air carrier comments, if any, and prior to the end of the then current Fiscal Year, Authority shall notify Airline of the rates for rentals, fees, and charges to be established for the ensuing Fiscal Year.

If calculation of the new rates for rentals, fees, and charges is not completed by Authority and the notice provided in this Section 7.08 is not given on or prior to the end of the then current Fiscal Year, the rates for rentals, fees, and charges then in effect shall continue to be paid by Airline until such calculations are concluded and such notice is given. Upon the completion of such calculations and the giving of such notice, Authority shall determine the difference(s), if any, between the

actual rentals, fees, and charges paid by Airline to date for the then current Fiscal Year and the rates for rentals, fees, and charges that would have been paid by Airline if said rates have been in effect beginning on the first day of the Fiscal Year. Said differences shall be applied to the particular rentals, fees, or charges for which a difference(s) in rates resulted in an overpayment or under payment, and shall be remitted by Airline or credited or refunded by Authority in the month immediately following the calculation of the new Fiscal Year's rates and the giving of written notice to Airline by Authority.

SECTION 7.09 - INSUFFICIENCY OF AIRPORT SYSTEM REVENUES, ADJUSTMENT OF FEES AND CHARGES

Notwithstanding any other provision hereof, if at any time while this Agreement shall remain in effect, Authority determines that Airport Revenues are or will be insufficient to pay, when due, all principal of and interest and premium on, any Bonds or other instruments of indebtedness issued by the Authority in connection with the Airport System, any requirements of the Airport Indenture or any other expense or cost in incidental or necessary to, or arising out of, the maintenance or operation of the Airport System, including without limitation, emergency repairs or expenses, the costs of defending, settling, or satisfying any litigation which relates to the Airport System, or any aspect thereof, or to compensate for the loss of Airport System Revenue, the Authority may, upon thirty (30) days notice to Airline, increase the fees and charges provided for herein to such amount as is sufficient to assure that all such items, expenses, and costs shall be paid in full, when due, solely from Airport System Revenues.

Airline shall pay Extraordinary Coverage Protection payments in fees and charge at the Airport in any Fiscal Year in which the amount of Revenues less Operating and Maintenance Expenses is projected to be less than one hundred twenty-five percent (125%) of the Debt Service requirement. Any amounts which must be collected for such Extraordinary Coverage Protection payments will be allocated to Cost Centers within the Airline Supported Areas on the basis of the Net Requirement of such Cost Centers. Should Extraordinary Coverage Protection payments be made, Authority will refund to the Signatory Airlines such payments made by each Signatory Airline as soon as uncommitted funds become available in the Development Fund.

SECTION 7.10 - SETTLEMENT

Authority shall use its best efforts such that within one hundred (120) days

following the close of each Fiscal Year, or as soon as audited financial data for said Fiscal Year is available, rates for rentals, fees, and charges for the preceding Fiscal Year shall be recalculated using audited financial data. Airline shall have reasonable access to the records of Authority, and shall have the right to audit the financial data used in connection with such recalculation. Upon the determination of any difference(s) between the actual rentals, fees, and charges that would have been paid by Signatory Airlines using said recalculated rates, Authority shall, in the event of overpayment, promptly refund to Airline the amount of such overpayment within thirty (30) days or such other time period as mutually agreed, and in the event of underpayment, invoice Airline for the amount of such underpayment. Said invoiced amount shall be due within thirty (30) days of the invoice mailing date or other time period as mutually agreed.

SECTION 7.11 - DISPOSITION OF AIRPORT REVENUES

- (A) Revenues received or otherwise realized by Authority arising from its operation of the Airport System shall not be expended for any purpose other than acquiring, establishing, developing, operating, maintaining, and managing said Airport System, or satisfying obligations relating to said Airport System (including, without limitation, obligation under any concession agreement or bond indenture).
- (B) It is the policy of the Authority that the Airport System owned and operated by it should be financially self-sufficient; provided, however, that the foregoing policy is not intended by the parties to create any judicially-cognizable right in Airline, but is simply a statement of Authority's policy and nothing more. Further, nothing in this Agreement shall require that a particular facility or cost center within the Airport System shall be financially self-sustaining.
- (C) Nothing in this Agreement shall restrict or preclude the Authority from generating a surplus from Airport-derived Revenue, or from utilizing such surplus for any purpose not prohibited by this Agreement or by law.
- (D) Airline agrees that amounts in the [Development Fund] at the end of each Fiscal Year, if available, shall be used for any lawful purpose of Authority.

SECTION 7.12 - TIME AND KIND OF PAYMENT

- (A) Airline agrees to pay Authority in lawful money of the United States of

America.

- (B) For all fees and charges set forth in this Agreement, Airline shall tender monthly the amounts due hereunder within ten (10) days after receipt of invoice from Authority. In the event that an unpaid balance remains after thirty (30) days from such receipt:
 - i) an additional one percent (1%) per month of the unpaid balance shall become due and payable by Airline; and
 - ii) airline shall be liable for all cost of collection, including reasonable attorney's fees and court costs.

- (C) In the event that Airline shall fail to tender any payment due hereunder, the Authority may tender statements of fees and charges due on a basis more frequent than monthly, and/or may require payment of such fees and charges upon presentation of statements; and/or may require that payment be made in cash or by cashier's check or money order if:
 - i) an unpaid balance remains after forty-five (45) days from receipt of the invoice; or
 - ii) the Airline has previously failed to tender the monthly amounts due as provided in Section 7.12(B) within the prior 12 months; or
 - iii) the Airline tenders a negotiable instrument as payment upon invoice and such instrument is not honored upon presentment.

- (D) All fees and charges due and owing by Airline hereunder are payable to Authority or its assignee under any security interest granted by the Authority provided, that in the event of default by Authority under any bond indenture to which it is a party, such fees and charges shall be payable as the trustee of such bonds may from time to time direct.

SECTION 7.13 - PROCEDURES TO RECOVER OVER-PAYMENT

It is the obligation of Airline to pay all fees and charges levied against it pursuant to this Agreement, on or before the date due. In the event that Airline desires to contest the validity or amount of any such fees or charges, Airline shall first pay the same to Authority, and may then seek a refund in any appropriate forum.

SECTION 7.14 - CONFORMITY OF AGREEMENT; FEES AND CHARGES TO OTHERS

The Authority shall not hereafter during the term of this Agreement, offer to other

Air Transportation Companies more favorable terms or conditions for use of, or lease of space at, the Airport than those provided in this Agreement for comparable rights and privileges, unless more favorable rates and conditions are offered to Airline at the same time.

In the event an Air Transportation Company shall use the facilities or any services of the Airport without executing an agreement with the Authority substantially identical to this Agreement, such Air Transportation Company shall pay fees to the Authority computed in accordance with the provisions of Part 12.00 of the Airport Rules and Regulations.

SECTION 7.15 - SURETY BOND

- (A) **Amount:** Airline shall, at all times during the tendency of this Agreement, post surety bond in an amount equal to the greater of:
- 1) \$75,000.00; or
 - 2) the sum of the following:
 - i) Three months' Departure Facility Service Charges, as provided in Section 7.01 of this Agreement. The three months' Departure Facility Service Charges provide herein shall equal one-quarter of the aggregate of Airline's Departure Facility Service Charge due and owing by the Airline over the immediately preceding twelve-month period. In the event that airline has not previously served the Airport for the entire preceding twelve-month period, Authority shall estimate the amount of Departure Facility Service Charges based upon prior Departure Facility Service Charges due and owing by the Airline to the Authority, if any, and/or the first and subsequent monthly flight schedules, if available, of airline for the Airport; plus
 - ii) Three months' landing fees, as provided in Section 7.02 of this Agreement. The three months' landing fees shall equal one-quarter of the aggregate of Airline's landing fees due and owing for the immediately preceding twelve-month period. In the event Airline has not previously served the Airport for the entire preceding twelve-month period, authority shall estimate the amount of landing fees based upon prior landing fees due and owing by the Airline to the Authority, if any, and/or the first and subsequent month flight schedules, if

available, of the Airline. Authority reserves the right to adjust the security deposit, upward or downward, taking into consideration subsequent changes in estimated Departure Facility Service Charge and landing fees.

- (B) **Bond:** The form of the surety bond required by Paragraph A of this Section 7.15, and the identity of the surety, shall be subject to the approval of the Authority. Such surety bond shall provide that the bond may not be canceled or reduced except upon thirty (30) days prior written notice to the Authority. The terms and conditions of such bond shall further provide that, at any time Airline fails to pay, when due, any fees and charges due and owing pursuant to the terms of this Agreement, whether or not airline is in default of this Agreement, the surety shall, upon demand by Authority, pay to Authority such sums as are then due and owing by Airline to Authority. The surety bond shall survive the termination or expiration of this Agreement, if and to the extent that upon such expiration or termination Airline is indebted to Authority for any such fees and charges.

ARTICLE 8: RIGHTS AND PRIVILEGES RESERVED BY AUTHORITY

SECTION 8.01 - RIGHT TO CHARGE USE FEES

Nothing in this Agreement shall be deemed to restrict in any manner Authority's right to charge any person, partnership, firm, association or corporation, fees and rentals for the use of Authority's property or any improvements thereon where such use of said property or improvements is of a regular or permanent nature, or where the use is of such a nature as to constitute the performance of a commercial business at the Airport. Without limiting the generality hereof, Authority shall have the right to:

- a) Charge vehicles carrying passengers for hire including tour buses, hotel/motel vehicles, limousines and taxicabs.
- b) Charge persons, partnership, firms, associations or corporation owned in part or as a whole, or operated by Airline) a fee for the sale and serving of food and beverage to

- others for consumption at the airport.
- c) Impose reasonable and nondiscriminatory fees for use of the automobile parking lots, etc.
 - d) Impose rental charges and/or concession fees to airport tenants that furnish services to the general public.
 - e) Impose rental charges for exclusive use of land or facilities at the Airport other than Airline's Preferential and Common Use premises, as defined herein.
 - f) Impose use fees for use of the triturator.
 - g) Impose use fees for use of the incinerator.

SECTION 8.02 - RIGHT TO IMPROVE AND PROTECT THE AIRPORT

In addition to any other rights herein retained by it, Authority specifically reserves the following privileges:

- (A) The right to develop or improve the landing area and other portions of the Airport as it deems necessary. If feasible, such improvements shall be made in a manner, which will cause Airline as little inconvenience as possible.

The Authority shall review with and seek the timely comments of Airline, and give serious consideration to the comments of all signatory airlines, regarding capital improvement programs involving facilities utilized by Airline directly or indirectly. In the event a governmental order or requirement results in significantly increased cost or expense that may affect Airline, Authority shall notify Airline with reasonable promptness in the manner provided in Section 14.19.

Prior to the initiation by Authority of any capital improvement program for the construction of a facility, all or substantially all of which is to be used by one or more tenants to the exclusion of others, Authority shall require such tenant or tenants to agree in writing to lease such facility from Authority and to pay rental to the Authority in amounts sufficient to make such facility fully self-sustaining, including all maintenance and operating cost associated therewith, and Authority shall satisfy itself that any such tenant or tenants is/are financially responsible and can fulfill all obligations to the Authority. Nothing herein shall restrict the Authority's right to construct facilities all or substantially all of which are of the preferential use of one or more tenants to the exclusion of others, such as extension to

or enlargement of the Terminal. But Airline shall have the right to participate in such project through its involvement in the budgetary process, in accordance with Article 7 of this Agreement.

- B) The right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Airline from erecting or permitting to be erected any building or other structure on the Airport which , in the opinion of Authority, would constitute a hazard to aircraft or limit the usefulness of the Airport.
- C) The right during time of war or national emergency to lease the Airport or any part thereof to the United States Government for military use.

In the event any such lease is executed, the privileges of this Agreement insofar as they are inconsistent with the privileges of the lease to the government shall be suspended.

SECTION 8.03 - AIRPORT DEVELOPMENT

A Signatory Airline through its AAC chairman shall have the right to review and comment upon the proposed Capital Expenditure(s) with a local share in excess of one hundred thousand dollars (\$100,000.00) when provided with the Authority's proposed budget as provided in Section 6.08. If requested by the AAC chairman, Authority agrees to meet with the interested airlines at a mutually convenient time for the purpose of discussing its planned Capital Expenditures that will impact airline fees. In advance of said meeting, Authority shall make available to the airlines any reasonably requested additional information relating to the determination of the proposed fees. Authority agrees to fully consider the comments and recommendations of the Signatory Airlines.

SECTION 8.04 - WORKING CAPITAL FUND

The Authority has established a separate special fund, designated "Working Capital Fund." Contribution to such fund shall be made out of fees and charges to all airlines serving the Airport, in the following amounts:

- a) a sum equal to the total of all funds which are earmarked by any bond indenture to which the Authority is a party for the construction of capital improvement projects, and which at the completion of such projects are applied to debt service under such bond indenture; and

- b) An amount equal to the Airport System's annual Coverage requirement
- c) Any Return on Authority Investment received.

SECTION 8.05 - RENEWAL AND REPLACEMENT FUND

Each Fiscal Year an amount not exceeding \$200,000.00 per year, as the Authority may budget for contribution to such fund will be deposited in the Renewal and Replacement Fund; provided, that whenever and for so long as the unencumbered balance in such fund shall equal or exceed \$1,000,000, no portion of airline-derived revenues may be allocated to such fund

SECTION 8.06 - SUBORDINATION TO INDENTURE

- A. This Agreement and all right granted to Airline hereunder are expressly subordinated and subject to the lien and provisions of the pledges, transfer, hypothecation or assignment made the Authority in the Indenture. Authority and Airline agree that to the extent required by the Indenture or law, the holder of the Bonds or their designated representatives shall have the right to exercise any and all right of Authority hereunder.
- B. Authority shall notify Airline in advance of any amendments or supplements to the Indenture that would materially alter the terms and provisions of this Agreement. Authority and Airline shall use their best efforts to agree on the implementation of any such material amendments or supplements desired solely by Authority for its own purposes.
- C. With respect to property provided by Authority to Airline hereunder which was or is to be acquired by the Authority with proceeds of Bonds, the interest on which is, or is intended to be, excludable from the gross income of the holders of such Bonds for federal income tax purposes, the parties hereby covenant to protect the tax-exempt status of the Bonds.

ARTICLE 9: INDEMNIFICATION AND INSURANCE

SECTION 9.01 - INDEMNIFICATION

The parties agree that Airline is and shall be deemed to be an independent contractor and operator and not an agent or employee of the Authority with respect to its acts or omissions hereunder.

Airline agrees to indemnify and save harmless the Authority, its directors, officers, agents, employees, elected or appointed officials, or volunteers from and against any and all liabilities, losses, damages, cost and expenses, claims, suits, judgments, actions and proceedings resulting from any injuries to, or death of, any person or persons, or loss or damage to property (including property and officers, employees, and agents of the Authority) arising out of the following except to the extent caused by the negligent acts or omission of the Authority or its agents, officers and employees:

- A) Suits alleging a taking of property or interest in property without just compensation, trespass, nuisance or similar suits based upon the use of the Airport for the landing and taking off of an aircraft;
- B) Airline's use or occupancy of the Airport (other than that covered by Subsection a of this Section 9.01);
- C) The condition of Airline's Exclusive Use Premises and/or Common Use Premises, including any equipment or facilities located thereon, and any repairs, construction and alteration thereto by Airline, its employees, agents, contractors or subcontractors;
- D) The violation by Airline of any covenant or condition of this Agreement, or the violation by airline of any other contract, law, ordinance, regulation or court order relating to the Airport;
- E) Acts and omissions of the Airline's employees and agents;
- F) Claims for environmental and pollution damages arising from the acts and omissions of the Airline and its employees; and
- G) Patent and trademark infringement claims arising from or related to Airline or its operations.

The Authority shall promptly notify Airline in writing of any claim or action brought against the Authority in respect of which indemnity may be sought by the Authority against Airline hereunder, furnishing Airline with a copy of all suits papers and legal process, Airline shall have the right to assume the defense

thereof, including the right to employ counsel and the right to compromise or settle such claim or action to the extent of its interest.

SECTION 9.02 - AIRLINE'S INSURANCE

Airline agrees that at all times during the Term of this Agreement and renewal and extension thereof, it will keep in effect the forms of insurance set forth in this Section 9.02. All policies or certificates shall contain a provision that written notice of cancellation, reduction in amount, non-renewal of coverage or any material change in said policy by the insurer shall be delivered to Authority ninety (90) days in advance of the effective date thereof. Airline shall procure all insurance coverages from carriers rated "A" or higher by the A.M. Best Company; all such carriers shall be subject to the approval of the Authority.

All policies of insurance shall name Authority, its directors, officers, agents, employees, elected or appointed officials, or volunteers as additional insured. Airline shall furnish Authority with certificates of insurance from the insurance carrier evidencing all insurance required hereunder to be in full force and effect during the entire term of this Agreement.

- a) **Property Insurance:** Airline shall procure and maintain during the Term of this Agreement coverage for risks of Direct Physical Loss or Damage to all real and personal property of every kind and description belonging to the Airline and the property of others which is (a) in Airlines care, custody, or control, and (b) for which the Airline is legally liable, in an amount equal to the full replacement value of such property.

All property insurance policies shall name both Airline and Authority as insured parties as their respective interests may appear at the time of loss.

- b) **Aviation Liability Insurance:** Airline shall procure and maintain during the Term of this Agreement, Commercial Airline Liability insurance providing coverage for Bodily Injury, Personal Injury, Property Damage, Airport Liability, Premises Liability, Product Liability, Hangarkeepers Legal Liability, Passenger Liability, Cargo Legal Liability, Contractual Liability, and Liquor Liability. Insurance shall be procured with a combined single limit of liability not less than the product of One Million Dollars (\$1,000,000.00) multiplied by the number of passenger seats in the largest aircraft operated by the Airline, but in no event less than Ten Million Dollars (\$10,000,000.00) combined single limit of liability. Bodily injury

insurance coverage shall include sickness or disease including death therefrom. Property Damage insurance shall include the loss of use of such property.

- c) **Automobile Liability Insurance:** Airline shall procure and maintain during the Term of this Agreement, Commercial Automobile Liability providing coverage for Bodily Injury and Property Damage for all owned and non-owned vehicles used on the premises of the Airport System. Insurance shall be procured with a combined single limit of liability not less than One Million Dollars (\$1,000,000.00) land side, and Four Million Dollars (\$4,000,000.00) air side.
- d) **Workman's Compensation Insurance:** Airline shall procure and maintain during the Term of this Agreement, Workman's Compensation Insurance in amounts required under the laws of the Commonwealth of the Northern Mariana Islands.

ARTICLE 10: DAMAGE OR DESTRUCTION OF LEASED PREMISES

SECTION 10.01 - PARTIAL DAMAGE

If Airline's Preferential Leased Premises are partially damaged by fire, explosion, the elements, the public enemy or other casualty, but not rendered untenable Airline shall not be entitled to any abatement of or reduction in any of the fees and charges payable to the Authority under Article 7 of this Agreement. Such damage will be repaired with due diligence by Authority, at its own cost and expense; provided, however, that if such damage is caused by an act or omission of Airline, its sublessees, agents, nominees, or employees, Airline shall reimburse Authority for its reasonable cost incurred in making such repairs.

SECTION 10.02 - EXTENSIVE DAMAGE

If Airline's Preferential Use Premises are damaged by fire, explosion, the elements, the public enemy, or other casualty, and thereby reduced at least partially untenable, but capable of being repaired within ninety (90) days, Airline shall be entitled to a reduction in the fees and charges payable to the Authority pursuant to the provisions of Section 7.01 of this Agreement, in a percentage equal to the percentage of Airline's Preferential Use Premises so

rendered untenantable, until such damage shall be repaired. Such damage shall be repaired with due diligence by Authority, at its own cost and expense, provided, however, or employees, Airline shall reimburse Authority for its reasonable cost incurred in making such repairs.

SECTION 10.03 - COMPLETE DESTRUCTION

If the Airline's Preferential Use Premises are damaged by fire, explosion, the elements, the public enemy, or other casualty, and thereby rendered at least partially untenantable and not capable of being repaired within ninety (90) days, Airline shall be entitled to a reduction in the fees and charges payable to Authority, pursuant to the provisions of Section 7.01 of this Agreement, computed in the manner set forth in Section 10.02 of this Agreement. In such event, Authority shall be under no obligation to repair or reconstruct said premises. Authority may, in its discretion, repair the Preferential Use Premises at its own cost and expense; provided, however, that if such damage is caused by an act or omission of Airline, its sublessees, agents, nominees or employees, Airline shall reimburse Authority for its reasonable costs incurred in making such repairs.

Airline shall not be entitled to any reduction in any fees and charges by reason of any damage to Airline's Common Use Premises, as described in Section 2.02 of this Agreement, or to Airline's non-exclusive use premises as described in Section 2.03 of this Agreement. Airline shall not be entitled to any abatement or reduction of any other charge payable to Authority pursuant to the provisions of Article 7 of this Agreement on account of any damage to its Preferential Use Premises.

SECTION 10.04 - RIGHT TO RECOVER DAMAGES

Nothing in this Agreement shall be construed as a waiver of the right of either Authority or Airline to recover damage from the other arising out of the fault or negligence of the other.

SECTION 10.05 - LIMIT OF AUTHORITY'S OBLIGATION DEFINED

It is understood that, in the application of the foregoing Sections 10.01, 10.02 and 10.03, Authority's obligation (if any) shall be limited to repair and reconstruction of the terminal building to the same extent and of equal quality as obtained at the commencement of the operations hereunder. Redecoration and replacement of Airline's furniture, equipment and supplies in the Preferential Use Premises shall be the responsibility of Airline unless damages thereto are caused by an act or

omission of the Authority, its lessee, sublessee, agents or employees, in which event the Authority shall be responsible for the redecoration and replacement. Any such redecoration and refurnishing-re-equipping shall be equivalent quality to that originally installed hereunder.

ARTICLE 11: ENVIRONMENT

SECTION 11.01 - GENERAL CONDITIONS

- A. Notwithstanding any other provisions in this Agreement, and in addition to any and all other requirements of this Agreement or any other covenants, representations or warranties of Airline, Airline expressly covenants, warrants and represents to Authority in connection with Airline's operations at the Airport the following:
- 1) Airline is knowledgeable of all applicable federal, commonwealth, and local environmental laws, ordinances, rules, regulations and orders, which apply to Airlines operations at the airport and acknowledges that such environmental laws, ordinances, rules regulations and orders change from time to time, and Airline agrees to keep informed of any such future changes.
 - 2) Airline shall not cause or permit any Hazardous Material hereinafter placed, stored, generated, used, released or disposed of in, on, under about or transported from any Airport premises by Airline, its agents, employees, contractors or other person, unless it has complied with the following: (a) with respect to Hazardous Materials other than oil, petroleum products, and flammable substances reasonably necessary in connection with Airline's aeronautical activities, the prior written consent of Authority shall be required, which shall not be unreasonably withheld. Authority may impose, however, as a condition of such consent, such requirements as Authority may impose, however, as a condition of such consent, such requirements as Authority in its sole discretion may deem reasonable or desirable, including without limiting the generality of the foregoing, requirements as to the manner in which, the time at which, and the contractor by whom such work shall be done, and (b) Airline must comply with all environmental laws and regulations,

and with prudent business practices, with respect to such Hazardous Materials and (c) the presence of Hazardous Materials must be reasonably necessary for the operation of Airline's air transportation business.

- 3) Except as provided for in 2) above, Airline shall comply, and shall at all times ensure that all Airport premises occupied by it are kept in compliance with all applicable federal, commonwealth, and local laws, ordinances, regulations, guidelines, and orders relating to health, safety, and protection of persons, the public, and the environment (collectively "Environmental Laws"). Airline shall furnish upon the reasonable request of Authority, all reports, assessments or other documents satisfactory to Authority showing that no Airport System premises occupied by it are being used nor have been used by Airline for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials.
- 4) Airline shall not install or allow to be installed any above ground or underground storage tanks on any Airport System premises.
- 5) Except as provided herein, Airline shall warrant that it shall keep Leased Premises occupied by it free of all environmental, health or safety hazards and nuisances of any kind whatsoever. Prior to Airline's occupancy of any Leased Premises, Airline and Authority, or Authority's designated agent shall review the condition of premises to be occupied by Airline, and shall make written notation of any pre-existing conditions discovered; subsequently, Airline shall not be responsible to Authority with respect to such pre-existing conditions.
- 6) Airline shall notify Authority immediately upon discovery of any Hazardous Material on, in, under or emanating from Airport System premises occupied by it, any release or threat of release of a Hazardous Material, illness caused by exposure thereto, as well as any actual, threatened or potential environmental health or safety liability, including but not limited to claims lawsuits, notices of violation, complaints and investigations. Airline shall immediately, and at its own expense, take all action necessary to remediate, abate, and rectify any such conditions at or upon the Airport. If Authority

is required to remediate or abate any such condition on or upon such premises, it may do so upon reasonable notice (under the circumstances) to Airline, and Airline shall pay all costs incurred by Authority in undertaking such remediation or abatement.

- 7) Except as may otherwise be provided herein, Airline will not make or allow to be made any change in usage, addition, or improvements in, on or to any Airport System premises which will result in the presence or release of Hazardous Materials on any Airport System premises.
- 8) If Airline breaches the obligations stated in this section, or if the presence of Hazardous Materials on Airport System premises occupied by Airline results in a release of Hazardous Materials on, from or to said premises or contamination of the premises or other property (including groundwater), or if contamination of said premises or other property by Hazardous Materials otherwise occurs as a result of Airline's actions or operations, then, in addition to any other indemnification provisions contained in this Agreement, Airline shall indemnify, and hold Authority, its directors, officers, employees, agents, and volunteers harmless from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities or losses, from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities or losses, (including without limitation, diminution in value of the premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises, natural resource damages, damages arising from any adverse impact on marketing of space, damage to other property, or the environment, and such paid in settlement of claims, attorney's fees, consultant and expert fees) except to the extent caused by the negligence or willful misconduct of Authority.
- 9) Airline agrees to cooperate with any investigation, audit or inquiry by Authority or any governmental agency, regarding possible violation of any environmental law or regulation upon the Airport System.
- 10) Airline agrees that all remedies of Authority provided herein with regard to violation of any federal, commonwealth or local environmental laws, ordinances, rules, regulation or orders shall be

deemed cumulative in nature and shall survive termination of this Agreement.

- 11) Airline agrees that may notice of violation, notice of non-compliance, or other enforcement action shall be provided to Authority within twenty-four (24) hours of receipt by Airline or Airline's agent. Any violation or notice of violation or non-compliance with federal, state, or local environmental law or ordinance shall be deemed a default under this Agreement. Such default shall be cured within ten (10) days of receipt of notice of default from Authority, or such longer period as may be required to effect a cure provided Airline commences a cure within said ten (10) days and thereafter diligently prosecutes the cure to completion. Any such default that is not cured shall be grounds for termination of this Agreement.

SECTION 11.02 - GROUNDWATER

Airline acknowledges that certain properties within the Airport System or owned by the Authority contain groundwater and a water lens that provides water to inhabitants of the Commonwealth. Accordingly, these properties are subject to certain rules and regulations issued by both the federal and commonwealth governments governing use of said property. Airline agrees to observe and abide by such groundwater rules and regulations as may be applicable to Authority's property and uses thereof.

SECTION 11.03 - SOLID AND HAZARDOUS WASTE

If Airline is deemed to be a generator of hazardous waste as defined by federal, commonwealth, or local law, Airline shall obtain a generator identification number from the Environmental Protection Administration (EPA), and the appropriate generator permit shall comply with all federal, commonwealth and local laws, and any rules and regulations promulgated thereunder, including but not limited to, insuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable law.

Airline agrees to provide Authority, upon request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation, responses, storage and disposal plans and material safety data sheets, within ten (10) days of any such requests by Authority.

ARTICLE 12: CANCELLATION, ASSIGNMENT AND TRANSFER

SECTION 12.01 - CANCELLATION BY AIRLINE

This Agreement shall be subject to cancellation by Airline as to any Airport, after the occurrence of one or more of the following events:

- A) The permanent abandonment by the Authority of the Airport as an airline terminal.
- B) The lawful assumption by the United States Government or any authorized agency thereof, of the Airport or any substantial parts thereof, in such a manner as to substantially restrict Airline for a period of at least forty-five (45) days from operating thereon for the carrying of passengers, cargo, property and mail.
- C) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof for airport purposes, and the remaining in force of such injunction for a period of at least forty-five (45) days.
- D) The inability of Airline to use for a period of forty-five (45) days the airfield on the Airport, including approach areas, runways, taxiways, aprons, navigational aids, and lighting facilities, for the landing and taking off of Airline's aircraft, because of fire, explosion, earthquake, other casualty or acts of God or the public enemy, provided that same is not caused by negligence or willful acts or failure to act on part of Airline; or the inability of Airline to use for a period of forty-five (45) days any other premises, facilities, rights, licenses, services or privileges granted to Airline hereunder, except as otherwise provided hereinabove or Article 10 herein.
- E) The default by Authority in the performance of any covenant or agreement herein required to be performed by Authority and the failure of Authority to remedy such default for a period of forty-five (45) days after receipt from Airline of written notice to remedy the same; provided, the notice shall be of no force or effect if Authority shall have remedied the default or is diligently proceeding to remedy the default.

- F) The permanent cessation by Airline of all service to and from the Airport.

Airline may exercise such right of termination by giving Authority forty-five (45) days prior written notice at any time after the lapse of the applicable periods of time, and this Agreement shall terminate as of that date. Charges and fees due hereunder shall be payable only to the date of said termination; provided, that if this Agreement is terminated by Airline pursuant to Paragraph (F) of this Section 12.01, and if fees and charges payable under Section 2.01 hereof shall be calculated, in whole or in part, on a per-square-foot basis, then Airline shall be liable to Authority for such fees and charges computed on a per-square-foot basis, for forty-five (45) days after the effective date of termination or for one-half of the fees and charges so computed which would have been due between the effective date of such termination and the end of the then-current term of the Agreement, whichever is less.

Airline's performance of all or any part of this Agreement for or during any period(s) after a default by Authority of any of the terms, covenants and conditions herein contained to be kept by Authority shall not be deemed a waiver of any right on the part of Airline to cancel this Agreement for any subsequent failure by Authority to perform, keep or observe any of the terms, covenants or conditions hereof.

SECTION 12.02 - CANCELLATION BY AUTHORITY

This Agreement shall be subject to cancellation by Authority, by notice to Airline, upon the occurrence of any one of the following events:

- a) The abandonment by Airline of its conduct of air transportation at the Airport for a period of forty-five (45) days; provided, however, that a suspension of service as a result of a strike or other cause beyond Airline's control shall not be deemed to constitute abandonment.
- b) The default by airline in the performance of any covenant or agreement herein required to be performed by Airline, other than the payment of fees and charges, and the failure of Airline to remedy such default for a period of thirty (30) days after receipt of written notice from Authority to remedy same.

- c) The default by Airline in the payment of any sums due and payable to the Authority hereunder or pursuant to the Authority's Airport Rules and Regulations, and the failure of Airline to completely cure such default within ten (10) days after receipt of written demand from Authority to do so.
- d) The lawful assumption by the United States Government or any authorized agency thereof of the operation, control or use of the airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict Airline, for a period of at least ninety (90) days, from operating thereon for the carrying of passengers, cargo, property and mail.

In addition to the aforesaid events, and without limitation of any other remedies available to Authority under this Agreement or at law, and without any notice other than provided for in this Section 12.02, and without any liability to Airline, Authority may take immediate possession of all leased premises and remove all persons or property therefrom; and may take such steps as Authority's Executive Director, in his sole discretion, deems reasonable to prevent the use of Airport facilities by Airline.

It is agreed that failure to declare this Agreement terminated upon the default of Airline for any of the reasons set forth above shall not operate to bar or destroy the right of Authority to declare this Agreement null and void by reason of any subsequent violation of the terms of this Agreement.

SECTION 12.03 - TERMINATION FOR FINANCIAL AID

In addition to the foregoing, all rights, privileges or interest acquired hereunder by Airline may, at the option of Authority and following prior written notice of thirty (30) days, be suspended or finally terminated if such suspension or termination is found by Authority, acting in good faith, to be necessary to secure financial aid provided by the United States Government for the development of the airport or for the development or promotion of aeronautical operations thereon; provided, however, that in the event that this Agreement is terminated by Authority pursuant to the provisions of this Section 12.03, Authority shall

- A) Be liable to Airline for the fair market value of all improvements, installed by Airline upon the Leased Premises, and

- B) Utilize its best efforts to provide equivalent rights, privileges and interest in any new facilities constructed by Authority.

SECTION 12.04 - ASSIGNMENT AND SUBLETTING

Airline shall not sell, assign or this Agreement or transfer any part thereof and shall not sublease all or any portion of the Leased Premises without the prior written consent of Authority; provided, however, that upon thirty (30) days' prior written notice to Authority, Airline may assign this Agreement to any corporation with which Airline may merge or consolidate or which may succeed to the Air Transportation Business of Airline.

ARTICLE 13: PROPERTY RIGHTS UPON TERMINATION

SECTION 13.01 - AIRLINE'S RIGHT OF REMOVAL

Upon termination of this Agreement for any reason, airline shall have the right, subject to the provision of Section 2.02, for a period of thirty (30) days after the date of termination, to remove any or all of its property from the Airport; provided, however, that Airline shall not be in default in its payments to Authority hereunder and provided that Airline shall restore said premises to their original condition as of the beginning of occupancy, ordinary wear and tear, damage by the elements, fire, explosion or other causes beyond the control of Airline excepted.

SECTION 13.02 - AUTHORITY RIGHTS AT TERMINATION

Title to any and all property not removed by Airline prior to the expiration of the aforesaid 30-day period shall vest in Authority; provided, however, that Authority reserves the right to require Airline to remove such improvements and property, the cost of which shall be borne by Airline.

ARTICLE 14: GENERAL PROVISIONS

SECTION 14.01 - RULES AND REGULATIONS

The Authority shall at all times have the right to adopt and enforce uniform, reasonable and nondiscriminatory rules, regulations and standards with respect to the use of the Airport; provided that such rules, regulations and standards shall be consistent with safety and security and with all relevant rules, regulations and orders of the FAA with respect to operations at the Airport. At least thirty (30) days prior to adoption by the Authority of any proposed rule, regulation or order having a direct and substantial effect (except in emergency or extraordinary conditions) on Airline's rights and privileges granted by this Agreement, the Authority shall give Airline notice of the proposed rule, regulation or order and afford Airline the right to present to Authority, within such thirty (30) day period, information and statements thereon. Upon request of a Signatory Airline, the Authority shall schedule a meeting of the AAC for the purpose of discussing the proposed rule, regulation, or order. Airline shall observe and obey all such reasonable rules, regulations, standards and orders and cause the same to be observed and obeyed by its employees, agents, contractors and representative. The Authority shall furnish Airline with two (2) copies of any such rules, regulations, standards and orders at least five days prior to their effective date (except in case of emergency), and all amendments thereto and revisions thereof.

SECTION 14.02 - COMPLIANCE WITH RULES AND REGULATIONS

Airline agrees to observe and obey all lawful rules and regulations of the Authority, which are now in effect or as may from time to time during the Term hereof be promulgated, or any lawful rule or regulation of the FAA or any federal or CNMI agency which is binding at law on Airline, as the same are or may from time to time be amended or supplemented.

Airline covenants and agrees that it will not violate or permit its agents, contractors, or employees acting on Airline's behalf to violate any such rules and regulation which are now in effect or may from time to time during the term hereof take effect. To the extent it is authorized to do so by law, Authority may prescribe civil penalties and injunctive remedies for violations of its rules and regulations and same may be applied to Airline for violations of their agents, employees, and contractors acting on Airline's behalf; provided, however, Airline does not hereby waive rights to contest such laws, penalties or remedies.

In the event Authority shall be subject to any civil fine or penalty by reason of

airline's violation of any governmental rules, regulations and standards as now or hereafter promulgated or enacted, the cost of such fine or penalty shall be borne by Airline. Airline shall indemnify fully and save harmless Authority from any fine or penalty charged against Authority by reason of Airline's violation of any governmental rules, regulations and standards.

SECTION 14.03 - INTERPRETATION OF AGREEMENT

Nothing in this Agreement shall be construed or interpreted in any manner whatsoever as limiting, relinquishing or waiving any rights of ownership enjoyed by Authority in the Airport property, or in any manner waiving or limiting the Authority's control over the operation, maintenance and general administration of Airport property or operations, nor in derogation of, such governmental rights as Authority possesses, except as is specifically provided for herein. Upon termination of this Agreement, all rights of Airline with respect to the use of facilities at the Airport shall at once cease and terminate.

SECTION 14.04 - INVALID PROVISIONS

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

SECTION 14.05 - UNITED STATES GOVERNMENT

This Agreement shall be subordinate to the provisions of any existing or future agreement between:

- a) Authority and the United States of America relative to the maintenance and operation of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.
- b) Commonwealth of the Northern Mariana Islands and the United States of America relative to the joint use of the Airport.

SECTION 14.06 - CONSENT NOT TO BE UNREASONABLY WITHHELD

Whenever consent or approval is required hereunder by either Authority or Airline, such consent or approval is not to be unreasonably withheld or to be delayed for any unreasonable period of time.

SECTION 14.07 - RE-DELIVERY OF PREMISES

Except as otherwise provided for herein, Airline shall, upon termination of this Agreement, quit and deliver up the Leased Premises to Authority peaceable, quietly and in as good order and condition as the same now are or may hereafter be improved by Airline or Authority, reasonable use and wear, damage by the elements, fire, explosion or other causes beyond the control of Airline excepted.

SECTION 14.08 - FEDERAL AVIATION ADMINISTRATION

Whenever the term "Federal Aviation Administration" is used in this Agreement, it shall mean the Federal Aviation Administration created by the Federal Government under the Federal Aviation Act of 1958, or to such other Federal Government authority as may be the successor thereto or be vested with the same or similar authority.

SECTION 14.09 - NONDISCRIMINATION

- A) The Airline, for itself, its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, 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) The Airline, for itself, its successors in interest and assigns, as part

of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that:

- 1) No person on the grounds of race, color, creed or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities;
 - 2) In the construction of any improvements on, over or under such land, and the furnishing of services thereon, no person, on the grounds of race, color, creed or national origin shall or otherwise be subjected to discrimination; and
 - 3) That the Airline shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation-Effectuation of title VI of the Civil Right Act of 1964, and as said Regulations may be amended.
- C) That in the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate this Agreement and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

SECTION 14.10 - OTHER LEASES AND CONTRACTS

Nothing contained in this Agreement shall be deemed or construed to nullify, restrict or modify in any manner the provisions of any other leases or contract between Authority and Airline authorizing the use of the Airport, its facilities and appurtenance upon payment of rentals, fees and charges therein provided.

SECTION 14.11 - NO EXCLUSIVE RIGHT

It is hereby agreed that nothing herein contained shall be construed to grant or authorized the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Authority reserves the right to grant to others the privilege and right of conducting any one or all activity of the aeronautical nature.

SECTION 14.12 - INSPECTION

Authority, through its authorized agents, shall have the right at all reasonable times to enter upon the Leased Premises to inspect said Leased Premises, to observe the performance by Airline of its obligations hereunder, and to do any act which Authority may be obligated to have the right to do under this Agreement.

SECTION 14.13 - COVENANT OF QUIET ENJOYMENT

Authority covenants and warrants that, upon payments of all rental and other charges due hereunder by Airline to Authority, and upon observance by Airline of all the remaining covenants of Airline provided for in this Agreement, Airline shall hold and may quietly enjoy the premises described in Sections 2.01, 2.02, and 2.03 of this Agreement, during the Term and any extensions hereof.

SECTION 14.14 - PUBLIC AUDITOR

The Public Auditor of the Commonwealth of the Northern Mariana Islands shall, pursuant to 1 CMC §7845, have the right to examine and copy any records, data or papers relevant to this Agreement for a period of three (3) years after final payment under this Agreement.

SECTION 14.15 - AGREEMENT MADE IN ACCORDANCE WITH LOCAL LAWS

This Agreement has been made in and shall be construed in accordance with the laws of the Commonwealth of the Northern Mariana Islands.

SECTION 14.16 - SUCCESSORS

This Agreement shall bind and inure to the benefits of any successor of Authority and any successor, assignee or sublessee of Airline.

SECTION 14.17 - HEADINGS

The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement.

SECTION 14.18 - ATTORNEY'S FEES

If any suit or action is instituted in connection with any controversy arising under

this Agreement, the prevailing party shall be entitled to recover and the losing party agrees to pay in addition to court costs, such sum as the trial court may adjudge reasonable as attorney's fees and upon appeal therefrom such sums as appellate court may adjudge reasonable as attorney's fees. This provision shall survive termination by either party with respect to causes of suit or action that survive termination.

SECTION 14.19 - TIME OF ESSENCE

Time is of the essence of this Agreement.

SECTION 14.20 - NOTICES

Notice to Authority provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

**The Commonwealth Ports Authority
Attention: Executive Director
Saipan International Airport
P.O. Box 501055
Saipan, MP 96950**

and notices to Airline, if sent by certified mail, postage prepaid, addressed to:

Attention: _____

or to such other address as the parties may designate to each other in writing from time to time.

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

**COMMONWEALTH PORTS
AUTHORITY**

AIRLINE

By: _____

By: _____

Date: _____

Date: _____

Approved as to Form and Legality:

Legal Counsel, CPA

Date: _____

Commonwealth of the Northern)
Mariana Islands,)
)
Saipan, MP.)

ACKNOWLEDGMENT

On this _____ day of _____, 20____, before me, a Notary Public in and for the Northern Mariana Islands, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

Commonwealth of the Northern)
Mariana Islands,)
)
Saipan, MP.)

ACKNOWLEDGMENT

On this _____ day of _____, 20____, before me, a Notary Public in and for the Northern Mariana Islands, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC