

**HARTSFIELD-JACKSON ATLANTA
INTERNATIONAL AIRPORT**

AIRPORT USE AND LEASE AGREEMENT

WITH

[AIRLINE NAME]

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**HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT
AIRPORT USE AND LEASE AGREEMENT**

GEORGIA.... FULTON COUNTY

THIS AIRPORT USE AND LEASE AGREEMENT (the “Agreement”), made and entered into as of the _____ day of _____, 2016, is between the CITY OF ATLANTA, a duly chartered municipal corporation of the State of Georgia (“City”), and [AIRLINE NAME], a corporation organized and existing under and by virtue of the laws of the State of _____ (“Airline”). All terms of this Agreement shall have the meanings defined in TITLE I below.

WITNESSETH THAT

WHEREAS, City owns and operates Hartsfield-Jackson Atlanta International Airport (“Airport”), located in Fulton and Clayton Counties, State of Georgia; and

WHEREAS, City has the right to lease premises and facilities at the Airport and to grant rights, licenses, and privileges on and in connection therewith, and has full power and authority to enter into this Agreement; and

WHEREAS, Airline, as duly authorized by competent governmental authority, is engaged in the business of air transportation with respect to persons, property, and mail on a scheduled basis; and

WHEREAS, Airline wishes to lease from City certain premises and facilities and acquire from City certain rights, licenses, and privileges in connection with its use of the Airport, and City is willing to lease and grant the same to Airline in accordance with the terms, provisions, and conditions set forth in this Agreement; and

WHEREAS, City has owned, managed, operated and controlled the Airport for over 85 years and has collaborated with the Air Carriers serving the Airport to develop and implement the Airport Master Plan and to make capital investments which have resulted in the Airport’s worldwide standing. Under City’s management, the Airport has grown to be the world’s busiest passenger airport. The unique partnership between City and the Air Carriers serving the Airport has been a material inducement to Airline entering into this Agreement and making the capital investments required hereunder. Ensuring that City retains ownership, management, operation and control of the Airport is vital to maintaining the financial strength and operational efficiency of the Airport; and

WHEREAS, City and Airline wish to terminate the following agreements between the City and Airline [insert prior use and lease agreements].

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants, agreements, and conditions contained herein, City does hereby demise and let unto Airline, and Airline does hereby lease, hire, and take from City, certain premises and facilities, and City does

hereby grant unto Airline certain rights, licenses, and privileges at and in connection with the Airport, and City and Airline do hereby mutually undertake, promise, and agree, each for itself and its successors and assigns, as follows:

TITLE I
DEFINITIONS

The following words, terms, and phrases, wherever used in this Agreement, have the following meanings (capitalized terms not defined in this TITLE I shall have the meanings ascribed to them by other titles of this Agreement):

- 1.01. – **“AATC Charges”** means the costs charged by the Atlanta Airlines Terminal Corporation to City for operations and maintenance expenses.
- 1.02. – **“Accommodating Airline”** means a Signatory Airline that accommodates the request of a Requesting Airline for use of a Preferential Use Gate or other Preferential Use Premises as provided in Sections 4.04 and 5.03.D.
- 1.03. – **“Additional Project”** means a Capital Improvement Project that is not (i) a Pre-Approved Project; (ii) financed with Pre-Approved Allowances; or (iii) an Exempt Project.
- 1.04. – **“Affiliate”** means a Passenger Carrier providing air service at the Airport that (i)(a) is a parent or subsidiary of a Signatory Airline, or a subsidiary of said Signatory Airline’s parent company, or is under the same parental control as said Signatory Airline; or (b) operates flights under an International Air Transport Association (IATA) flight designator code of a Signatory Airline; or (c) otherwise operates under essentially the same trade name of a Signatory Airline and uses essentially the same livery as said Signatory Airline, and (ii) is properly designated as an Affiliate by said Signatory Airline in accordance with Section 7.01; provided, however, that no Passenger Carrier that sells tickets to passengers under its own trade name and flight number at this Airport shall be classified as an Affiliate of another such Passenger Carrier that is a Signatory Airline unless either clause (i)(a) or clause (i)(c) above defines the relationship between such Air Carrier and the Signatory Airline at the Airport; and further provided that no Signatory Airline may be an Affiliate of another Signatory Airline.
- 1.05. – **“Affiliate Operating Agreement”** means the agreement between City and a Passenger Carrier designated by a Signatory Airline as its Affiliate.
- 1.06. – **“Agreement”** means this Airport Use and Lease Agreement between City and Airline.
- 1.07. – **“Air Carrier”** means a carrier certificated by the Secretary of the U.S. Department of Transportation as a Passenger Carrier under 49 U.S.C. § 41102, a Cargo Carrier under 49 U.S.C. § 41103 or a Foreign Carrier under 49 U.S.C. § 41302.
- 1.08. – **“Air Service Incentive Program”** means each program made up of air service incentives at the Airport that City may adopt and implement in order to enhance existing air service or attract new air service to the Airport, each of which shall be consistent

with applicable federal requirements and may include, without limitation, rates and charges waivers and marketing support, as further described in Section 22.13.B.

- 1.09. – **“Air Transportation Business”** means that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels or cargo.
- 1.10. – **“Aircraft Apron Taxilane Area”** means the paved areas generally between the Aircraft Parking Area within the CPTC as shown on **Exhibit A** as of July 1, 2016, as such facilities may be modified, improved or enlarged.
- 1.11. – **“Aircraft Parking Area”** means the location where an aircraft parks at a Gate within the CPTC, as shown on **Exhibit A** as of July 1, 2016, as such facilities may be modified, improved, or enlarged during the Term.
- 1.12. – **“Aircraft Parking and Apron Taxilane Areas”** means the Aircraft Apron Taxilane Area and Aircraft Parking Area.
- 1.13. – **“Airfield”** means the areas and facilities provided for the landing, takeoff, and taxiing of aircraft, including runways, runway safety and approach protection areas, taxiways, infield areas, air navigation aids, lighting systems, non-licensed vehicle roadways, perimeter security facilities, and related facilities at the Airport, as depicted in **Exhibit B**, consistent with the most recently FAA-approved Airport Layout Plan, and associated I&U facilities, as all such areas and facilities may be modified, improved, or enlarged during the Term.
- 1.14. – **“Airfield Allowance”** means a Pre-Approved Allowance for projects in the Airfield.
- 1.15. – **“Airfield Capital Improvement Project”** means a Capital Improvement Project for which City has reasonably allocated a portion of the Total Project Costs to the Airfield Cost Center.
- 1.16. – **“Airfield Cost Center”** means the Airline Cost Center for the purposes of accounting for and reasonably allocating Costs to the Airfield.
- 1.17. – **“Airline”** means the Air Carrier executing this Agreement and any assignee, transferee or successor-in-interest as specified in Section 20.01 of this Agreement.
- 1.18. – **“Airline Cost Center”** means a Cost Center with an associated Airline Rate Base Requirement. There are two Airline Cost Centers: (i) the Airfield Cost Center and (ii) the Central Passenger Terminal Complex Cost Center.
- 1.19. – **“Airline Rate Base Requirement”** means the Costs reasonably attributable or allocable to one or more Airline Cost Centers for the calculation of rentals and fees in accordance with TITLE VIII of this Agreement.
- 1.20. – **“Airline O&M Reimbursement”** means the amount of operations and maintenance third party provider costs reimbursed by City to Signatory Airlines pursuant to Section 12.02.I.

- 1.21. – **“Airline Rate-Based Capital Costs”** means the portion of the Total Project Costs that is reasonably attributable or allocable to one or more Airline Cost Centers.
- 1.22. – **“Airline Rate-Based Operating Expenses”** means Operating Expenses that are reasonably attributable or allocable to one or more Airline Cost Centers.
- 1.23. – **“Airline Rented Space”** means Group A, B, C or D type space (as defined in Section 8.03.B) in the CPTC rented to any Signatory Airline as Exclusive Use Premises, Preferential Use Premises or Shared Use Premises, plus all Common Use Premises in the CPTC, all as it may be adjusted from time to time, all as shown in **Exhibit A** as of October 1, 2017. Group E type space (Inside Concessions Space), Group F type space (vacant space) and Group G type space (Circulation and Support Space) as depicted in **Exhibit A** is not Airline Rented Space.
- 1.24. – **“Airport”** means Hartsfield-Jackson Atlanta International Airport as it now exists or hereafter may be improved and expanded.
- 1.25. – **“Airport Master Plan”** means that FAA accepted long term plan and schedule of airport development priorities, including potential land acquisition to support such plan and priorities, titled as the “Master Plan Technical Report for Hartsfield-Jackson Atlanta International Airport” and dated March 2015, as it may be amended or replaced from time to time by City after notice to and consultation with the Signatory Airlines. For ease of reference and illustrative purposes, copies of (a) two Airport Master Plan drawings dated March 2015 and (b) a drawing depicting the current airport capital plan are attached as **Exhibit C**.
- 1.26. – **“Airport Rules and Regulations”** means, collectively, all reasonable rules, procedures, requirements and regulations currently effective and hereinafter amended, adopted or established by City, including without limitation City’s Common Use Regulations, Winter Weather Operations Plan, Irregular Operations (IROPS) Plan, and Surface Movement Guidance and Control Plan (as each may be amended from time to time), all of which are incorporated into and made a part of this Agreement, provided that such Airport Rules and Regulations do not conflict with applicable provisions of state or federal law or the provisions of this Agreement.
- 1.27. – **“Amortization”** means the charge for the use of the R&E Fund to finance Additional Projects or Exempt Projects funded with Airline Rate-Based Capital Costs (except for Exempt Projects under 11.02.A(2)) based on the economic life of each such Capital Improvement Project and including a return on the unamortized portion of each such project calculated using an interest rate mutually agreed upon by City and a majority of MII Eligible Signatory Airlines that together have enplaned at least eighty-seven percent (87%) of the total Enplaned Passengers of all MII Eligible Signatory Airlines during the immediately preceding fiscal year, provided, however that at a minimum the interest rate shall equal the average borrowing costs for a comparable term published in the Bond Buyer Revenue Bond Index on June 30th of the year in which such project is put in service.

- 1.28. – **“Anticipated R&E Fund Withdrawals”** means amounts, if any, City reasonably anticipates it will withdraw from the R&E Fund for purposes described in subsections 403(a) through (f) or subsections 405(b) through (e) of the Master Bond Ordinance when the failure to pay such amounts would result, either with the lapse of time or upon notice or both, in a default under the Master Bond Ordinance.
- 1.29. – **“Approved Projects”** means, collectively, the Pre-Approved Projects, Capital Improvement Projects financed with Pre-Approved Allowances and Additional Projects that are deemed approved pursuant to the process in Section 11.03.
- 1.30. – **“Atlanta Airlines Terminal Corporation” or “AATC”** means the third party provider of operations and maintenance services described in Section 12.01 of this Agreement.
- 1.31. – **“Automated Guideway Transit System” or “AGTS”** means the passenger vehicle transit system connecting the terminals and concourses at the Airport, including rights of way, structures, tracks, maintenance facilities, vehicles, power and control systems and related facilities, as shown on **Exhibit A** as of July 1, 2016, and associated I&U facilities, as such transit system may be modified, improved, or enlarged during the Term. The AGTS includes the extensions to any future terminals or concourses, but excludes the SkyTrain to the Rental Car Center.
- 1.32. – **“Average Gate Utilization”** means the average number of Departing Seats per day per SAGE at all of a Signatory Airline’s Preferential Use Gates or, with respect to calculating Reasonably Available Capacity, at City’s Domestic Common Use Gates, calculated over specified intervals. The Departing Seats of a Requesting Airline involuntarily accommodated by a Signatory Airline pursuant to Section 5.03.D(4) shall not count towards a Signatory Airline’s Average Gate Utilization.
- 1.33. – **“Aviation General Manager”** means the person so designated by City or his or her designee.
- 1.34. – **“Bond Ordinance” or “Master Bond Ordinance”** means the Restated and Amended Master Bond Ordinance 99-0-1896 authorizing the issuance of City of Atlanta Airport Revenue Bonds adopted by City Council on March 20, 2000, as subsequently amended and supplemented.
- 1.35. – **“Capital Costs”** means the sum of Debt Service for Prior Debt, Debt Service for New Debt, Debt Service for Terminal Modernization Project Debt, all Coverage Requirements applicable to such Debt Service for Prior Debt, New Debt and Terminal Modernization Project Debt, plus Amortization (if any).
- 1.36. – **“Capital Improvement Project”** means an addition or improvement to the Airfield, CPTC or Airport’s physical plant or equipment, including Capital Renewal and Replacement Projects, and the acquisition of land or rights in land for expansion or operation of the Airport (including judgments and awards related to claims for inverse condemnation) or for avigation easements acquired from property owners releasing City from any claims or liability arising from the flight of aircraft landing at or departing from the Airport.

- 1.37. – **“Capital Renewal and Replacement Projects”** means capital additions, replacements, betterments, extensions or improvements to the Airport.
- 1.38. – **“Cargo Carrier”** means an Air Carrier certificated by the Secretary of the U.S. Department of Transportation as a Cargo Carrier under 49 U.S.C. § 41103 or as a foreign carrier under 49 U.S.C. § 41302 that provides all-cargo air transportation.
- 1.39. – **“Central Passenger Terminal Complex” or “CPTC”** means the buildings, concourses, Aircraft Parking and Apron Taxilane Areas, and other associated facilities comprising the Domestic Terminal, the International Terminal and the AGTS, all as shown on **Exhibit A** as of July 1, 2016, as all such buildings, concourses, Aircraft Parking and Apron Taxilane Areas and other facilities may be modified, improved, or enlarged during the Term.
- 1.40. – **“Check-In Positions”** means those areas in the CPTC, including kiosks, made available by City for use by Passenger Carriers for passenger check-in, ticketing, and similar activities, including associated queuing space.
- 1.41. – **“Circulation and Support Space” or “CSS”** means the space used by passengers and others for circulation at the CPTC and the space required to provide necessary public services (such as restrooms and mechanical rooms), all as it may be adjusted from time to time, all as shown in **Exhibit A** as of October 1, 2017.
- 1.42. – **“City”** means the City of Atlanta, a duly chartered municipal corporation of the State of Georgia.
- 1.43. – **“City Common Use Gate Requirement”** means the requirement that, at any point during the Term after the completion of the Concourse T Expansion Project (as described in **Exhibit D**) but in no event later than December 31, 2021, City shall have at least three (3) Domestic Common Use Gates with Reasonably Available Capacity.
- 1.44. – **“City Cost Centers”** means functional areas or departments whose allocable costs are borne by City, after appropriate allocations related to police, fire, security, operations and maintenance. Examples of these cost centers are general and administration, ground transportation, parking, roadways, cargo, car rental, other Outside Concessions, and other landside departments.
- 1.45. – **“City Space”** means the space in the CPTC used for, among other things, Department of Aviation offices, offices for the police department, fire department and emergency medical response teams, the USO, the Atlanta Convention and Visitors Bureau and chapels, all as it may be adjusted from time to time, all as shown in **Exhibit A** as of October 1, 2017. No City Space shall be included as Rented Space.
- 1.46. – **“Common Use”** means the use of Common Use Gates or other terminal facilities used by a Passenger Carrier for its flights and passengers in common with other Passenger Carriers in accordance with the provisions of the Common Use Regulations and this Agreement.

- 1.47. – **“Common Use Facility Manager”** means the third-party manager selected by the City in its sole discretion to manage the Common Use Premises.
- 1.48. – **“Common Use Facility Manager Costs”** means all of the costs of City or its third-party manager to operate and manage the Common Use Premises, including without limitation labor costs, Capital Costs and operating costs of Common Use Terminal Equipment, operations and maintenance expenses and management fees.
- 1.49. – **“Common Use Gate”** means a Gate in the CPTC designated for Common Use by the Aviation General Manager and does not include any Preferential Use Gates.
- 1.50. – **“Common Use Gate with Priority Use Rights”** means a Common Use Gate assigned by the Aviation General Manager to a Signatory Airline for use on a Priority Use basis as further specified in Sections 5.04 and 6.01.A and the Common Use Regulations.
- 1.51. – **“Common Use Premises”** means those areas of the CPTC, including without limitation Common Use Gates (including Common Use Gates with Priority Use Rights), Common Use Check-In Positions, Common Use Terminal Equipment, Common Use baggage claim and Common Use baggage make-up, not assigned on a Shared Use, Preferential Use or Exclusive Use basis, but rather used in common by Airline and one or more other Passenger Carriers. Common Use Premises does not include Circulation and Support Space.
- 1.52. – **“Common Use Regulations”** means the Terminal Common Use Regulations adopted by City of Atlanta Ordinance on May 7, 2007, as such regulations may be revised or supplemented from time to time.
- 1.53. – **“Common Use Terminal Equipment”** means equipment that is utilized on a Common Use basis for passenger processing.
- 1.54. – **“Concessions Program”** means the program under which food, beverages, goods, services and amusements are provided at locations within the CPTC for the benefit and convenience of the public.
- 1.55. – **“Concessions Support Space”** means the space in the CPTC that is rented to concessionaires on a per square foot basis that was not included in any concessions request for proposal, all as it may be adjusted from time to time, all as shown in **Exhibit A** as of October 1, 2017.
- 1.56. – **“Consumer Price Index for All Urban Consumers for Atlanta”** means the Consumer Price Index for All Urban Consumers for Atlanta published by the United States Department of Labor, Bureau of Economic Statistics or, in the event that the United States Department of Labor ceases to publish such an index, a similar index selected in the reasonable discretion of the Aviation General Manager after consultation with the Signatory Airlines.
- 1.57. – **“Core Airport Operation Projects”** means all Approved Projects; all Capital Improvement Projects and all Capital Renewal and Replacement Projects related to the

Airfield or CPTC, airport safety or security, aeronautical facilities, cargo facilities, or airport parking and roadways, and any projects shown in the Airport Master Plan in effect on July 1, 2027, but shall not include any non-aeronautical commercial development projects, such as hotels or office parks.

- 1.58. – **“Costs”** means the Debt Service, Coverage Requirement, Amortization (if any), and Operating Expenses attributable or allocable to a Cost Center for the purpose of calculating rentals, fees and charges in accordance with TITLE VIII of this Agreement.
- 1.59. – **“Cost Center”** means the Airport facilities and functions grouped for the purposes of accounting for and reasonably allocating Costs. Cost Centers are designated as (i) Airline Cost Centers or (ii) City Cost Centers.
- 1.60. – **“Coverage Requirement”** means, for Prior Debt, twenty percent (20%) of the Debt Service; for New Debt, thirty percent (30%) of the Debt Service; and for Terminal Modernization Project Debt twenty percent (20%) of the Debt Service.
- 1.61. – **“CPTC Allowance”** means a Pre-Approved Allowance for projects in the CPTC.
- 1.62. – **“CPTC Capital Improvement Project”** means a Capital Improvement Project for which City has reasonably allocated a portion of the Total Project Costs to the CPTC Cost Center.
- 1.63. – **“CPTC Cost Center”** means the Airline Cost Center for the purposes of accounting for and reasonably allocating Costs to the CPTC.
- 1.64. – **“Customer Facility Charges” or “CFCs”** means fees imposed for non-aeronautical use of the Airport for the purpose of funding non-aeronautical facilities at the Airport, such as a consolidated rental car facility, as such fees may be altered from time to time during the Term of this Agreement.
- 1.65. – **“Date of Beneficial Occupancy” or “DBO”** means, with regard to any Capital Improvement Project, the date on which such project is substantially complete and available for occupancy, as certified by the City’s architects and engineers and for which a certificate of occupancy has been obtained, if applicable.
- 1.66. – **“Debt Service”** means, collectively, debt service on GARBs and other indebtedness payable from General Revenues.
- 1.67. – **“Departing Seat”** means a seat on a departing flight from the Airport, as reported by an airline to the Official Airline Guide (“OAG”) or other generally-accepted published airline schedule database designated by the Aviation General Manager.
- 1.68. – **“Deplaned Passenger”** means any passenger (including revenue passengers, zero-fare passengers utilizing a frequent flyer ticket and non-revenue passengers) arriving on an aircraft at the Airport, including any such passenger who subsequently boards another aircraft of the same or a different Passenger Carrier or on the same aircraft subsequently operating under a different flight number.

- 1.69. – **“Designated Gate”** means a Preferential Use Gate designated by City for accommodation pursuant to Section 5.03.D(4).
- 1.70. – **“Direct Operating Expense”** means all Operating Expenses other than the Operating Expenses associated with the City Cost Centers for City’s Department of Aviation administrative costs, the costs of City departments other than the Department of Aviation and other non-Department of Aviation administrative costs including but not limited to pensions, auditors, investment gains/losses and employee expenses. **Exhibit E** provides, for illustrative purposes only, City’s allocation of Operating Expenses to Direct Operating Expenses (those Operating Expenses shown in the **Exhibit E** as allocated to the “AGTS,” “Terminal” and “Airfield”) and City’s allocation of Operating Expenses to City Cost Centers.
- 1.71. – **“Domestic Common Use Baggage Claim”** means the space and equipment on the upper and lower levels in the Domestic Terminal used in common with other Passenger Carriers for the delivery of inbound baggage to arriving passengers, as it may be adjusted from time to time, as shown in **Exhibit A** as of October 1, 2017.
- 1.72. – **“Domestic Common Use Check-In Areas”** means the Check-In Positions and associated baggage make-up space and equipment in the Domestic Terminal designated by the Aviation General Manager from time to time to be used in common with other Passenger Carriers.
- 1.73. – **“Domestic Common Use Facilities”** means Domestic Common Use Baggage Claim, Domestic Common Use Gates and Domestic Common Use Check-In Areas.
- 1.74. – **“Domestic Common Use Gate”** means a Gate in the Domestic Terminal designated by the Aviation General Manager from time to time to be used in common with other Passenger Carriers.
- 1.75. – **“Domestic Deplaned Passenger”** means all Deplaned Passengers arriving at the Airport from destinations inside the United States of America.
- 1.76. – **“Domestic Enplaned Passenger”** means all Enplaned Passengers bound from the Airport for destinations inside the United States of America.
- 1.77. – **“Domestic Flight”** means the flight of an aircraft either arriving from or departing to another airport within the United States of America.
- 1.78. – **“Domestic Originating Enplaned Passengers”** means all originating Enplaned Passengers bound from the Airport for destinations inside the United States of America.
- 1.79. – **“Domestic Terminal”** means the west landside terminal building and concourses as depicted in **Exhibit A** and any future terminals and concourses intended primarily for the use of Domestic Passengers; the Aircraft Parking and Apron Taxilane Areas, taxilanes, and other areas adjacent to such concourse buildings for the parking and maneuvering of aircraft, as shown on **Exhibit A** as of July 1, 2016, and associated I&U facilities, as all such facilities may be modified, improved, or enlarged during the Term.

- 1.80. – **“Effective Date”** means 12:00 a.m. Eastern Time on the dates specified in Section 2.01.
- 1.81. – **“Enplaned Passenger”** means any passenger (including revenue passengers, zero-fare passengers utilizing a frequent flyer ticket and non-revenue passengers) boarding an aircraft, including any such passenger who previously disembarked from another aircraft of the same or a different Passenger Carrier or from the same aircraft previously operating under a different flight number.
- 1.82. – **“ENR Building Cost Index”** means the Building Cost Index for Atlanta, Georgia published by Engineering News-Record or, in the event that Engineering News-Record ceases to publish such an index, a similar construction cost index selected in the reasonable discretion of the Aviation General Manager after consultation with the Signatory Airlines.
- 1.83. – **“Environmental Laws”** means and includes all applicable federal, state, and local laws, statutes, ordinances, regulations, decrees, permits, directives and/or requirements currently in effect or which may come into effect during the Term of this Agreement, as may be amended from time to time, and all implementing regulations, orders, and applicable federal or applicable state court decisions interpreting, relating to, regulating or imposing liability under the same (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health and/or safety conditions, the environment, public health and/or safety, environmental conditions, or the use, generation, storage, disposal, Release, exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all applicable federal or state superlien or environmental clean-up statutes.
- 1.84. – **“Exclusive Use”** means Airline and its Affiliates shall have exclusive rights of use over all other Air Carriers at all times.
- 1.85. – **“Exclusive Use Premises”** means any office space, storage area, passenger club, employee break room or other areas of the CPTC designated for Airline’s exclusive use and shown on **Exhibit A** as Group B Rented Space (unless such Group B Rented Space is designated as “Preferential”), Group C Rented Space and Group D Rented Space.
- 1.86. – **“Exempt Project”** means a Capital Improvement Project that is exempt from the review and implementation procedures specified in TITLE XI of this Agreement, except for the consultation requirements in Sections 11.02.A(8) and 11.02.C. No Pre-Approved Project shall be deemed to be an Exempt Project or converted to an Exempt Project.
- 1.87. – **“Extension Period”** means the period commencing on July 1, 2036, with any such extension being exercisable by the mutual written consent of City and Airline, for ten (10) years, subject to the requirements of Section 2.03.
- 1.88. – **“FAA”** means the Federal Aviation Administration, or any successor or other federal agency which assumes the oversight and functions of the Federal Aviation Administration, if the Federal Aviation Administration is abolished or combined with or merged into any other federal agency.

- 1.89. – **“Final Recapture Notice”** means the notice issued by City to Airline pursuant to Section 5.03.C(4), stating City’s election to recapture one or more of the Airline’s Preferential Use Gates and designating the number and location of Preferential Use Gates that City intends to recapture.
- 1.90. – **“Final Termination Notice”** means the notice issued by City to Airline pursuant to Section 5.04.A(5), stating City’s election to terminate Airline’s Priority Use Rights on one or more International Common Use Gates and designating the Gates at which the City intends to terminate Airline’s Priority Use Rights.
- 1.91. – **“Fiscal Quarter”** means one of four three-month periods during the Fiscal Year.
- 1.92. – **“Fiscal Year”** means a year beginning July 1 and ending June 30, as may be changed by City from time to time.
- 1.93. – **“Funding Plan”** means a plan presenting how City plans to fund Total Project Costs of a Capital Improvement Project with GARBs, the R&E Fund, PFCs, CFCs, federal Airport Improvement Program grants and other funding sources.
- 1.94. – **“GARB Debt Service Coverage”** means the amounts by which funds available to pay debt service on GARBs, as calculated in accordance with the Master Bond Ordinance, exceed debt service on GARBs.
- 1.95. – **“GARBs” or “Airport Revenue Bonds”** means the Airport general revenue bonds issued by City, from time to time, having a lien on the General Revenues of the Airport in accordance with the Bond Ordinance.
- 1.96. – **“Gate”** means the aircraft parking position, apron areas for staging ground service equipment, loading bridge, ground power units, passenger holdroom, and equipment essential for the operation of an aircraft flight and the loading and unloading of passengers, baggage, and cargo at a concourse.
- 1.97. – **“General Revenues”** means, for GARB and Debt Service purposes, the term as defined in the Bond Ordinance.
- 1.98. – **“Hazardous Materials”** means any and all chemicals, pollutants, contaminants, substances, products, by-products, waste, or other materials of any nature or kind whatsoever which (a) are or become listed or regulated under any Environmental Laws; (b) give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under applicable reported decisions of state or federal court; or (c) which may be hazardous or harmful to the air, water, soil or environment or affect industrial hygiene, human health or safety, including without limitation, petroleum, polychlorinated biphenyls, urea formaldehyde, and/or asbestos materials, products, by-products, or waste.
- 1.99. – **“Infrastructure and Utilities” or “I&U”** means drainage and sewerage systems; facilities and systems for the provision of electrical power and other utilities;

telecommunications systems and facilities; and other infrastructure and utility facilities that are for the direct benefit of the Airport as such infrastructure and utility facilities may be modified, improved, or enlarged during the Term. I&U facilities as of July 1, 2016 are depicted in **Exhibit F**.

- 1.100. – **“Initial Recapture Notice”** means the notice issued by City to Airline pursuant to Section 5.03.C(1), stating City’s intention to recapture one or more of Airline’s Preferential Use Gates.
- 1.101. – **“Initial Termination Notice”** means the notice issued by City to Airline pursuant to Section 5.04.A(2), stating City’s intention to terminate Airline’s Priority Use Rights on one or more International Common Use Gates.
- 1.102. – **“Inside Concessions”** means all concessions which are or will be located inside the CPTC, and which supply or will supply goods, services, or amusement and includes, but is not limited to, food/restaurants, beverages, gifts, personal services, specialty retail shops, any banks, convenience retail shops, duty paid, newsstands, interior advertising, amusement and vending machines and any other concessions for supplying goods, services (expressly excluding goods and services directly related to Airline’s Air Transportation Business, subject to TITLE III of this Agreement) or amusement. Inside Concessions does not include, and City reserves all rights with respect to, all other concessions which currently or will supply goods, services or amusement outside the CPTC, which are referred to as Outside Concessions.
- 1.103. – **“Inside Concessions Revenue”** means the revenue received by City from Inside Concessions for (a) base rent; (b) percentage rent based on gross revenues; and (c) any minimum guarantee payments not otherwise included in (a) or (b), but will exclude any rent paid by concessionaires for Concessions Support Space, which will be considered Non-Airline Rented Space.
- 1.104. – **“Inside Concessions Revenue Credit”** means the amount of the Inside Concession Revenue that is credited by City to the Signatory Airlines each month, as calculated in accordance with Section 8.08.
- 1.105. – **“Inside Concessions Space”** means the space in the CPTC that was included in a concessions request for proposals with rent based on a percentage of sales, and is utilized or reserved for Inside Concessions, as it may be adjusted from time to time and as shown in **Exhibit A** as of October 1, 2017.
- 1.106. – **“International Common Use Gate”** means a Common Use Gate in the International Terminal.
- 1.107. – **“International Departing Flight”** means a flight departing to a destination outside the United States of America.
- 1.108. – **“International Deplaned Passengers”** means all Deplaned Passengers arriving at the Airport from destinations outside the United States of America (excluding “Preclearance

Locations,” as defined by the Department of Homeland Security’s Customs and Border Protection).

- 1.109. – **“International/Domestic Check-in Areas” or “IDCA”** means the space in the International Terminal identified on **Exhibit A** as International/Domestic Check-In Areas or “IDCA” used for checking in International Originating Enplaned Passengers, as such space may be adjusted from time to time.
- 1.110. – **“International/Domestic Passenger Use Areas” or “IDPUA”** means the space in the International Terminal identified on **Exhibit A** as International/Domestic Passenger Use Area or “IDPUA” used by departing International Enplaned Passengers, as such space may be adjusted from time to time.
- 1.111. – **“International Enplaned Passengers”** means all Enplaned Passengers bound from the Airport for destinations outside of the United States of America (including “Peclearance Locations,” as defined by the Department of Homeland Security’s Customs and Border Protection).
- 1.112. – **“International Only Passenger Use Area” or “IOPUA”** means the space in the International Terminal identified as International Only Passenger Use Area or “IOPUA” on **Exhibit A** used for the processing of arriving International Deplaned Passengers, as such space may be adjusted from time to time.
- 1.113. – **“International Originating Enplaned Passengers”** means all originating Enplaned Passengers bound from the Airport for destinations outside of the United States of America (including “Peclearance Locations,” as defined by the Department of Homeland Security’s Customs and Border Protection).
- 1.114. – **“International Terminal”** means the Maynard H. Jackson, Jr., International Terminal (MHJIT), associated concourses and facilities, as depicted in **Exhibit A** as of July 1, 2016, and any future terminals and concourses intended primarily for the use of International Passengers; Aircraft Parking and Apron Taxilane Areas, taxilanes, and other areas adjacent to the international concourse buildings for the parking and maneuvering of aircraft, as depicted in **Exhibit A** as of July 1, 2016; and associated I&U facilities; as all such facilities may be modified, improved, or enlarged during the Term.
- 1.115. – **“Irregular Operation”** means an off-schedule arrival or departure of a Scheduled Operation.
- 1.116. – **“Landing Fees”** means the fees effective July 1st of each Fiscal Year as calculated in accordance with Section 8.02.
- 1.117. – **“Landing Fee Rate”** means the amount per thousand pounds of MGLW charged to each Air Carrier for each landing at the Airport, as calculated in accordance with Section 8.02.
- 1.118. – **“Majority-In-Interest”** means, for any Fiscal Year, (i) for an Airfield Capital Improvement Project, MII Eligible Signatory Airlines that together have landed at least

eighty-seven percent (87%) of the total Maximum Gross Landed Weight of all MII Eligible Signatory Airlines during the immediately preceding Fiscal Year; and (ii) for a CPTC Capital Improvement Project, MII Eligible Signatory Airlines that together have enplaned at least eighty-seven percent (87%) of the total Enplaned Passengers of all MII Eligible Signatory Airlines during the immediately preceding Fiscal Year. In calculating the Majority-In-Interest, if a force majeure event, as defined in Section 22.12, affected an MII Eligible Signatory Airline's activity in the immediately preceding Fiscal Year, that MII Eligible Signatory Airline's activity shall be based on its activity during the twelve-month period immediately preceding the inception of the force majeure event. For purposes of these calculations, an MII Eligible Signatory Airline's activity shall include that of each of its Affiliates.

- 1.119. – **“Maximum Gross Landed Weight” or “MGLW”** means the maximum certificated weight, in thousand pound units, at which each aircraft is authorized by the FAA to land at the Airport, as certified by the aircraft's manufacturer and recited in the Air Carrier's flight manual governing that aircraft type.
- 1.120. – **“Minimum Gate Utilization Standard”** means an Average Gate Utilization of 600 Departing Seats.
- 1.121. – **“Minimum Priority Use Rights Standard”** means the average utilization necessary to retain Priority Use Rights on International Common Use Gates as further specified in Section 5.04.A.
- 1.122. – **“MII Eligible Signatory Airline”** means an Air Carrier that has executed this Agreement or a substantially similar agreement with a Term that initially expires on June 30, 2036.
- 1.123. – **“New Debt”** means all GARBs and other indebtedness payable from General Revenues issued on or after July 1, 2016, but shall not include refundings of any Prior Debt or Terminal Modernization Project Debt.
- 1.124. – **“Non-Airline Rented Space”** means Group A, B, C or D type space (as defined in Section 8.03.B) in the CPTC rented to any tenant other than a Signatory Airline, including any Concessions Support Space but excluding any City Space, Inside Concessions Space and Circulation and Support Space, as it may be adjusted from time to time, all as shown in **Exhibit A** as of October 1, 2017.
- 1.125. – **“Non-Signatory Airline”** means any Air Carrier that is not a Signatory Airline.
- 1.126. – **“Operating Agreement”** means the agreement executed by City and any Non-Signatory Airline pertaining to such Non-Signatory Airline's use of the CPTC and Airfield.
- 1.127. – **“Operating Expenses”** means City's costs and expenses, either paid or accrued, in connection with the operation, repair and ordinary maintenance of the Airport, including without limitation, salaries, wages, the cost of materials, services and supplies; rentals of leased property, if any; management fees; utility costs; the cost of audits; paying agents,

bond registrar fees, payment of insurance premiums, and generally, all expenses, exclusive of depreciation, for the proper operation and maintenance of the Airport to operate, maintain, and repair the Airport using sound accounting practices and principles, including without limitation City's costs and expenses of providing security, police, fire and other services at the Airport.

- 1.128. – **“Original Airline Rate-Based Capital Cost Estimate”** means the Airline Rate-Based Capital Costs of a Capital Improvement Project as reflected in **Exhibit D** for Pre-Approved Projects or the written proposal provided under Section 11.03.A for Additional Projects (as escalated by the ENR Building Cost Index from the Effective Date for Pre-Approved Projects or date of the notice provided by City under Section 11.03.C for Additional Projects to the point in time at which the Approved Project is being reviewed under Sections 11.04.F or G).
- 1.129. – **“Original Total Project Cost Estimate”** means the budgeted Total Project Costs of a Capital Improvement Project as reflected in **Exhibit D** for Pre-Approved Projects or the written proposal provided under Section 11.03.A for Additional Projects (as escalated by the ENR Building Cost Index from the Effective Date for Pre-Approved Projects or date of the notice provided by City under Section 11.03.C for Additional Projects to the point in time at which the Approved Project is being reviewed under Sections 11.04.F or G).
- 1.130. – **“Outside Concessions”** means all concessions which supply food, beverages, goods, services or amusement outside the CPTC. Outside Concessions does not include employee parking lots or ground transportation related thereto. The term includes, but is not limited to:
- (a) Automobile, other ground transportation or other vehicle parking;
 - (b) Bus, limousine, tram, or other ground transportation services to and from the CPTC;
 - (c) Automobile or other ground transportation, vehicle rental or lease services;
 - (d) Concessions at rental car facilities;
 - (e) Gas stations and convenience stores;
 - (f) Exterior advertising;
 - (g) Curb space rental;
 - (h) Taxicab or car-for-hire permit or admission fees;
 - (i) Courtesy car or bus fees;
 - (j) Hotels;
 - (k) Commercial office space; and
 - (l) Any other business, service or enterprise, not constituting an Inside Concession and which is designated as an Outside Concession by City.
- 1.131. – **“Outside Concessions Revenue”** means the revenue received by City from Outside Concessions.

- 1.132. – **“Passenger Carrier”** means an Air Carrier certificated by the Secretary of the U.S. Department of Transportation under 49 U.S.C. § 41102 or as a foreign carrier under 49 U.S.C. § 41302 that provides passenger air transportation.
- 1.133. – **“Period of Use”** means the time from the scheduled arrival of a flight to the scheduled departure time of a flight plus the buffer periods specified in the Common Use Regulations, which combined shall not exceed the “Maximum Gate Occupancy Periods” specified in the Common Use Regulations.
- 1.134. – **“Pre-Approved Allowances”** means a specified amount of money as listed on **Exhibit D** that City may spend or encumber on Capital Improvement Projects each Fiscal Year, as approved by Airline by way of its execution of this Agreement. There shall be separate Pre-Approved Allowances for Capital Improvement Projects in the Airfield (the Airfield Allowance) and in the CPTC (the CPTC Allowance).
- 1.135. – **“Pre-Approved Project”** means a Capital Improvement Project approved by the Airline by way of its execution of this Agreement and described on **Exhibit D**.
- 1.136. – **“Pre-Approved Project Trigger”** means the activity levels or other prerequisites, if any, specified in **Exhibit D** that must be met before City may proceed with a Pre-Approved Project.
- 1.137. – **“Prcleared Arriving Passengers”** means all Deplaned Passengers that were cleared for entry into the United States of America by the Department of Homeland Security’s Customs and Border Protection at the airport from which they departed.
- 1.138. – **“Prcleared Only Baggage Claim Areas” or “POBCA”** means those areas in the International Terminal identified on **Exhibit A** as Prcleared Only Baggage Claim Areas or “POBCA” used by Prcleared Arriving Passengers to claim their checked bags, as such areas may be modified from time to time.
- 1.139. – **“Preferential Use”** means Airline and its Affiliates shall have preferred use over all other Air Carriers at all times, except as provided in the accommodation provisions of Sections 4.04 and 5.03.D.
- 1.140. – **“Preferential Use Gate”** means a Gate over which Airline and its Affiliates have preferred use over all other Air Carriers at all times, except as provided in the accommodation provisions of Sections 5.03.D-F.
- 1.141. – **“Preferential Use Premises”** means those areas shown on **Exhibit A** as Group A Rented Space as well as Group B Rented Space designated as “Preferential”.
- 1.142. – **“Premises”** means (a) Exclusive Use Premises, (b) Preferential Use Premises (including Preferential Use Aircraft Gates), (c) Shared Use Premises, (d) Common Use Gates with Priority Use Rights and (e) Common Use Premises, all as further described in Section 4.02; provided, however, that in the case of Common Use Gates with Priority Use Rights and Common Use Premises, such areas will only constitute “Premises” during the period of time for which Airline has the right to use such areas. Premises

shall not include any areas leased by Airline in the CPTC or otherwise at the Airport pursuant to an instrument, license, permit, or agreement other than this Agreement.

- 1.143. – **“Premises Notice”** means the notice described in Section 4.02.A and attached as **Exhibit G**.
- 1.144. – **“Prime Concessionaires”** means a group of companies that provide or will provide concessions services at the Airport as described in TITLE XIII of this Agreement.
- 1.145. – **“Prior Debt”** means all GARBs and other indebtedness payable from General Revenues outstanding on June 30, 2016, as such indebtedness may be refunded.
- 1.146. – **“Prior Tenant Finish Costs”** means the costs of CPTC projects originally funded by City for specific Air Carriers under Prior Use and Lease Agreements, as described in **Exhibit H**, and to be recovered under this Agreement pursuant to Section 8.03.
- 1.147. – **“Prior Use and Lease Agreements”** means any Central Passenger Terminal Complex Lease, Hartsfield-Jackson Atlanta International Airport Lease, Airport Use Agreement, Airport Use License Agreement or other substantially similar agreement to use or lease the CPTC or the Airfield.
- 1.148. – **“Priority Use”** means the right to schedule flights on a Common Use Gate in advance of any other Air Carrier, in accordance with the provisions of Section 5.04 and subject to the Common Use Regulations.
- 1.149. – **“R&E Subaccount”** means the account within the R&E Fund funded as specified under Section 8.08.D.
- 1.150. – **“Reasonably Available Capacity”** means an Average Gate Utilization of 300 or fewer Departing Seats for any consecutive one hundred eighty (180) day period.
- 1.151. – **“Release”** means spill, discharge, leak, leaching, emission, migration, injection, disposal, escape, dumping, or release.
- 1.152. – **“Reimbursable Airline O&M Costs”** means the amount of operations and maintenance third party provider costs submitted to the City each month pursuant to Section 12.02.I.
- 1.153. – **“Renewal and Extension Fund” or “R&E Fund”** means the fund of that name established under the Bond Ordinance. Amounts accumulated and retained in the R&E Fund may be used to fund Airport capital improvements or for other purposes as specified in the Bond Ordinance.
- 1.154. – **“Rented Space”** means all space in the CPTC that is either Airline Rented Space or Non-Airline Rented Space. Rented Space shall not include City Space, Inside Concessions Space, Circulation and Support Space or vacant space.

- 1.155. – **“Requesting Airline”** means a Passenger Carrier requesting accommodation in the CPTC, as further specified in Sections 4.04 and 5.03.D.
- 1.156. – **“Scheduled Operation”** means a Passenger Carrier operation (arrival or departure) that occurs pursuant to the Official Airline Guide (“OAG”) or other generally-accepted published airline schedule database designated by the Aviation General Manager.
- 1.157. – **“Shared Use Premises”** means an area assigned on a Preferential Use basis to two (2) or more Signatory Airlines for use in common by those Signatory Airlines as so described in the Premises Notice.
- 1.158. – **“Signatory Airline”** means an Air Carrier that (a) signs an agreement with City substantially similar to this Agreement and (b) is either a Passenger Carrier that sells tickets to passengers under its own trade name and flight number or a Cargo Carrier. If, subsequent to qualifying as a Signatory Airline, Airline fails to satisfy the criteria set forth in (b) above for a period of sixty (60) days after notification from City of such failure, this Agreement shall automatically terminate and City and Airline shall promptly execute an Operating Agreement.
- 1.159. – **“Standard Aircraft Gate Equivalent” or “SAGE”** means the relative numerical weighting of aircraft Gates according to the longest wingspan that each Gate can accommodate, with a Gate that can accommodate a Group III aircraft (which is defined as an aircraft with a wingspan of up to but not including 118 feet) assigned a SAGE weighting of 0.94. A gate with a SAGE of 1.0 will accommodate an aircraft with a wingspan of 118 divided by 0.94, or 125.53 feet. The SAGE of each Gate is equal to the longest wingspan that can be accommodated at the Gate divided by 125.53, as shown on **Exhibit I**. The assignments of gates to particular airlines shown on **Exhibit I** are as of July 1, 2016.
- 1.160. – **“Term”** means the lease term of this Agreement as further described in Section 2.02.
- 1.161. – **“Terminal Modernization Project”** means the Capital Improvement Project described in **Exhibit J**.
- 1.162. – **“Terminal Modernization Project Debt”** means all GARBs and other indebtedness payable from General Revenues utilized by City to fund the Terminal Modernization Project.
- 1.163. – **“Terminal Rental Rate”** means the amount per square foot per year charged to each Passenger Carrier for each type of space leased by the Passenger Carrier, as calculated in accordance with Section 8.03.
- 1.164. – **“Terminal Rents”** means the rents effective July 1st of each Fiscal Year as calculated in accordance with Section 8.03.
- 1.165. – **“Total Project Costs”** means the total costs of planning, designing and constructing a Capital Improvement Project.

- 1.166. – “TSA” means the Transportation Security Administration or other federal agency which assumes the oversight and functions of the Transportation Security Administration, if the Transportation Security Administration is abolished or combined with or merged into any other federal agency.

TITLE II

TERM

2.01. – Effective Date

This Agreement shall become effective on October 1, 2017, except for TITLE XI, which shall become effective on July 1, 2016. Wherever “Effective Date” is used in this Agreement, other than TITLE XI and related definitions and exhibits, the Effective Date shall be October 1, 2017. Where “Effective Date” is used in TITLE XI and related definitions and exhibits, the Effective Date shall be July 1, 2016.

2.02. – Term

The Agreement shall continue in effect from July 1, 2016 with respect to TITLE XI and October 1, 2017 with respect to the remainder of the Agreement through June 30, 2021, unless extended in accordance with Section 2.03 or earlier terminated by operation of law or pursuant to the express provisions of this Agreement.

2.03. – Extension Period

- A. MII Eligible Signatory Airlines and City may extend the Term by the Extension Period by mutually agreeable written consent; provided, however, that City, Airline and all other MII Eligible Signatory Airlines extending the Term agree to (i) a new capital plan and corresponding list of Pre-Approved Projects and Pre-Approved Allowances, if any, for the Extension Period; (ii) appropriate changes to the rates and charges methods set forth in TITLE VIII for the Extension Period; and (iii) reallocations of Preferential Use Gates and other Premises as reasonably determined by City are necessary to foster expansion and competition at the Airport. An MII Eligible Signatory Airline seeking to extend the Term under this Section 2.03 shall notify City in writing at least twelve (12) months prior to the end of the Term.
- B. Signatory Airlines that are not MII Eligible Signatory Airlines may extend the Term for successive five (5) year periods through June 30, 2036, by notifying City in writing at least six (6) months prior to the end of the Term. City shall approve the extension, subject to reallocations of such non-MII Eligible Signatory Airline’s Preferential Use Gates and other Premises as reasonably determined by City are necessary to foster expansion and competition at the Airport. If City intends to reallocate a non-MII Eligible Signatory Airline’s Premises, City shall provide written notice to the non-MII Signatory Airline describing the reallocation at least nine (9) months prior to the end of the Term. If an MII Eligible Signatory Airline and City extend the Term beyond June 30, 2036, Signatory Airlines that are not MII Eligible Signatory Airlines may also extend the Term for successive five (5) year periods through the Extension Period.

2.04. – Termination of Prior Use and Lease Agreements

- A. Airline’s Prior Use and Lease Agreements shall terminate at 11:59 p.m. on September 30, 2017; provided, however, that any rights and obligations of either party, not inconsistent with the terms of this Agreement, that a Prior Use and Lease Agreement specifically provides shall survive expiration or earlier termination of that Prior Use and Lease Agreement shall survive its termination under this Section 2.04 and further provided that any provisions in Airline’s Prior Use and Lease Agreements inconsistent with the terms of TITLE XI of this Agreement shall be superseded by TITLE XI of this Agreement on July 1, 2016.
- B. In the event that an Air Carrier does not extend its Prior Use and Lease Agreement through 11:59 p.m. on September 30, 2017, either by executing this Agreement as provided in Section 2.04.A or by written agreement with City, that Air Carrier’s rights under its Prior Use and Lease Agreement shall terminate on September 20, 2017 as specified in its Prior Use and Lease Agreement and the rights to lease that Air Carrier’s Preferential Use Gates shall be assigned to Signatory Airlines as shown in **Exhibit K**, and rent for the use of such Gates shall be charged in accordance with the rate making methodology in that Signatory Airline’s Prior Use and Lease Agreement until October 1, 2017.

2.05. – Majority-In-Interest Approval Under Prior Use and Lease Agreements

All Capital Improvement Projects that are (a) Pre-Approved Projects or Capital Improvement Projects funded with Pre-Approved Allowances as described in Section 11.01; (b) Exempt Projects as described in Section 11.02; or (c) Additional Projects that are deemed to be Approved Projects under Section 11.03.B of this Agreement shall be deemed to have been approved by Airline under its Prior Use and Lease Agreement.

TITLE III
GRANT OF RIGHTS TO USE THE AIRPORT

3.01. – General Rights of Use

- A. Airline shall have the right to use, in common with others so authorized by City, the Airport for purposes reasonably necessary for the operation of Airline and its Air Transportation Business, provided that Airline complies with all applicable laws, codes, regulations, Airport Rules and Regulations, and the terms, conditions and limitations of this Agreement.
- B. Subject only to the provisions of this Agreement, all applicable laws, codes, Airport Rules and Regulations, and any other agreement in effect between City and Airline, Airline shall have the right in common with others to use the Airfield and appurtenances, together with all facilities, improvements, equipment and services of the Airfield, not leased to others on an Exclusive Use or Preferential Use basis.
- C. Subject only to the provisions of this Agreement, all applicable laws, codes, Airport Rules and Regulations, and any other agreement in effect between City and Airline,

Airline shall have the right in common with others of free ingress and egress to, from, and over the Airport, and any and all roads which City controls leading thereto and therefrom.

- D. Subject only to the provisions of this Agreement, all applicable laws, codes, Airport Rules and Regulations, and any other agreement in effect between City and Airline, Airline, its officers, employees, agents, suppliers of materials, furnishers of services, passengers, prospective passengers, guests, patrons, and invitees, in common with others, shall have the right to use all Circulation and Support Space, other than mechanical rooms within the CPTC, not leased to others on an Exclusive Use or Preferential Use basis, in conformity with Airport Rules and Regulations. Nothing herein shall preclude City from imposing reasonable fees and charges to cover actual administrative expenses in connection with the issuance of security permits, identification badges, special parking permits, and services of a similar nature.
- E. Except as otherwise required by law, Airline shall have the full right of purchasing its supplies from any person or company of its choice, and no charges, fees, or tolls of any kind except as expressly set forth herein shall be charged by City, directly or indirectly, against Airline or its Affiliates or suppliers for the privilege of buying, selling, using, withdrawing, handling, consuming, or transporting the same to, from, or on the Airport. However, the foregoing shall not prevent City from receiving from such businesses fees, rentals or other charges and consideration in connection with (i) requiring or issuing business licenses generally imposed under applicable law upon businesses of like character, (ii) entering into leases with such businesses for space on the Airport, (iii) requiring and issuing permits, including operating permits, for the use of space or access to the Airport by such business, (iv) the issuance of security permits, identification badges, special parking permits or services of a similar nature; or (v) entering into concessions agreements at the Airport with such businesses. Furthermore, the foregoing shall not prevent City from collecting rents, fees, tolls or any other applicable charges from any such business that conducts business on the Airport separate from or in addition to supplying Airline or its Affiliates to the extent of such separate or additional business.
- F. Airline shall have the right, subject to this Agreement, as well as all applicable laws, codes and Airport Rules and Regulations, in its Preferential Use Premises on the Aircraft Parking Area or in areas designated by the Aviation General Manager for such purposes and used in common with others, to locate, maintain and operate full aircraft servicing facilities, storage space for aircraft, equipment, machinery, tools, and any and all other materials necessary for the conduct of its Air Transportation Business.
- G. The Airline shall have the right to exchange, dispose of and sell to third parties any of its equipment, machinery, supplies, parts and any other materials held or used for purposes of the conduct of its Air Transportation Business, when the same shall not be needed in the operation of that business; provided such exchange, sale or disposition shall not be construed as authorizing the conduct of a separate business by Airline. In addition to the servicing of its own aircraft, the Airline shall have the right to service, handle or maintain the aircraft of other Air Carriers authorized to operate at the Airport, when such

servicing, handling or maintenance shall be performed pursuant to an agreement between the Airline and such other Air Carrier; but this provision shall not be construed to grant to the Airline any right or privilege to conduct an independent business in the nature of a fixed base operator. Further, the Airline shall have the right, consistent with the public safety, to train its own personnel, personnel of other regularly scheduled Air Carriers, and personnel of the United States Government.

- H. The privileges granted in Sections 3.01.F and 3.01.G are subject to and contingent upon the existence of adequate and suitable space within the confines of the Airport, which now or in the future may be available for any given use.
- I. If Airline contracts with a third party to provide supplies or services for Airline that Airline itself is permitted to provide under this Agreement, Airline shall ensure that any such third party and any subcontractors of such third party shall first obtain a license or permit from City authorizing the third party to conduct its activities on the Airport. Airline shall not permit a third party contractor or its subcontractors to enter its Premises or conduct business on the Airport until the requirements of this Section 3.01.I have been satisfied.

3.02. – Access to Premises

- A. Subject to the provisions of this Agreement, all applicable laws, codes and Airport Rules and Regulations, Airline shall have the full and unrestricted rights of access, ingress and egress with respect to its Premises, for Airline, its employees, passengers, guests, patrons, invitees, suppliers of materials and furnishers of service, and its or their aircraft, equipment, vehicles, machinery and other property, without charge to Airline or to such persons or property other than the charges specified in TITLE VIII.
- B. Where Airline or any other person or persons shall have the right of access, ingress, and egress with respect to the CPTC by means of access located outside the boundaries of the Premises whether by streets, highways, taxiways, corridors, lobbies, hallways, or other means of access, City may, at any reasonable time or times and under conditions reasonably necessary, close, relocate, reconstruct, change, alter or modify such means of access, ingress and egress, either temporarily or permanently; provided that a reasonably comparable and adequate means of access, ingress and egress is made available for the same purpose. The City shall reasonably allocate the Costs of such access to the appropriate Cost Centers.
- C. Airline shall cooperate with other Signatory Airlines regarding egress and ingress with respect to the Premises and adjoining areas where two (2) or more leasing parties use a common access to such areas. Airline agrees to cooperate with City by joining in or granting any utility or other easements or licenses as City reasonably determines, for the safe, continuous and efficient operation of the Premises, adjoining areas and the Airport. Airline shall also maintain unobstructed common access so as not to restrict ingress and egress to any other premises.

- D. Airline agrees that it will not use the CPTC for loading and unloading of passengers on or from vehicles or other conveyances for transportation to or from aircraft (commonly referred to in the airline industry as “remote loading operations”) unless such use(s) and the specific terms governing same are approved in writing by the Aviation General Manager. This Section 3.02.D should not be construed as affecting or impairing Airline’s use of the Aircraft Parking Area as set forth elsewhere herein.

3.03. – Ancillary Rights of Airline

Airline shall have the following rights provided that Airline shall in each instance comply with all applicable laws, codes, Airport Rules and Regulations and permits of City and any governmental body having jurisdiction over the subject activity:

- A. Airline, or its contractor, shall have the right to maintain and operate customer service lounges and facilities for its guests, invitees, and passengers within its Exclusive Use Premises and to provide therein alcoholic and non-alcoholic beverages, food and other related services without charge to club members; provided, however, that Airline may charge club members for alcoholic beverages or food if Airline pays City a concession fee equal to ten percent (10%) for alcoholic beverages and ten percent (10%) for food of Airline’s gross revenues of sales of such alcoholic beverages or food or such lesser percentage as shall be agreed upon by City and all Signatory Airlines offering such alcoholic beverages or food for sale; provided, however, that any revenue collected by City under this Section 3.03.A shall not be subject to revenue sharing with Signatory Airlines under Section 8.08.A. Airline may provide Wi-Fi within these Exclusive Use Premises with or without a charge, provided that Airline’s Wi-Fi equipment and signal does not interfere with City’s Wi-Fi equipment and signal. Any contractor performing services under this Section 3.03.A shall obtain a permit from City. Airline may also offer co-branded credit card financial services from its Preferential Use Premises without paying a fee to City, provided the same services are not offered by a City concessionaire.
- B. Airline shall have the right to load and unload persons, property and mail at the Airport by such motor cars, buses, trucks, or other means of conveyance as Airline may desire or require in the operation of its Air Transportation Business, with the further right to designate the particular carrier or carriers who transport Airline’s employees, passengers, and their luggage if such transportation is provided at the expense of Airline, subject to any permits required by City for such transportation services. If such transportation is not provided at the expense of the Airline, City may charge and/or require permits for operators of vehicles carrying passengers for hire reasonable fees and charges for the privilege of entering upon the Airport, soliciting passengers upon the Airport or otherwise operating on the Airport.
- C. Airline shall have the right to install, maintain, and operate within its Exclusive Use Premises and Preferential Use Premises an employees’ cafeteria, restaurant, or other food and beverage preparing and dispensing facility(ies) including vending machines, and to cook, prepare, serve, offer or otherwise dispense foods, tobacco products, beverages, other merchandise or services for consumption by the employees of Airline

and its Affiliates and to do any and all things necessary, required or convenient in connection therewith (including, but not limited to, the imposition of a charge, if Airline so desires, for such food, tobacco products, beverages, or other merchandise or services); provided that the location of such facilities shall be limited to areas within Airline's Exclusive Use Premises and Preferential Use Premises not accessible to the general public. Any services (as opposed to food, beverages and other merchandise) provided under this Section 3.03.C for a charge must be approved in writing by City and such approval shall not be unreasonably withheld. If Airline intends to provide for free any services that are offered by a City concessionaire, it must provide City with ten (10) days' written notice of the service.

- D. Airline shall have the right to provide its own in-flight food and beverage services, in-flight duty free sales, or to provide in-flight entertainment, Wi-Fi, and other related in-flight services, and to have such services provided by its wholly-owned or majority-owned subsidiary, or by an independent contractor (including another Signatory Airline) of its choice, all without payment of a fee except for building and land rentals, security fees and any applicable fees under this Agreement. Any independent contractor performing such services shall obtain a permit from City.
- E. To the extent City has the legal authority to grant such rights, Airline and AATC shall have the right to use all public roadways on and off the Airport for ingress to and egress from parking lots on the Airport leased by Airline or AATC from City for use by Airline or AATC employees, without additional charge. To the extent City has the legal authority to grant such rights, Airline and AATC, or its third party designee, shall have the right to use the aforementioned public roadways and all non-licensed vehicular roadways and the other routes on the Airport for the ground transportation of their employees by bus or other vehicle between such parking lots and other locations in the CPTC and on the Airport, without additional charge.
- F. Airline shall have the right to provide, within Airline's Preferential Use Premises or within Common Use Premises, food and beverage service without charge to Airline's passengers who are inconvenienced during Irregular Operations.
- G. Airline shall have the right to install identification and directional signs on and about its Preferential Use Premises, subject to prior written approval of the Aviation General Manager.

3.04. – Exclusions and Reservations

- A. Nothing in this TITLE III shall be construed as authorizing Airline to conduct any business at the Airport separate and apart from the conduct of its Air Transportation Business.
- B. Airline shall not, by action or failure to act, knowingly interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications

(including Wi-Fi services), fire protection, utility, electrical or other systems installed or located from time to time at the Airport.

- C. Airline shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon written notice from City to do so.
- D. Airline shall not maintain or operate in the CPTC for the purpose of selling retail items, food and beverages to the public or to Airline's employees and passengers a retail establishment or a cafeteria, restaurant, bar or cocktail lounge, except as otherwise provided in Sections 3.03.A and 3.03.C above.
- E. Except as otherwise provided in Sections 3.03.A and 3.03.C above, Airline shall not install or operate amusement machines or vending machines.
- F. The rights and privileges granted Airline pursuant to this TITLE III shall be subject to any and all applicable laws, codes, and Airport Rules and Regulations. Airline covenants and agrees that it will not violate or permit its agents, contractors or employees to violate any such laws, codes or Airport Rules and Regulations. City may prescribe civil penalties and injunctive remedies for violations of any Airport Rules and Regulations, and the same may be applied to Airline for violations by Airline's agents, contractors or employees.
- G. City or its duly authorized representative may enter upon the Premises at any and all reasonable times and upon reasonable notice (except in emergency situations) for the purpose of determining whether or not Airline is complying with the terms and conditions of this Agreement or for any other purpose incidental to the rights of City. In the case of an emergency, City shall provide as much notice as possible in light of the circumstances.
- H. Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to City.

TITLE IV
AIRLINE PREMISES

4.01. – General Purpose and Plan of Leasing Space within the CPTC

It is understood that a primary purpose of City is to provide adequate public facilities to accommodate air traffic at the Airport. The City has concluded that this purpose can be fulfilled most efficiently and economically by authorizing portions of the CPTC to be used by commercially certificated airlines in order that they may provide adequate and

efficient air transportation and related services to the public. It is intended, however, that such arrangements, including the rights to use the Premises, shall create a usufruct and only the relationship of landlord and tenant and that no estate for years or otherwise shall pass to Airline. Airline shall be entitled to use its Premises only for the purposes set forth in this Agreement related to the conduct of its Air Transportation Business, subject to Airport Rules and Regulations and this Agreement, and shall not have the right to sell, assign, transfer or otherwise dispose of the Premises or its interest therein, except as specifically provided herein.

4.02. – Premises

- A. Premises Notice. On or before the Effective Date, City will issue to Airline a Premises Notice, attached hereto as **Exhibit G**, space drawings, attached hereto as **Exhibit A**, and gate allocations attached hereto as **Exhibit K**, that will designate which areas of the Airport, if any, City will make available for Airline’s use as: (a) Exclusive Use Premises, which is shown on **Exhibit A** as Group B Rented Space (unless otherwise designated in **Exhibit A** as “Preferential”), Group C Rented Space and Group D Rented Space; (b) Preferential Use Premises, which is shown on **Exhibit A** as Group A Rented Space as well as any Group B Rented Space designated as “Preferential”; (c) Common Use Premises; (d) Common Use Gates with Priority Use Rights; and (e) Shared Use Premises. City and Airline acknowledge that **Exhibits A, G and K**, as attached to this Agreement at the time of execution, will be revised effective October 1, 2017 to reflect intervening changes in Airline’s Premises, space within the CPTC and gate allocations under applicable Prior Use and Lease Agreements in effect through September 30, 2017.
- B. Exclusive Use Premises. City grants to Airline, subject to TITLE III and TITLE IV and all other applicable provisions of this Agreement, the exclusive right to use the Exclusive Use Premises identified in the Premises Notice and **Exhibit A**.
- C. Preferential Use Premises. City grants to Airline, subject to TITLE III, TITLE IV and TITLE V and all other applicable provisions of this Agreement, the right to use, on a Preferential Use basis, the Preferential Use Premises identified in the Premises Notice, **Exhibit A** and **Exhibit K**.
- D. Common Use Premises. City grants to Airline, subject to TITLE III, TITLE IV and TITLE V and all other applicable provisions of this Agreement and the Common Use Regulations, the right to use, on a Common Use basis, the Common Use Premises identified in the Premises Notice, **Exhibit A** and **Exhibit K**; provided, however, that City shall at all times have exclusive control and management of the Common Use Premises (other than Common Use Gates with Priority Use Rights). Airline agrees that City may, subject to Section 6.02, utilize a Common Use Facility Manager to operate and manage the Common Use Premises subject to Section 6.02, including management of payments by Air Carriers for their use of Common Use Premises, as required under TITLE VIII and the Common Use Regulations.
- E. Common Use Gates with Priority Use Rights. City grants to Airline, subject to TITLE III, TITLE IV, TITLE V, TITLE VI and all other applicable provisions of this

Agreement and the Common Use Regulations, the right to use, on a Priority Use basis, the Common Use Gates with Priority Use Rights identified in the Premises Notice, **Exhibit A** and **Exhibit K**.

- F. Shared Use Premises. The City grants to Airline, subject to TITLE III and TITLE IV of this Agreement, the right to use, on a shared use basis, the Shared Use Premises identified in the Premises Notice and **Exhibit A**.
- G. Airline specifically acknowledges and agrees that City is permitting Airline's use of the Premises on an "as is with all faults" basis, and that Airline is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, as to any matters concerning the Premises.
- H. Airline acknowledges and agrees that the Premises may be revised from time to time during the Term to reflect new assignments and reallocations of space in accordance with the terms of this Agreement. Any such revisions of Premises shall be reflected in the issuance of a revised Premises Notice, **Exhibit A** and **Exhibit K** issued by City's Aviation General Manager and shall not require or constitute a formal amendment to this Agreement.
- I. The dimensions of the Premises, as measured from time to time, as appropriate under the terms of this Agreement, may be based on preliminary architectural and engineering plans and specifications, developed for the purpose of obtaining contractor bid proposals for construction. In such circumstances, City and Airline recognize that actual dimensions cannot be finally and accurately determined until the completion of construction, at which time City and Airline will determine the final "as constructed" dimensions by measuring from the center line of walls of interior space and to the inside face of exterior walls. The actual dimensions will be set forth in writing and agreed to by both City and Airline and thereafter used as the basis for adjusting and determining the Airline rentals and charges payable under the provisions of TITLE VIII or any other provision hereof.

4.03. – Expansion or Contraction of Exclusive Use and Preferential Use Premises; Limitations on City Conversion of Space to City Space

- A. The Aviation General Manager and Airline may from time to time agree to the expansion or contraction of Airline's Exclusive Use Premises or Preferential Use Premises. Such expansion or contraction shall not require further action of the Atlanta City Council and shall be effected by the Aviation General Manager issuing a revised Premises Notice, **Exhibit A** and, if applicable, **Exhibit K**; provided, however, that no such expansion or contraction shall increase or decrease Airline's Exclusive Use Premises and Preferential Use Premises by more than a total of 5,000 square feet in any instance. City shall be under no obligation to accept the return of space. Any space accepted by City from Airline under this Section 4.03.A shall initially be treated as vacant space or Rented Space for purposes of Section 4.03.B below. If City subsequently seeks to convert that space to City Space, that conversion shall be subject to Section 4.03.B.

- B. In no event shall City convert vacant space or Rented Space to City Space without the consent of MII Eligible Signatory Airlines that together have enplaned at least eighty-seven percent (87%) of the total Enplaned Passengers of all MII Eligible Signatory Airlines during the immediately preceding Fiscal Year.

4.04. – Accommodation in Space Other Than Gates

A. Priorities for Accommodation in Space Other than Gates.

- (1) If City receives a request for access to space in the CPTC (other than Gates, which are subject to the provisions of TITLE V of this Agreement) from a Requesting Airline, City shall, whenever possible, accommodate such a request by providing access to existing Common Use space or vacant space under City's control.
- (2) If such Common Use space or vacant space is unavailable to meet the reasonable requirements of the Requesting Airline, as reasonably determined by City, City shall encourage Signatory Airlines to voluntarily accommodate the Requesting Airline, by subletting (subject to Section 20.01) or otherwise making available for use by the Requesting Airline space within the CPTC that is subject to their Preferential Use.
- (3) City shall notify the Signatory Airlines in writing when City has determined that a Requesting Airline cannot be accommodated in Common Use space or vacant space, and the Signatory Airlines shall have thirty (30) days from the receipt of such notice by the Signatory Airlines to voluntarily agree to accommodate the Requesting Airline. Any such agreements to accommodate a Requesting Airline must be in writing and are subject to Aviation General Manager's written approval, which shall not be unreasonably withheld.
- (4) If a Requesting Airline is unable to meet its reasonable requirements, as reasonably determined by City, by using Common Use space or vacant space made available by City, or by using space voluntarily made available by Signatory Airlines, City shall have the right, upon thirty (30) days' notice to Airline, to require Airline to accommodate the Requesting Airline in space designated by City by allowing the Requesting Airline to use Airline's Preferential Use Premises (other than Gates), subject to Sections 4.04.B and 4.04.C; provided, however, that if the Requesting Airline is a Signatory Airline, the Requesting Airline must show, to City's satisfaction, that it cannot reasonably accommodate its own expanded service within the CPTC space already subject to its Exclusive Use or Preferential Use. In determining which Signatory Airline shall accommodate the Requesting Airline, City shall take into consideration the factors listed in Section 5.03.E(3) and subject to Section 4.04.B.
- (5) If City is unable to meet the reasonable requirements of the Requesting Airline, as reasonably determined by City, after requiring the Signatory Airlines,

including Airline, to accommodate the Requesting Airline, City shall consider whether the reasonable requirements of the Requesting Airline could be met in a reasonable, cost-effective way by constructing temporary or permanent new facilities. Any Capital Improvement Project to construct such facilities shall be subject to TITLE XI of this Agreement.

B. Accommodation Requirements in Preferential Use Premises Other than Gates.

City may not require Airline to accommodate a Requesting Airline under Section 4.04.A above if such accommodation would require Airline to reschedule one or more Scheduled Operations. Airline shall otherwise accommodate such Requesting Airline as directed by City by providing access to and use of Airline's Preferential Use Premises (other than Gates). As a condition of accommodation in any such space, the Requesting Airline shall have executed an agreement that is substantially in the form of this Agreement or an Operating Agreement, as applicable, through which the Requesting Airline is bound by insurance and indemnification obligations that are substantially similar to the obligations set forth in this Agreement. These insurance and indemnification obligations shall inure to the benefit of the Airline as a third-party beneficiary for any period of accommodation, and Airline shall not be required to accommodate a Requesting Airline if the Requesting Airline's insurance and indemnification obligations are not satisfied.

C. Charges for Use of Facilities Other than Gates by Requesting Airline.

In the absence of an agreement to the contrary between Airline and a Requesting Airline that is accommodated in any space (other than Gates) used by Airline on a Preferential Use basis, City shall charge the Requesting Airline its pro-rata share of the charges for the space as determined under TITLE VIII and a pro-rata share of the unamortized costs of any improvements to the space made by Airline and City shall credit the fees collected to Airline. Airline shall not demand any additional payments from the Requesting Airline on account of its use of such space.

D. Consolidation of Operations.

- (1) If City is unable otherwise to meet the reasonable requirements of a Requesting Airline in accordance with the priorities established in Section 4.04.A, City and Airline shall consult to jointly determine whether Airline is under-utilizing its Premises (other than Gates). If such Premises are underutilized, as reasonably determined by Airline and City, Airline shall collaborate with City and, if reasonably practicable, make a good faith effort to consolidate its operations in its remaining Premises.
- (2) If, as a result of such consolidation, Airline vacates certain of its Premises, City shall either assign the vacated premises to the Requesting Airline, if the Requesting Airline is or becomes a Signatory Airline, or deem the vacated premises to be available for Common Use subject to City's exclusive control.

- (3) City shall pay to Airline its reasonable costs of relocating Airline's furniture, equipment and signage in connection with the consolidation of Airline's operations under this Section 4.04.D, plus the reasonable costs of Airline's unamortized tenant improvements originally constructed with City's consent that cannot be relocated.
- (4) City shall revise the Premises Notice and **Exhibit A** issued to Airline to reflect any consolidation of Airline's operations under this Section 4.04.D, and shall issue said revised Premises Notice and **Exhibit A** to Airline when any such consolidation takes effect.

4.05. – **Damage or Destruction of Premises**

- A. Repair and Rebuilding. In the event of damage to or destruction of the Premises by fire, weather or other casualty or otherwise, to the extent of any proceeds of insurance actually received by City and provided that such damage or destruction was not caused by the negligent or wrongful conduct of Airline, City (or, if City allows in its sole discretion, Airline using the proceeds of insurance received by City) shall with all reasonable diligence and dispatch repair or rebuild the said premises so as to restore them, as nearly as possible, to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed upon between Airline and City, and further subject to the provisions of Section 4.05.E, below.
- B. Use of Insurance Proceeds, Financing. Any repair or rebuilding required hereunder shall be paid for, to the extent possible, with the proceeds of the insurance required under TITLE XVII of this Agreement. Should such insurance proceeds exceed the total cost of repair or rebuilding, the excess proceeds shall be credited against the Terminal Rate Base Requirement in Section 8.03.
- C. Rentals and Charges; Alternate Facilities. In the event of damage to or destruction of the Premises, the rentals and charges payable by Airline hereunder shall not be abated, except if such damage is due to the willful misconduct of City or its employees, officers, agents or contractors. City shall provide temporary alternate comparable facilities on the Airport, if available, so that Airline may continue its operations until such time as the Premises is repaired or rebuilt and ready for occupancy, at no additional cost to Airline except for any costs incurred by City in preparing such facilities for Airline.
- D. Negligence or Wrongful Conduct of the Airline. Notwithstanding the provisions of this Section 4.05, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent or obligation to provide alternate facilities during the repair or replacement of said Premises. To the extent that the costs of repairs shall exceed the amount of any insurance proceeds payable to City by reason of damage or destruction due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Airline shall pay the amount of such additional costs to City.

- E. Option of City Not to Repair or Rebuild. If the entire CPTC is so substantially damaged or destroyed that City determines, in view of the age of the premises, the cost of rebuilding, the availability or the amount of insurance proceeds received, and other relevant factors, that rebuilding is not prudent or practicable, it may elect not to rebuild by providing written notice to Airline within ninety (90) days of the date of the damage or destruction.
- F. Failure of City to Repair or Rebuild. In the event that City elects, under Section 4.05.E, not to proceed with any repair or rebuilding of Airline's Premises as required hereunder or fails thereafter to continue such rebuilding with all reasonable diligence and dispatch, City and Airline shall have the following options:
- (1) If the damage or destruction is so extensive that the Airline's entire Premises cannot reasonably be used by Airline to conduct its Air Transportation Business and City fails to elect, within ninety (90) days, to repair and rebuild, Airline may terminate this Agreement by providing written notice to City. Upon City's receipt of such notice, all rentals and charges hereunder shall abate. The proceeds of the property insurance policy maintained by City shall first be distributed to City to compensate City for the value of the improvements and property owned by City impacted by the damage or destruction. If any property insurance proceeds from the policy maintained by City remain, Airline shall share in same to the extent of any shortage in the proceeds of the property insurance policy maintained by Airline (without consideration of any deductible maintained by Airline, which deductible will not be deemed to be a part of any such shortage), to compensate Airline for the unamortized value of Airline's improvements and installations, including fixtures, equipment and systems, and the balance of such proceeds shall be retained by City, or
 - (2) Airline may proceed with the necessary repair and rebuilding with the insurance proceeds, if any, and City shall fully cooperate as necessary, including taking any necessary action to release the insurance proceeds, if any, due Airline for such repair and rebuilding.

4.06. – **Condemnation**

In the event that the Premises or any portion thereof are condemned or otherwise taken for public or quasi-public use under the power of eminent domain or any similar power, the following shall apply:

A. Entire Premises Taken

If the Premises are taken in their entirety, this Agreement shall terminate as of the date of such taking, all rentals and charges payable by Airline hereunder shall abate as of such date and the condemnation award shall be distributed as provided in Section 4.06.C. below.

B. Portion of Premises Taken:

If only a portion of the Premises is taken, this Agreement shall terminate as to such portion as of the date of such taking, all rentals and charges payable by Airline hereunder related to such portion of the Premises shall abate as of such date and the condemnation award shall be distributed as provided in Section 4.06.C below, except that if the remainder of the Premises as reduced by the taking is thus rendered unsuitable or insufficient for use by Airline to conduct its Air Transportation Business, in Airline's reasonable discretion, this Agreement shall be terminated in its entirety as of the date of such taking, all rentals payable by Airline hereunder shall abate as of such date, and the condemnation award shall be distributed as provided in Section 4.06.C below.

C. Distribution of Award:

The condemnation award shall be distributed between City and Airline as specifically provided by the court, but if no distribution is made by the court the following shall apply:

- (1) There first shall be paid the reasonable fees and expenses incurred by the parties in collecting the award.
- (2) There next shall be paid to Airline the unamortized value of the improvements and installations of Airline, including fixtures, equipment and systems, not financed by City, which are taken or rendered unusable pursuant to Sections 4.06.A or 4.06.B, above.
- (3) If there is a partial taking and it is necessary to incur expenses or costs to restore the remaining premises so that they may be used by Airline to conduct its air transportation business, there next shall be paid such expenses and costs; and
- (4) The balance shall be paid to City.

D. Participation by Airline:

Airline shall be entitled to participate fully in any condemnation proceedings affecting the Premises, and City shall not consent to any taking of any portion thereof or enter into any voluntary settlement with the condemning authority without the written consent of Airline, which shall not be unreasonably withheld.

4.07. – Structural Alterations

Airline shall make no structural alterations to the Premises without the prior written approval of the Aviation General Manager.

4.08. – Other Alterations, Installations, and Improvements

- A. Airline shall have the right to install equipment, systems, and fixtures and to construct additional, non-structural improvements, including advertising of Airline's Air

Transportation Business and identifying signs on its Exclusive Use Premises and Preferential Use Premises or to alter, change or make other improvements to its Exclusive Use Premises or Preferential Use Premises; provided, however, that all such alterations, installations, or improvements shall be commenced only after plans and specifications therefor have been approved by the Aviation General Manager, and further provided that Airline may construct alterations, installations, and improvements in the CSS upon the request of the City and after plans and specifications have been approved by the Airport General Manager. In approving any such plans and specifications under this Section 4.08.A, the Aviation General Manager shall designate the alterations, installations or improvements that City may require Airline to remove pursuant to Section 19.03.

- B. Any such alterations, installation, or improvements shall be without cost to City, unless otherwise provided for in this Agreement. City may, but is not obligated to, fund and recover from Airline the Costs of Airline alterations, installations or improvements through a separate written agreement between City and Airline. City shall not allocate any such Costs to an Airline Cost Center.
- C. Unless financed by City through GARBS, the R&E Fund, PFCs, or other City financing resources, title to any equipment, system, fixture or other installation or improvement, not affixed to the realty in such a way as to become a part of the realty, shall remain or vest in Airline, and Airline shall have the right to remove any such installation or improvement at any time, provided Airline restores the Premises to the condition existing prior to the installation or improvement, normal wear and tear, fire and other casualty excepted. Airline shall not, without the written approval of the Aviation General Manager, demolish or destroy any portion of the Premises.

TITLE V

GATE ASSIGNMENT, USE AND RECAPTURE

5.01. – No Exclusive Use Gates.

All Gates within the CPTC will be for Common Use, Common Use with Priority Use Rights or Preferential Use in accordance with the terms of this TITLE V.

5.02. – Initial Allocation and Assignment of Gates on Effective Date.

The allocation and assignment of Common Use Gates, including Common Use Gates with Priority Use Rights, and Preferential Use Gates at the Airport on the Effective Date are shown on **Exhibit K**. Airline's assigned Preferential Use Gates and Common Use Gates with Priority Use Rights are shown in **Exhibit K**.

5.03. – Preferential Use Gates.

- A. City's Reserved Rights. City is committed to a policy of providing open access to the Airport and achieving a balanced and efficient utilization of Airport facilities. To achieve these goals, City reserves the right to (i) recapture Preferential Use Gates

pursuant to Section 5.03.C below and (ii) to require accommodation on Preferential Use Gates pursuant to Section 5.03.D below.

B. Reassignment of Existing Preferential Use Gates and Assignment of New Preferential Use Gates.

- (1) In the event that (i) any new Gates are constructed in the Domestic Terminal, (ii) any Preferential Use Gates become available due to recapture (Section 5.03.C) or return (Section 4.03) or (iii) City decides to convert a Domestic Common Use Gate to a Preferential Use Gate, then City may assign any such Gate as a Preferential Use Gate to (a) any existing Signatory Airline with an Average Gate Utilization greater than or equal to 750 Departing Seats over the immediately preceding twelve (12) month period or (b) to any new Signatory Airline with scheduled flights that meet or exceed an Average Gate Utilization of 750 or more Departing Seats for the ninety (90) day period starting ninety (90) days after the Effective Date for that Signatory Airline. In making such an assignment, City shall consider gate utilization (including historical, current and reasonably projected frequency of operations and number of enplaned and deplaned passengers), efficiency of operations, hub connectivity and the accommodation of expansion at and new entry to the Airport.
- (2) Upon the DBO for the Concourse T Expansion Project (as that project is described in **Exhibit D**):
 - (a) three (3) additional Concourse T Gates will be assigned to American Airlines, Inc. (“American”) on a Preferential Use basis, provided, however, that American (a) executes this Agreement with a Term that runs through June 30, 2036 and (b) returns to City its three (3) Preferential Use Gates on Concourse D and related operations space on Concourse D, provided, however, that American may elect to retain such operations space as is reasonably necessary to support its operations for a period of up to six (6) months from the DBO for the Concourse T Expansion Project; and
 - (b) two (2) additional Concourse T Gates will be assigned to United Airlines, Inc. (“United”) on a Preferential Use basis, provided, however, that United executes this Agreement with a Term that runs through June 30, 2036.

City shall determine in its sole discretion whether to lease any remaining unassigned Concourse T Gates on a Preferential Use basis or retain those Gates as Common Use Gates. In the event that construction of the Concourse T Expansion Project prevents a Signatory Airline from fully utilizing one or more of its Preferential Use Gates on Concourse T, that Signatory Airline may elect, during the period of impact, to have its activity on any such affected Preferential Use Gates be based on its average activity during the twelve-month period immediately preceding the commencement of construction for the purposes of calculating compliance with the Minimum Gate Utilization Standard.

C. Recapture of Preferential Use Gates.

- (1) If at any time during the Term Airline fails to meet the Minimum Gate Utilization Standard as calculated over the immediately preceding twelve (12) month period, City may issue an Initial Recapture Notice to Airline. City shall have no obligation to issue such notice unless City intends to undertake a project under Section 11.02.A(8).
- (2) Ninety (90) days from issuance of the Initial Recapture Notice, Airline must demonstrate to City that its currently Scheduled Operations on that ninetieth (90th) day for the next ninety (90) days meet the Minimum Gate Utilization Standard or City may recapture Airline's Preferential Use Gates as provided in Sections 5.03.C(4)-(9).
- (3) If Airline demonstrates that it meets the Minimum Gate Utilization Standard under Section 5.03.C(2) above, Airline must demonstrate through actual operations that it continues to meet the Minimum Gate Utilization Standard over each of the following periods of time or City may recapture Airline's Preferential Use Gates as provided in Sections 5.03.C(4)-(9) below:
 - (a) Between ninety (90) days and one hundred eighty (180) days from issuance of the Initial Recapture Notice.
 - (b) Between ninety (90) days and two hundred seventy (270) days from issuance of the Initial Recapture Notice.
 - (c) Between ninety (90) days and three hundred sixty (360) days from issuance of the Initial Recapture Notice.
 - (d) Between ninety (90) days and four hundred fifty (450) days from issuance of the Initial Recapture Notice.
- (4) If Airline has not cured its utilization deficiency as specified in Sections 5.03.C(2) and (3) above, City may issue to Airline a Final Recapture Notice identifying the Gate(s) that City proposes to recapture in order to bring Airline into compliance with the Minimum Gate Utilization Standard. City shall have no obligation to issue such notice unless City intends to undertake a project under Section 11.02.A(8). The Preferential Use Gates so recaptured will be that number of Gates needed to allow Airline to meet the Minimum Gate Utilization Standard for ninety (90) consecutive days from the date of recapture specified in 5.03.C(6) below based on the data then available to City.
- (5) In the case of City's recapture of less than all of the Preferential Use Gates in Airline's Premises, City shall provide Airline with an opportunity to change the designation of Preferential Use Gate(s) to be recaptured; provided, however, that Airline shall designate Gate(s) that (i) are located adjacent to Domestic Common Use Gates or the Preferential Use Gate of a Signatory Airline other than Airline; (ii) if more than one Gate is recaptured, are adjacent to or in close proximity to one another; and (iii) are capable of accommodating a Group III aircraft. Airline

shall provide its designation to City within fifteen (15) days of the delivery of the Final Recapture Notice.

- (6) Forty-five (45) days after delivery of the Final Recapture Notice, this Agreement shall be deemed to have been amended to delete from the Premises the portion of the Premises designated by Airline pursuant to 5.03.C(5) or, if no such designation is made, the portion of the Premises identified in the Final Recapture Notice. City shall have the right, but not the obligation to utilize the recaptured Gate(s) as a Domestic Common Use Gate or to reassign the Gate(s) in accordance with Section 5.03.B.
- (7) City shall revise the Premises Notice, **Exhibit A** and **Exhibit K** issued to Airline to reflect the deletion of any Gate(s) from the Premises as a result of City's recapture promptly after City's delivery of the Final Recapture Notice.
- (8) If the number of Airline's Preferential Use Gates is reduced as provided in this Section 5.03.C, City may terminate, upon thirty (30) days' written notice to and after consultation with Airline, Airline's right to use those portions of the Premises, including but not limited to ticket counters, that are no longer necessary, in City's reasonable discretion, to support Airline's operations at Airline's remaining Preferential Use Gates, provided that such reduction in Airline's Premises is in reasonable proportion to the reduced number of Preferential Use Gates and the remaining Premises is reasonably sufficient to maintain Airline's operations and that there is no other comparable, available space at the Airport. In such a situation, the revised Premises Notice, **Exhibit A** and **Exhibit K** that are issued to Airline to reflect the deletion of Preferential Use Gates shall document the termination of any portion of the Premises under this Section 5.03.C. Airline's surrender of any such Premises shall be subject to the terms of TITLE XIX of this Agreement.
- (9) It is understood and agreed that City's rights to recapture and reclassify Gates under this Section 5.03.C is the only remedy of City under this Agreement in the event of non-compliance with the Minimum Gate Utilization Standard.

D. Accommodation of Requesting Airlines on Preferential Use Gates. If a Passenger Carrier, including any Passenger Carrier seeking to expand its service or a Passenger Carrier seeking entry into the Airport, requests from City the use of a Gate to accommodate its expanded or new service, City and Airline shall comply with the following procedures to accommodate the Requesting Airline on Preferential Use Gates:

- (1) City shall first determine whether the Requesting Airline can be accommodated on Common Use Gates, including Common Use Gates with Priority Use Rights.
- (2) If City is unable to accommodate the Requesting Airline on a Common Use Gate, including a Common Use Gate with Priority Use Rights, City shall serve written notice to all Signatory Airlines (a) describing the Requesting Airline's request and City's efforts to accommodate the Requesting Airline; (b) specifying

the Period(s) of Use that City seeks to accommodate through accommodation on Preferential Use Gates; and (c) requesting voluntary accommodation by the Signatory Airlines.

- (3) The Signatory Airlines shall have thirty (30) days from the delivery of the notice under Section 5.03.D(2) above to notify City that the Requesting Airline's flights will be accommodated. Such notice shall be provided in writing by the Accommodating Airline and shall specify the terms upon which the Requesting Airline shall be accommodated.
- (4) If City does not receive a response from a Signatory Airline under Section 5.03.D(3) above, City shall have the right, in accordance with the rules and priorities set forth in Sections 5.03.E and 5.03.F below, to specify one or more Designated Gates, including rights of ingress and egress, the right to use the associated aircraft parking positions and the right to use associated passenger loading bridges and other appurtenant equipment which are reasonably necessary for the effective use of the Gate. In selecting a Gate, City shall first consult with the Accommodating Airline and use reasonable efforts to consider the preference of the Accommodating Airline with respect to which of its Preferential Use Gates is to be selected. City shall select a Gate that is configured such that the Requesting Airline's aircraft could operate on such Gate. In addition, the Gate selected by City shall be adjacent to either a Domestic Common Use Gate or the Preferential Use Gate of a Signatory Airline other than the Accommodating Airline, if the Accommodating Airline leases such a Gate. City shall provide sixty (60) days' notice to the Accommodating Airline. The notice shall specify the Periods of Use requested by the Requesting Airline and the dates that the Accommodating Airline must make the Designated Gate available for use by the Requesting Airline during the requested Periods of Use.
- (5) Nothing in this Section 5.03 shall prevent a Signatory Airline from directly receiving and accommodating the request of another Passenger Carrier in lieu of the procedures set forth in Sections 5.03.D, 5.03.E and 5.03.F, subject to the applicable requirements of this Agreement.

E. Priorities for Determining Designated Gates. If City elects, pursuant to Section 5.03.D(4), to designate a Preferential Use Gate for accommodation of a Requesting Airline, City shall use the following priorities for determining the Designated Gate:

- (1) One or more Signatory Airlines must have time available on a Gate for the Period(s) of Use sought by the Requesting Airline based on the published flight schedule in effect on the date City receives the request from the Requesting Airline.
- (2) If a Signatory Airline that has time available on a Gate for the Period(s) of Use sought by the Requesting Airline is not meeting the Minimum Gate Utilization Standard, City shall select a Gate of that Signatory Airline as the Designated Gate to accommodate the Requesting Airline. If there is more than one such

Signatory Airline, the City shall select the Signatory Airline with the lowest Average Gate Utilization over the immediately preceding one hundred eighty (180) days.

- (3) If the Designated Gate is not determined pursuant to 5.03.E(2) above, then City will select, from among the Signatory Airline(s) that have time available on a Gate during the requested Period(s) of Use, the Designated Gate from the Signatory Airline with the lowest Average Gate Utilization over the immediately preceding one hundred eighty (180) days after also using reasonable efforts to consider all the following factors with respect to all Signatory Airlines that have time available on a Gate for the Period(s) of Use sought by the Requesting Airline:
 - (a) maintaining hub connection times, efficiency and other benefits of the hub;
 - (b) the average number of flight arrivals and departures per aircraft parking position per day;
 - (c) flight scheduling considerations;
 - (d) potential labor conflicts; and
 - (e) the number, availability and type (e.g. wide-body or narrow-body) of aircraft parking position locations.
- (4) Accommodation of a Requesting Airline seeking more than one Period of Use might not be possible on the Preferential Use Gates of a single Signatory Airline and may require designation of Preferential Use Gates of more than one Signatory Airline.

F. Rules for Accommodation. Unless the accommodation is voluntary under Sections 5.03.D(3) or 5.03.D(5), the following rules shall apply to Accommodating Airlines and Requesting Airlines:

- (1) The Accommodating Airline shall accommodate the Requesting Airline during the Period(s) of Use specified in the notice from City pursuant to Section 5.03.D(2). In the event an Irregular Operation of the Accommodating Airline prevents this accommodation, the Accommodating Airline shall accommodate the Requesting Airline during the Period(s) of Use specified in the notice from City on another Preferential Use Gate assigned to the Accommodating Airline, provided, however that the Accommodating Airline selects a Gate on the same concourse and uses reasonable efforts to select a Gate in close proximity to the Designated Gate.
- (2) In the event of an Irregular Operation of the Requesting Airline's accommodated flight, the Requesting Airline shall either not park at the Designated Gate or remove its aircraft from the Designated Gate prior to the end of the buffer period specified in the Common Use Regulations for the next Scheduled Operation, unless allowed to remain on the Gate by the Accommodating Airline. At any time prior to the end of the buffer period, the Requesting Airline shall move to another location if so directed by City or its designee. In the event that the

Requesting Airline repeatedly has Irregular Operations on the Designated Gate for reasons within the Requesting Airline's control, City shall, after consulting with both the Requesting and Accommodating Airlines, withdraw the Requesting Airline's right to accommodation during the affected Period of Use.

- (3) The Accommodating Airline shall not be held liable by City or the Requesting Airline with regard to any claim for damages or personal injury arising out of or in connection with accommodating a Requesting Airline under Sections 5.03.D and 5.03.E except to the extent caused by the intentional acts or negligence of Accommodating Airline, its employees or agents.
- (4) The Requesting Airline must be a Signatory Airline or execute an Operating Agreement through which the Requesting Airline is bound by insurance and indemnification obligations that are substantially similar to the obligations set forth in this Agreement. These insurance and indemnification obligations shall inure to the benefit of the Accommodating Airline as a third-party beneficiary for any period of accommodation, and the Accommodating Airline shall not be required to accommodate the Requesting Airline at its Preferential Use Gates if the Requesting Airline's insurance and indemnification obligations are not satisfied.
- (5) The Requesting Airline shall pay City the Domestic Common Use Gate Fee for its use of the Accommodating Airline's Preferential Use Gate, as specified in the Common Use Regulations, and City shall credit that payment to the Accommodating Airline.
- (6) In no event shall the Accommodating Airline be required to change its current or future flight schedule as published on the day City receives the request from the Requesting Airline in order to accommodate the Requesting Airline.
- (7) The Accommodating Airline shall not be required to continue accommodating the Requesting Airline if:
 - (a) the Requesting Airline discontinues the flight for which it sought accommodation;
 - (b) a Common Use Gate, including a Common Use Gate with Priority Use Rights, becomes available during a time that will accommodate the Requesting Airline's requested aircraft and Period of Use;
 - (c) another Signatory Airline's Preferential Use Gate becomes available during a time that will accommodate the Requesting Airline's requested aircraft and Period of Use and the other Signatory Airline's Average Gate Utilization is less than the Accommodating Airline's Average Gate Utilization over the immediately preceding one hundred eighty (180) days.
- (8) Requesting Airline shall not have the right to use Accommodating Airline's proprietary computer equipment or make physical alterations to the gate holdroom or millwork.

5.04. – Common Use Gates with Priority Use Rights.**A. Granting/Terminating of Priority Use Rights on Common Use Gates in the International Terminal.**

- (1) City may grant Priority Use Rights on International Common Use Gates to (a) any existing Signatory Airline to the extent that the Signatory Airline's average daily International Arriving Flights to the Airport per Common Use Gate with Priority Use Rights granted or proposed to be granted to Airline is greater than or equal to two and one half (2.5) flights with an average of at least three hundred and seventy-five (375) seats or (b) to any new Signatory Airline with scheduled flights to the Airport greater than or equal to two and one half (2.5) International Arriving Flights with an average of at least three hundred and seventy-five (375) seats per Common Use Gate with Priority Use Rights for the ninety (90) day period starting ninety (90) days after the Effective Date for that Signatory Airline. For a hub carrier operating at the Airport, all Domestic to International and International to Domestic aircraft rotations will also be included in the calculation of two and one half (2.5) flights with an average of at least three hundred and seventy-five (375) seats. In addition, any flights operated on a Common Use Gate with Priority Use Rights by a hub carrier's code share partners will be counted in the calculation of two and one half (2.5) flights with an average of at least three hundred and seventy-five (375) seats for that hub carrier. In determining whether to grant such rights, City shall consider gate utilization (including historical, current and reasonably projected frequency of operations and number of enplaned and deplaned passengers), efficiency of operations, hub connectivity and the accommodation of expansion at and new entry to the Airport.
- (2) If at any time during the Term, Airline's average daily International Arriving Flights to the Airport per Common Use Gate with Priority Use Rights is less than two and one quarter (2.25) flights with an average of fewer than three hundred and thirty-seven (337) seats as calculated over the immediately preceding twelve (12) month period (the "Minimum Priority Use Rights Standard"), City may in its reasonable discretion issue an Initial Termination Notice to Airline. City shall have no obligation to issue such notice or terminate an Airline's Priority Use Rights on Common Use Gates. For a hub carrier operating at the Airport, all Domestic to International and International to Domestic aircraft rotations will also be included in the calculation of two and one quarter (2.25) flights with an average of at least three hundred and thirty-seven (337) seats. In addition, any flights operated on a Common Use Gate with Priority Use Rights by a hub carrier's code share partners will be counted in the calculation of two and one quarter (2.25) flights with an average of at least three hundred and thirty-seven (337) seats for that hub carrier.
- (3) Three hundred sixty (360) days from issuance of the Initial Termination Notice, Airline must demonstrate to City that its currently Scheduled Operations on that three hundred sixtieth (360th) day for the next ninety (90) days meet the

Minimum Priority Use Rights Standard or City may terminate Airline's Priority Use Rights on Common Use Gates in the International Terminal as provided in Sections 5.04.A(5)-(10).

- (4) If Airline demonstrates that it meets the Minimum Priority Use Rights Standard under Section 5.04.A(2) above, Airline must demonstrate through actual operations that it continues to meet the Minimum Priority Use Rights Standard over each of the following periods of time or City may terminate Airline's Priority Use Rights on Common Use Gates in the International Terminal as provided in Sections 5.04.A(5)-(10) below:
 - (a) Between three hundred sixty (360) days and four hundred fifty (450) days from issuance of the Initial Termination Notice.
 - (b) Between three hundred sixty (360) days and five hundred forty (540) days from issuance of the Initial Termination Notice.
 - (c) Between three hundred sixty (360) days and six hundred thirty (630) days from issuance of the Initial Termination Notice.
 - (d) Between three hundred sixty (360) days and seven hundred twenty (720) days from issuance of the Initial Termination Notice.
- (5) If Airline has not cured its utilization deficiency as specified in Sections 5.04.A(3)-(4) above, City may issue to Airline a Final Termination Notice identifying the Gate(s) at which City proposes to terminate Priority Use Rights in order to bring Airline into compliance with the Minimum Priority Use Rights Standard. City shall have no obligation to issue such notice. The Priority Use Rights so terminated will be that number of Gates needed to allow Airline to meet the Minimum Priority Use Rights Standard for ninety (90) consecutive days from the date of termination specified in 5.04.A(7) below based on the data then available to City.
- (6) In the case of City's termination of less than all of Airline's Priority Use Rights on International Common Use Gates, City shall provide Airline with an opportunity to change the designation of International Common Use Gate(s) where Priority Use Rights will be terminated; provided, however, that Airline shall not be permitted to change the designation of a Gate on Concourse F if Airline's utilization of such Gate is lower than the utilization on the lowest utilized Common Use Gate without Priority Use Rights on Concourse F. Airline shall provide its designation to City within fifteen (15) days of the delivery of the Final Termination Notice.
- (7) Forty-five (45) days after delivery of the Final Termination Notice, this Agreement shall be deemed to have been amended to terminate Airline's Priority Use Rights at the Gate(s) designated by Airline pursuant to 5.04.A(6) or, if no such designation is made, at the Gate(s) identified in the Final Termination Notice.

- (8) City shall revise the Premises Notice, **Exhibit A** and **Exhibit K** issued to Airline to reflect the termination of any Priority Use Rights as a result of City's termination promptly after City's delivery of the Final Termination Notice.
- (9) If Airline's number of International Common Use Gates with Priority Use Rights is reduced as provided in this Section 5.04.A, City may terminate, upon thirty (30) days' written notice to Airline, Airline's right to use those portions of the Premises in the International Terminal, including but not limited to ticket counters, that are no longer reasonably necessary, as determined by City and Airline after consultation, to support Airline's operations in the International Terminal, provided that the remaining Premises is reasonably sufficient to maintain Airline's operations in the International Terminal and that there is no other comparable, available space at the Airport. In such a situation, the revised Premises Notice, **Exhibit A** and **Exhibit K** that is issued to Airline to reflect the termination of Priority Use Rights shall document the termination of any portion of the Premises under this Section 5.04.A(9). Airline's surrender of any such Premises shall be subject to the terms of TITLE XIX of this Agreement.
- (10) It is understood and agreed that City's rights to terminate Priority Use Rights on International Common Use Gates under this Section 5.04.A is the only remedy of City under this Agreement in the event of non-compliance with the Minimum Priority Use Rights Standard.
- B. Scheduling on Common Use Gates with Priority Use Rights. Airline may schedule flights on Common Use Gates with Priority Use Rights assigned to Airline by City as Airline deems appropriate, provided that the scheduling complies with the Common Use Regulations and is subject to the priorities specified in Section 6.01.A below. City may schedule flights on Common Use Gates with Priority Use Rights at all other times, as provided in the Common Use Regulations and subject to the priorities specified in Section 6.01.A below.
- C. Proprietary Systems. A Signatory Airline that qualifies for Common Use Gates with Priority Use Rights under Section 5.04.A may, at its own expense, install proprietary systems (including, without limitation, under-wing luggage tracking systems) of its own choosing at any or all Gates designated for use by such Signatory Airline at the International Terminal and in other areas of the International Terminal assigned to such Signatory Airline's use by City, provided, however, that no Signatory Airline may install proprietary passenger processing equipment at Gates E1, E3, E11, E14, E32, E34 or E37 or at any Gates on Concourse F, Concourse G or any future additional concourse in the International Terminal unless such gate passenger processing equipment can be used on a common use basis or is otherwise approved in writing by the Aviation General Manager.

5.05. – Common Use Gates

- A. Exclusive Control by City. City shall retain exclusive control of the use of all Common Use Gates, subject to any Priority Use Rights of Airline, the Common Use Regulations and Section 6.01.A.
- B. Periods of Use. City shall not alter the buffer periods or Maximum Gate Occupancy Periods specified in the Common Use Regulations by more than five (5) minutes for buffer periods or fifteen (15) minutes for Maximum Gate Occupancy Periods without submitting a written proposal to the Signatory Airlines and obtaining the written approval of a majority in number of Signatory Airlines that also collectively account for at least fifty percent (50%) of total Enplaned Passengers at the Airport during the immediately preceding Fiscal Year. City shall deem the proposal approved by a Signatory Airline if that Signatory Airline does not respond in writing to City's proposal within thirty (30) days of receipt.

TITLE VI
INTERNATIONAL TERMINAL

6.01. – General

The International Terminal will be a public, common use facility available for all international arrivals, international departures, as well as domestic arrivals and domestic departures, subject to the following provisions:

- A. The use of International Common Use Gates shall be scheduled based on the following order of priority:
 - (1) International scheduled arrivals;
 - (2) International scheduled departures;
 - (3) International precleared arrivals;
 - (4) Domestic scheduled departures that are continuations of international arrivals; and then
 - (5) Domestic scheduled arrivals or departures.
- B. All Passenger Carriers utilizing the International Terminal, including Airline, shall have the option of providing their own ground handling services, including delivery of baggage to the CPTC. However, with regard to the hydrant system, fuel will be available only through (i) City's fuel storage and distribution system, (ii) the fuel storage and distribution system of a Signatory Airline should operational needs arise, or (iii) a future Signatory Airline managed fuel consortium if such consortium is approved by City. Airline may also provide fuel to its aircraft by means of fuel tanker trucks. Airline may provide its own into-plane fueling or may contract with a third-party of Airline's choice to provide into-plane fueling services.

- C. Airline may individually, or collectively with other airlines, operate and maintain its preferential tenant finishes, equipment and systems in the International Terminal.
- D. Check-in and baggage claim facilities for all international passengers and precleared passengers shall be provided at the International Terminal, except that domestic Passenger Carriers shall have the right to process international passengers in the Domestic Terminal; provided, however, that for purpose of rates and charges, all international passengers and precleared passengers, checked bags, and other activity numbers used to calculate rates and charges in TITLE VIII shall be allocated to the International Terminal irrespective of where the processing takes place.
- E. In addition to the reporting requirements in TITLE IX of this Agreement, Airline (if utilizing the International Terminal) shall provide City or the Common Use Facilities Manager with actual data for the prior month and Fiscal Quarter and projected data for the coming Fiscal Quarter needed by City to prepare estimated billings for the coming Fiscal Quarter. The data shall include the numbers of connecting and origin and destination international passengers (including passengers to and from preclearance cities) at all Gates utilized by Airline. Should such estimated data not be submitted on a timely basis or should such estimates not be reasonable in City's or the Common Use Facility Manager's judgment, then City or the Common Use Facility Manager shall use its best professional judgment in determining Airline's flight and passenger information needed to prepare estimated billings. With respect to actual data to be provided by Airline, if City or the Common Use Facility Manager believes the actual data provided to be unreasonable or if a Passenger Airline fails to provide actual data, City or the Common Use Facility Manager shall request additional supporting documentation from Airline.

6.02. – Third-Party Operator

City may itself operate or contract with a Common Use Facility Manager for the operation of the International Terminal. City agrees that it will confer in good faith with the Signatory Airlines prior to approving:

- (1) the Common Use Facility Manager's annual operating budget for the International Terminal; and
- (2) the form and terms of any new contract entered into with the Common Use Facility Manager.

TITLE VII
AFFILIATES

7.01. – Airline's Designation of Affiliates

Subject to the provisions of this TITLE VII, Airline may designate one or more Affiliates to operate at the Airport. In the event Airline designates an Affiliate, the following provisions shall apply to Airline and its Affiliates:

- A. Airline's designation of an Affiliate shall not be effective until Airline has first (a) notified the Aviation General Manager in writing that Airline intends to designate the Affiliate using the form attached to the Affiliate Operating Agreement (**Exhibit L**, Attachment 1); (b) ensured that the Affiliate has entered into an Affiliate Operating Agreement with City in the form attached as **Exhibit L**; and (c) confirmed for the Aviation General Manager in writing that Airline will pay to City or guarantee Affiliate's payments to City of all of the Affiliate's rents, fees and other charges due to City on account of the Affiliate's use of any Airport facilities or services as an Affiliate of the Airline (excluding facilities or services provided by City to Affiliate under separate agreement), as provided in Section 7.01.B. below.
- B. Airline or its Affiliates shall report and pay to City all PFCs (if any) that they collect on account of Enplaned Passengers at the Airport. Airline shall pay to City all rents, fees and other charges due to City on account of the Affiliate's use of any Airport facilities or services (excluding facilities or services provided by City to Affiliate under separate agreement), and submit all activity reports, that are due to City on account of each Affiliate's use of any Airport facilities or services as an Affiliate of Airline; provided, however, that both Airline and the Affiliate shall remain jointly and severally liable to City for the payment of all rents, fees and other charges (including PFCs), and the submission of all activity reports, that are due to City on account of the Affiliate's use of any Airport facilities or services as an Affiliate of Airline.

7.02. – **Applicability of Agreement to Affiliates**

For so long as Airline and its Affiliates have complied with the payment and reporting obligations under TITLE IX and TITLE X, then:

- A. Each Affiliate shall have the same rights as Airline to use the Premises at times and locations within the Premises specified by Airline.
- B. All rents, fees and other charges due on account of each Affiliate's use of Airport facilities or services shall be calculated as if the Affiliate were a Signatory Airline; provided, however, that the Affiliate's activity as an Affiliate of Airline shall be treated as activity of Airline.
- C. Airline and each of its Affiliates shall be treated as a single Signatory Airline for purposes of determining a Majority-In-Interest, and each Affiliate's MGLW and Enplaned Passengers shall be treated as MGLW and Enplaned Passengers of Airline for purposes of determining a Majority-In-Interest.
- D. Each Affiliate's activity as an Affiliate of Airline shall be treated as activity of Airline for purposes of calculating Average Gate Utilization, revenue sharing and other calculations in this Agreement based on the activity of Airline.

7.03.– **Designation by More than One Signatory Airline**

More than one Signatory Airline may from time to time designate the same Passenger Carrier as its Affiliate, and each such Signatory Airline shall only be responsible for

such Passenger Carrier's operations when such Passenger Carrier operates as such Signatory Airline's Affiliate.

7.04. – **Termination of Status of Affiliate**

A Passenger Carrier's status as an Affiliate of Airline may be terminated by Airline upon not less than thirty (30) days' written notice to City using the form attached to the Affiliate Operating Agreement (**Exhibit L**, Attachment 2). Airline's liability to City for the payment of all rents, fees and other charges (including PFCs), and the submission of all activity reports, that are due to City on account of the use of any Airport facilities or services by Airline's Affiliates shall survive any termination of Affiliate status; provided, however, that Airline shall only be responsible for such payments and reports as related to the terminated Affiliate's operations before its proper termination by Airline took effect.

7.05. – **Affiliate as Signatory Airline**

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

TITLE VIII **CALCULATION OF RATES AND CHARGES**

8.01. – **Rate Setting Methods**

Except as provided in Section 10.10, the Landing Fees and Terminal Rents and other charges and fees to be charged by City and paid by Airline and all other Air Carriers for use of the Airport under this Agreement from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using the rate-setting methods set forth in this TITLE VIII. **Exhibit M** displays, for illustrative purposes only, a calculation of the Landing Fee Rate and Terminal Rental Rates for Fiscal Year 2019 showing the methods set forth in this TITLE VIII based on budget and forecast Airport activity for the year. City shall not include costs paid from PFCs or federal or state grants received by City in the calculation of the Landing Fee Rate or Terminal Rental Rates. City shall not include Debt Service (including capitalized interest and Coverage Requirements) on any Capital Improvement Project in the Terminal Rate Base Requirement or Airfield Rate Base Requirement until the Date of Beneficial Occupancy for that project, subject to Section 11.04.I of this Agreement. Except as otherwise provided in this Agreement, no other fees or charges shall be imposed by City on Airline in connection with its use of the Airport under this Agreement.

8.02. – **Landing Fees**

The Landing Fee Rate to be effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section 8.02.

- A. Airfield Rate Base Requirement. City shall calculate the Airfield Rate Base Requirement by computing the sum of the following budgetary items for the Fiscal Year:
- (1) Debt Service allocable to the Airfield Cost Center for Prior Debt, and the associated Coverage Requirement; *plus*
 - (2) Debt Service allocable to the Airfield Cost Center for New Debt, and the associated Coverage Requirement; *plus*
 - (3) Amortization allocable to Airfield Capital Improvement Projects funded from the R&E Fund, if any; *plus*
 - (4) Direct Operating Expenses allocable to the Airfield Cost Center; *minus*
 - (5) Landing Fees collected from Non-Signatory Airlines.
- B. Forecast Maximum Gross Landed Weight. City shall forecast, based upon the immediately preceding Fiscal Year's Maximum Gross Landed Weight, the aggregate Maximum Gross Landed Weight for all Signatory Airline aircraft greater than 12,500 pounds landing at the Airport during the Fiscal Year.
- C. Calculation of Landing Fee Rate. City shall calculate the Landing Fee Rate by dividing the Airfield Rate Base Requirement by the forecast aggregate Maximum Gross Landed Weight for all Signatory Airline aircraft greater than 12,500 pounds landing at the Airport during the Fiscal Year.
- D. Calculation of Landing Fees. Airline shall pay Landing Fees for its use of the Airfield based on its aggregate Maximum Gross Landed Weight at the Airport during the Fiscal Year based on Scheduled Operations. If Airline has no Scheduled Operations, City shall use the Aerobahn System or its equivalent to determine Maximum Gross Landed Weight.
- E. Non-Signatory Airline Landing Fees. Landing Fees for Non-Signatory Airlines shall equal at least one hundred and five percent (105%) of the Landing Fee computed pursuant to Section 8.02.C.

8.03. – Terminal Rents

The Terminal Rental Rates to be effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section 8.03.

- A. Terminal Rate Base Requirement. City shall calculate the Terminal Rate Base Requirement by computing the sum of the following budgetary items for the Fiscal Year:
- (1) Debt Service allocable to the CPTC Cost Center funded from Prior Debt, and the associated Coverage Requirement; *plus*

- (2) Debt Service allocable to the CPTC Cost Center funded from New Debt, and the associated Coverage Requirement; *plus*
- (3) Debt Service for Terminal Modernization Project Debt, and the associated Coverage Requirement; *plus*
- (4) Amortization allocable to CPTC Capital Improvement Projects funded from the R&E Fund, if any; *plus*
- (5) Prior Tenant Finish Costs allocable to the CPTC, as designated in **Exhibit H**; *plus*
- (6) Direct Operating Expenses allocable to the CPTC Cost Center.

City shall not include any AATC Charges or Common Use Facility Manager Costs in the Terminal Rate Base Requirement.

B. Calculation of Terminal Rental Rates.

- (1) In recognition of the differing utility of various types of Rented Space, City shall separately calculate rental rates for four (4) types of Rented Space: Group A (Gate holdroom space); Group B (generally boarding level, arrival level, and ticketing level conditioned space other than Gate holdroom space); Group C (generally enclosed lower level space and operations space); and Group D (generally unenclosed or non-conditioned lower level space), all as shown in **Exhibit A** as of the Effective Date of this Agreement and as such exhibit may be adjusted from time to time.
- (2) In the event that the space type designation shown in **Exhibit A** for particular space in the CPTC is inconsistent with the general description of space in Section 8.03.B(1), **Exhibit A** shall control.
- (3) The rental rates per square foot for each of these four (4) types of Rented Space in the CPTC shall bear the following relativities:

Group A:	1.000
Group B:	0.500
Group C:	0.250
Group D:	0.125

- (4) The rental rates per square foot for each of the four (4) types of Rented Space will be calculated so that the aggregate amount recovered for all types of Rented Space equals the Terminal Rate Base Requirement.

C. Calculation of Terminal Rent. Airline shall pay for all Exclusive Use Premises and Preferential Use Premises assigned to Airline in the Premises Notice based on the square footage of and applicable Terminal Rental Rate for each type of space rented.

8.04. – Domestic Terminal Common Use Charges

Airline shall pay fees for its use of Domestic Common Use Facilities as calculated according to the rate-setting methodology set forth in the Common Use Regulations.

8.05. – International Terminal Common Use Charges

International Terminal Common Use Charges shall be set quarterly according to the rate-setting method set forth in this Section 8.05.

A. International Arrivals Charge. Prior to each Fiscal Quarter, City shall calculate the International Arrivals Charge to be charged on the basis of forecast quarterly International Deplaned Passengers as follows.

(1) Rate Base Requirement. City shall calculate the quarterly International Arrival Rate Base Requirement by computing the sum of the following budgetary items:

- (a) one quarter of the product of the appropriate annual Terminal Rental Rate times the total square footage of each type of space in the International Only Passenger Use Areas; *plus*
- (b) forecast quarterly AATC Charges reasonably allocable to the International Only Passenger Use Area; *plus*
- (c) forecast quarterly Common Use Facility Manager Costs reasonably allocable to the International Only Passenger Use Area; *minus*
- (d) fifty percent (50%) of the forecast quarterly Domestic Use Charges collected pursuant to Section 8.05.C.

(2) Forecast of International Deplaned Passengers. City shall forecast, taking account of estimates provided by Passenger Carriers, the total number of International Deplaned Passengers for the next Fiscal Quarter. Should Passenger Carriers fail to provide estimates on a timely basis, City will estimate the total number of International Deplaned Passengers for the next Fiscal Quarter based upon other available information for such Passenger Carriers.

(3) Calculation of Charge. City shall calculate the International Arrivals Charge by dividing the estimated International Arrivals Rate Base Requirement for the next Fiscal Quarter by the forecast total number of International Deplaned Passengers for the next Fiscal Quarter.

B. International Departures Charge. Prior to each Fiscal Quarter, City shall calculate the estimated International Departures Charge to be charged on the basis of forecast quarterly International Enplaned Passengers and Precleared Arriving Passengers as follows.

(1) Rate Base Requirement. City shall calculate the quarterly International Departures Rate Base Requirement by computing the sum of the following budgetary items:

- (a) one quarter of the product of the appropriate annual Terminal Rental Rate times the total square footage of each type of space in the International/Domestic Passenger Use Areas; *plus*
 - (b) forecast quarterly AATC Charges reasonably allocable to the International/Domestic Passenger Use Areas; *plus*
 - (c) forecast quarterly Common Use Facility Manager Costs reasonably allocable to the International/Domestic Passenger Use Areas; *minus*
 - (d) fifty percent (50%) of the forecast quarterly Domestic Use Charges collected pursuant to Section 8.05.C.
- (2) Forecast Passengers. City shall forecast, taking account of estimates provided by Passenger Carriers, the total number of International Enplaned Passengers and Precleared Arriving Passengers for the next Fiscal Quarter. Should Passenger Carriers fail to provide estimates on a timely basis, City will estimate the total number of International Enplaned Passengers or Precleared Arriving Passengers for the next Fiscal Quarter based upon other available information for such Passenger Carriers.
- (3) Calculation of Charge. City shall calculate the International Departures Charge by dividing the estimated International Departures Rate Base Requirement for the next Fiscal Quarter by the forecast total number of International Enplaned Passengers plus Precleared Arriving Passengers for the next Fiscal Quarter.
- C. Domestic Use Charge. In the event the International Terminal is used for a Domestic Flight, City shall charge the Domestic Common Use Gate Charge (as calculated according to the rate-setting method set forth in the Common Use Regulations) for each Domestic Enplaned Passenger and each Domestic Deplaned Passenger using the International Terminal.
- D. International Terminal Passenger Check-In Charge. Prior to each Fiscal Quarter, City shall calculate the International Terminal Passenger Check-In Charge to be charged on the basis of International Originating Enplaned Passengers as follows.
- (1) Rate Base Requirement. City shall calculate the quarterly International Terminal Passenger Check-In Rate Base Requirement by computing the sum of the following budgetary items:
 - (a) one quarter of the product of the appropriate annual Terminal Rental Rate times the total square footage of each type of space in the International/Domestic Check-in Areas; *plus*
 - (b) forecast quarterly AATC Charges reasonably allocable to the International/Domestic Check-in Areas; *plus*
 - (c) forecast quarterly Common Use Facility Manager Costs, including but not limited to Common Use Terminal Equipment Costs, reasonably allocable to the International/Domestic Check-in Areas.

- (2) Forecast Passengers. City shall forecast, taking account of estimates provided by Passenger Carriers, the total number of International Originating Enplaned Passengers for the next Fiscal Quarter. Should Passenger Carriers fail to provide estimates on a timely basis, City will estimate the total number of International Originating Enplaned Passengers for the next Fiscal Quarter based upon other available information for such Passenger Carriers.
 - (3) Calculation of Charge. City shall calculate the International Terminal Passenger Check-In Charge by dividing the estimated quarterly International Terminal Passenger Check-In Rate Base Requirement by the forecast total number of International Originating Enplaned Passengers for the next Fiscal Quarter.
 - (4) City shall not allocate costs for Common Use Terminal Equipment to Passenger Carriers that do not utilize Common Use Terminal Equipment. The full cost of the Common Use Terminal Equipment shall be recovered from the Passenger Carriers utilizing that equipment.
- E. Preleared Only Baggage Claim Charge. Prior to each Fiscal Quarter, City shall calculate the Preleared Only Baggage Claim Charge to be charged on the basis of Preleared Arriving Passengers as follows.
- (1) Rate Base Requirement. City shall calculate the quarterly Preleared Only Baggage Claim Rate Base Requirement by computing the sum of the following budgetary items:
 - (a) one quarter of the product of the appropriate annual Terminal Rental Rate times the total square footage of each type of space in the Preleared Only Baggage Claim Areas; *plus*
 - (b) forecast quarterly AATC Charges reasonably allocable to the Preleared Only Baggage Claim Areas; *plus*
 - (c) forecast quarterly Common Use Facility Manager Costs reasonably allocable to the Preleared Only Baggage Claim Areas.
 - (2) Forecast Passengers. City shall forecast, taking account of estimates provided by Passenger Carriers the total number of Preleared Arriving Passengers for the next Fiscal Quarter. Should Passenger Carriers fail to provide estimates on a timely basis, City will estimate the total number of Preleared Arriving Passengers for the next Fiscal Quarter based upon other available information for such Passenger Carriers.
 - (3) Calculation of Charge. City shall calculate the Preleared Only Baggage Claim Charge by dividing the estimated Preleared Only Baggage Claim Rate Base Requirement by the forecast total number of Preleared Arriving Passengers for the next Fiscal Quarter.
- F. Calculation of International Terminal Common Use Charges. Airline shall pay International Common Use Charges based upon the numbers of its International Deplaned Passengers, International Enplaned Passengers, Domestic Enplaned

Passengers using the International Terminal, Domestic Deplaned Passengers using the International Terminal, International Originating Enplaned Passengers, and Precleared Arriving Passengers.

8.06. – Prior Tenant Finish Costs

Airline shall pay City for Prior Tenant Finish Costs allocated to Airline in **Exhibit H**.

8.07. – Shared Use Premises.

City shall calculate Airline's share of the Terminal Rent for any Shared Use Premises Airline shares with any other Air Carriers by dividing the total square footage of Airline's Exclusive Use and Preferential Use Premises that benefit from the Shared Use Premises by the total square footage of all Exclusive Use and Preferential Use Premises that benefit from the Shared Use Premises. Airline shall pay its proportionate share of the Terminal Rent for Shared Use Premises.

8.08. - Revenue Sharing.

- A. Inside Concessions Revenue Credit. For Fiscal Year 2018 (from and after October 1, 2017) and for each of Fiscal Years 2019 through 2021, City shall calculate the Inside Concessions Revenue Credit to be given to all Passenger Carriers that are Signatory Airlines by dividing seventy percent (70%) of total Inside Concessions Revenue by the total Enplaned Passengers carried by all of the Passenger Carriers that are Signatory Airlines and their Affiliates. For each of Fiscal Years 2022 and following during the Term, City shall calculate the Inside Concessions Revenue Credit to be given to all Passenger Carriers that are Signatory Airlines by dividing fifty percent (50%) of total Inside Concessions Revenue by the total Enplaned Passengers carried by all of the Passenger Carriers that are Signatory Airlines and their Affiliates. The Inside Concessions Revenue Credit shall be expressed in dollars and cents per Enplaned Passenger and shall be credited monthly. The Inside Concessions Revenue Credit shall be based on that Fiscal Year's budget, as prepared by City and approved by the Atlanta City Council, of Inside Concessions Revenue, and the Enplaned Passengers for that Fiscal Year as forecast by City for each Passenger Carrier that is a Signatory Airline. During each Fiscal Quarter, City will calculate the actual Inside Concessions Revenue and Enplaned Passengers for the Signatory Airlines and their Affiliates for the preceding Fiscal Quarter. City will credit or debit any difference from budgeted to actual Inside Concessions Revenue Credits to Airline in the final month of the current Fiscal Quarter.
- B. Per-Passenger Credit. For Fiscal Year 2018 (from and after October 1, 2017) and for each of Fiscal Years 2019 through 2021, City shall calculate the Per-Passenger Credit to be given to all Passenger Carriers that are Signatory Airlines by multiplying sixty cents (\$.60) by the total Enplaned Passengers carried by all of the Passenger Carriers that are Signatory Airlines and their Affiliates. For each of Fiscal Years 2022 through 2027, City shall calculate the Per-Passenger Credit to be given to all Passenger Carriers that are Signatory Airlines by multiplying forty cents (\$.40) by the total Enplaned Passengers carried by all of the Passenger Carriers that are Signatory Airlines and their Affiliates.

For Fiscal Years 2028 and following during the Term, there shall be no Per-Passenger Credit. The monthly Per-Passenger Credit shall be based on the estimated Enplaned Passengers for that Fiscal Year for each Passenger Carrier that is a Signatory Airline and its Affiliates. During each Fiscal Quarter, City will calculate the actual Enplaned Passengers for the Signatory Airlines and their Affiliates for the preceding Fiscal Quarter. City will credit or debit any difference from budgeted to actual Per-Passenger Credits to Airline in the final month of the current Fiscal Quarter.

C. Limits on Cumulative Inside Concessions Revenue Credits and Per-Passenger Credits.

- (1) Inside Concessions Revenue Cap. For no Fiscal Year during the Term may the sum of all Inside Concessions Revenue Credits and all Per-Passenger Credits exceed one hundred percent (100%) of actual Inside Concessions Revenues. In the event that the sum of all Inside Concessions Revenue Credits and all Per-Passenger Credits exceeds one hundred percent (100%) of actual Inside Concessions Revenues for any Fiscal Year, City will debit each Signatory Airline in equal proportion to the sum of their Inside Concessions Revenue Credits and Per-Passenger Credits for that Fiscal Year so that the aggregate Inside Concessions Revenue Credits and Per-Passenger Credits given to all Signatory Airlines for that Fiscal Year equals, but does not exceed, one hundred percent (100%) of actual Inside Concessions Revenues.
- (2) Discretionary Reduction of Credits. City shall have the right, but not the obligation, after consultation with the Signatory Airlines, to reduce the total amount of the Inside Concessions Revenue Credit and Per-Passenger Credit for any Fiscal Year if annual GARB Debt Service Coverage is projected to be less than fifty percent (50%) for the current or following Fiscal Year; provided, however, that any such reduction shall only be made to the extent required to achieve annual GARB Debt Service Coverage of at least fifty percent (50%) for the current and following Fiscal Year; and further provided that if actual GARB Debt Service Coverage for any Fiscal Year in which such a reduction was made equals or exceeds fifty percent (50%), City shall reverse the reduction in Inside Concessions Revenue Credit and Per-Passenger Credits following its year-end reconciliation to the extent it was not required to achieve GARB Debt Service Coverage of at least fifty percent (50%) for that Fiscal Year. In exercising its discretion under this Section 8.08.C(2), City shall give due consideration to the extent, if any, to which City has altered the sources or uses of funds shown in **Exhibit N**, which displays anticipated sources and uses of funds for the 2015-2035 Capital Plan as of July 1, 2016.

D. R&E Fund Credit and Supplemental R&E Fund Credit.

- (1) R&E Fund Credit. For each of Fiscal Years 2028 and following during the Term, City shall calculate the R&E Fund Credit, if any, to be given to all Passenger Carriers that are Signatory Airlines as follows:

- (a) By the time City is required by Section 8.10 to make its annual adjustments-to-actual, City shall determine the actual balance in the R&E Fund for the immediately preceding Fiscal Year (the “Base Year”) and shall forecast the balance in the R&E Fund for each of the immediately following four (4) Fiscal Years, after netting out the Total Project Costs of all Core Airport Operation Projects that City reasonably expects to pay during those four (4) Fiscal Years and the Anticipated R&E Fund Withdrawals, if any, that City reasonably expects to make during those four (4) Fiscal Years.
 - (b) If, for the Base Year, the actual balance in the R&E Fund exceeds One Hundred and Fifty Million Dollars (\$150,000,000), then City shall calculate the R&E Fund Credit to be given to all Passenger Carriers that are Signatory Airlines by, first, calculating the amount by which the R&E Fund balance exceeds One Hundred and Fifty Million Dollars (\$150,000,000) for the Base Year and, second, dividing fifty percent (50%) of that amount by the total Enplaned Passengers carried by all of the Passenger Carriers that are Signatory Airlines and their Affiliates; provided, however, that the amount of the R&E Fund Credit for the Base Year and the equal amount to be placed in the R&E Subaccount shall each be reduced, in equal amounts, to the extent, if any, required so that after the R&E Fund Credit is given on account of the Base Year and after placing in the R&E Subaccount an amount equal to the total R&E Fund Credit for the Base Year, the remaining forecast balance in the R&E Fund is at least One Hundred and Fifty Million Dollars (\$150,000,000) for each of the following four (4) Fiscal Years.
 - (c) If City does not actually incur at least ten percent (10%) of the forecast annual Total Project Costs on a Core Airport Operations Project that is netted out under Section 8.08.D(1)(a) for two (2) consecutive Fiscal Years, City shall consult with the Signatory Airlines concerning the status of that Core Airport Operations Project and whether it continues to be reasonable for City to include that project in the calculations of R&E Fund balances under Section 8.08.D(1)(a).
- (2) Supplemental R&E Fund Credit. For any Fiscal Year in which City provides an R&E Fund Credit to Signatory Airlines pursuant to Section 8.08.D(1)(b), above, fifty percent (50%) of the amount by which the R&E Fund balance exceeds One Hundred and Fifty Million Dollars (\$150,000,000) for the Base Year shall be placed in City’s R&E Subaccount. Amounts accumulated and retained in the R&E Subaccount may be used by City to fund Airport capital improvements or for other purposes consistent with the Master Bond Ordinance. For each of Fiscal Years 2028 and following during the Term, City shall calculate the Supplemental R&E Fund Credit, if any, to be given to all Passenger Carriers that are Signatory Airlines as follows:
- (a) By the time City is required by Section 8.10 to make its annual adjustments-to-actual, City shall determine the actual balance in the R&E Subaccount for the immediately preceding Fiscal Year (the “Base Year”);

- (b) If, for the Base Year, the unencumbered balance in the R&E Subaccount exceeds Four Hundred Million Dollars (\$400,000,000), then City shall calculate a Supplemental R&E Fund Credit to be given to all Passenger Carriers that are Signatory Airlines by, first, calculating the amount by which the unencumbered R&E Subaccount balance exceeds Four Hundred Million Dollars (\$400,000,000) for the Base Year and, second, dividing one hundred percent (100%) of that amount by the total Enplaned Passengers carried by all of the Passenger Carriers that are Signatory Airlines and their Affiliates.

E. Limit on Cumulative Credits.

- (1) For no Fiscal Year during the Term may the sum of all Inside Concession Revenue Credits, Per-Passenger Credits, R&E Fund Credits and Supplemental R&E Fund Credits exceed one hundred percent (100%) of the sum of actual Inside Concessions Revenues and actual Outside Concessions Revenues . In the event that the sum of all Inside Concession Revenue Credits, Per-Passenger Credits, R&E Fund Credits and Supplemental R&E Fund Credits exceeds one hundred percent (100%) of the sum of actual Inside Concessions Revenues and actual Outside Concessions Revenues for any Fiscal Year, City will reduce the R&E Fund Credit and the Supplemental Fund Credit, if any, to be given to each Signatory Airline in equal proportion to the sum of their Inside Concession Revenue Credits, Per-Passenger Credits, R&E Fund Credits and Supplemental R&E Fund Credits for that Fiscal Year so that the aggregate Inside Concession Revenue Credits, Per-Passenger Credits, R&E Fund Credits and Supplemental R&E Fund Credits given to all Signatory Airlines for that Fiscal Year equal, but do not exceed, one hundred percent (100%) of the sum of actual Inside Concessions Revenues and actual Outside Concessions Revenues.
- (2) The limit on cumulative credits established by Section 8.08.E(1), above, shall cease to apply for any Fiscal Year beginning after the end of the Fiscal Year in which the final payment of all City Airport revenue bonds which are not private activity bonds is made.
- (3) If, by reason of the limit on cumulative credits established by Section 8.08.E(1), above, City reduces the aggregate Inside Concession Revenue Credits, Per-Passenger Credits, R&E Fund Credits and Supplemental R&E Fund Credits that would otherwise be given to all Signatory Airlines for any Fiscal Year, City shall use any unencumbered balance in the R&E Subaccount that exceeds Four Hundred Million Dollars (\$400,000,000) at that time to reduce Airline Rate-Based Capital Costs.

- F. Payment of R&E Fund and Supplemental R&E Fund Credits. The R&E Fund Credit and the Supplemental R&E Fund Credit, if any, shall be expressed in dollars and cents per Enplaned Passenger and shall be credited to all Passenger Carriers that are Signatory Carriers on the basis of the actual Enplaned Passengers for each Signatory Carrier and

its Affiliates for the preceding Fiscal Year at the time City makes adjustments-to-actual under Section 8.10.

- G. Illustrative Exhibits. Illustrative exhibits showing how revenue sharing calculations are to be made under this Section 8.08 are attached as **Exhibit O**.
- H. Set-Off. City shall, in addition to all other rights under this Agreement, have the right to set off against any credits otherwise due Airline under this Section 8.08 the amounts, if any, then due and owing by Airline to the City under this Agreement.
- I. Uncured Default. City shall not be obligated to provide any credits under this Section 8.08 to any Signatory Airline that has failed to cure an event of default under Section 18.01 within the applicable notice and cure period so long as such default remains uncured.

8.09. – **Mid-year Adjustments.**

- A. If at any time it appears to City, on the basis of information it is able to accumulate during the course of a Fiscal Year during the Term, including information provided pursuant to TITLE IX of the Agreement, that the budgeted Airfield or CPTC costs or forecast landed aircraft weight or rented CPTC space it used in calculating the Landing Fee Rate or Terminal Rental Rates then in effect are likely to vary materially from actual results at the Airport, or if changes in the Landing Fee Rate or Terminal Rental Rates are required by the terms and conditions of the Bond Ordinance or any other indebtedness agreement, City may in its sole discretion make adjustments to the Landing Fee Rate or Terminal Rental Rates (or both) at any time during the Fiscal Year as the need for such an adjustment becomes apparent to City.
- B. City shall provide Airline with a minimum of thirty (30) days' advance written notice of any adjustments under Section 8.09.A.

8.10. – **Adjustments-to-Actual.**

- A. Within one hundred twenty (120) days after the close of each Fiscal Year, City shall provide to Airline an estimate comparing City's projections of Landing Fees and Terminal Rents to actual experience. Within two hundred ten (210) days after the close of each Fiscal Year, the City will provide an updated, final report comparing the City's projections of Landing Fees, Terminal Rents and other fees and charges to actual audited expenses. If, based on the final report, Landing Fees, Terminal Rents or other fees and charges actually paid by Airline were greater than the corresponding amounts chargeable to Airline, City shall credit the amount of such overpayment to the account of Airline within thirty (30) days of Airline's receipt of the final report. If Landing Fees, Terminal Rents or other fees and charges paid by Airline were less than the corresponding amounts chargeable to Airline, City shall apply the amount of such deficiency to the account of Airline within thirty (30) days of Airline's receipt of the final report.
- B. For the final Fiscal Year of the Term, City shall make a final settlement in accordance with Section 8.10.A and any resulting credit shall be issued to Airline, and any resulting

charge will be invoiced to and payable by Airline, notwithstanding the termination of the Agreement at the end of the Term.

- C. At the end of each Fiscal Quarter, City or the Common Use Facility Manager shall compare its projections of Domestic Terminal Common Use Charges and International Terminal Common Use Charges to actual experience. If Domestic Terminal Common Use Charges or International Terminal Common Use Charges actually paid by Airline were greater than the corresponding amounts chargeable to Airline, City or the Common Use Facility Manager shall apply the amount of such overpayment to the account of Airline within forty-five (45) days of the end of the Fiscal Quarter. If Domestic Terminal Common Use Charges or International Terminal Common Use Charges paid by Airline were less than the corresponding amounts chargeable to Airline, City or the Common Use Facility Manager shall apply the amount of such deficiency to the account of Airline within forty-five (45) days of the end of the Fiscal Quarter.

8.11. – Budget Consultation.

No later than March 15th of each year during the Term, City shall consult with the Signatory Airlines to discuss any proposed revised Landing Fee Rate, Terminal Rental Rates and other fees and charges. In connection with this consultation, City shall provide to Airline the calculations City has made in determining the revised charges with reasonable supporting documentation. City's obligation to consult with Airline shall not limit in any way City's rate-setting powers under this Agreement or otherwise cause any delay in the effectiveness of revised charges. No later than June 15th of each year during the Term, City shall notify Airline of the actual Landing Fee Rate, Terminal Rental Rates and other fees and charges it will charge for the next Fiscal Year, effective July 1.

8.12. – Charges for Use of the AGTS

Other than the rates and charges specified in this TITLE VIII, City shall not impose any charge, toll or fee for the use of the AGTS by Airline, its Affiliates or its employees, passengers, guests, patrons, invitees, or suppliers of materials without written approval from MII Eligible Signatory Airlines that together have enplaned at least eighty-seven percent (87%) of the total Enplaned Passengers of all MII Eligible Signatory Airlines during the immediately preceding Fiscal Year.

8.13. – Passenger Facility Charges (PFCs)

- A. Notwithstanding anything to the contrary in this Agreement, City reserves the right to impose and use PFCs subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, 49 U.S.C. § 40117 (the "PFC Act") and implementing regulations, as each may be supplemented or amended from time to time. Airline shall collect and remit to City all PFCs for which it is responsible under the provisions of 14 C.F.R. Part 158. Failure by Airline to remit PFCs within the time frame required by 14 C.F.R. Part 158 shall be grounds for termination of this Agreement

pursuant to Sections 18.01 and 18.03. Additionally, each year Airline shall submit its audited report of PFC activity and receipts to City.

- B. In the event that Congress authorizes an increase in the amount that can be imposed as a PFC from the current maximum of \$4.50 on each paying passenger (“PFC Increase”), City agrees to the full extent permitted by the PFC Act and 14 CFR Part 158, Appendix A to prioritize the use of any incremental PFC funds collected by City solely as a result of the PFC Increase as follows:
- (1) Funding Pre-Approved Projects that are PFC eligible and not yet complete.
 - (2) Funding Additional Projects that are PFC eligible and not yet complete. City and Signatory Airlines shall mutually determine which Additional Projects receive priority under this Section 8.13.B(2).
 - (3) Funding PFC eligible Approved Projects that have been completed, but for which City is charging Airline Rate-Based Capital Costs that can be reimbursed with PFCs.

TITLE IX **ACTIVITY DATA**

9.01. – Data from Airlines

- A. Airline shall, not later than fifteen (15) days following the last day of each month during the Term of this Agreement, certify and report to City by its authorized representative certain statistical data for the Airport. If City provides a standard reporting form, Airline shall use that form to report its data to City. Such data shall include the following:
- (1) total Enplaned Passengers, reported separately for Domestic Enplaned Passengers and International Enplaned Passengers;
 - (2) total Deplaned Passengers;
 - (3) Domestic Originating Enplaned Passengers, with revenue passengers and non-revenue passengers reported separately;
 - (4) International Originating Enplaned Passengers, with revenue passengers and non-revenue passengers reported separately;
 - (5) Domestic Deplaned Passengers, with revenue passengers and non-revenue passengers reported separately;
 - (6) International Deplaned Passengers, with revenue passengers and non-revenue passengers reported separately;
 - (7) total aircraft operations, reported separately for domestic and international operations;

- (8) total freight in metric tons, reported separately for loaded and unloaded, and domestic and international freight if such separate data is available; and
 - (9) total mail in metric tons, reported separately for loaded and unloaded, and domestic and international mail if such separate data is available.
- B. Airline shall also provide the following information at the times specified below, to the extent that such data are available:
- (1) no less than twice each week, forecast for the next seven (7) days of the Airline's (a) Domestic Originating Enplaned Passengers, (b) International Originating Enplaned Passengers and (c) total Deplaned Passengers minus any such passengers boarding another aircraft;
 - (2) for significant Irregular Operations, arrival and departure cancellations, number of passengers estimated to remain in the airport, number of passengers estimated to be sent to hotels as soon as reasonably practicable; and
 - (3) for seasonal and peak events, number and times of any added flights and anticipated gate locations as soon as reasonably practicable.
- C. Airline shall be responsible for obtaining the data required in Sections 9.01.A and B from its Affiliates, and Airline may rely upon the certification of such data as provided by its Affiliates. Airline shall submit such data related to its Affiliates to City in the same form, but as a separate report accompanying Airline's report of such data. Airline agrees to concurrently provide Enplaned Passengers data reported pursuant to Sections 9.01.A, B and C to the AATC.
- D. If Airline should erroneously report its data to City, any City costs actually incurred in correcting such data and adjusting any associated City invoices shall be paid to City by Airline upon receipt of an invoice for such costs from City.
- E. For planning purposes, Airline shall upon request cooperate to the greatest extent possible to furnish to City any and all pertinent non-confidential information reasonably requested by City regarding Airline's current and future operations (including forecasts) at Airport. City shall be entitled, from time to time, to release consolidated statistics for all Signatory Airlines and their Affiliates.
- F. Airline shall discuss with City at the earliest reasonably feasible date its consideration of changes to its operations or the type and series of aircraft used at the Airport (other than temporary equipment substitutions). Airline may require City to sign an appropriate confidentiality agreement if any such information is of a confidential nature.
- G. City may elect to collect Airport activity information using an electronic reporting system rather than the system that is described above. If City elects to utilize such a system during the Term of this Agreement, Airline shall make every reasonable effort to comply with the reporting requirements applicable thereto. Airline shall continue to

provide activity reports as described above until such time as Airline commences use of any such electronic reporting system as implemented by City.

9.02. – City Data

City shall provide the following reports and data to Airline:

- A. Forty-five (45) days after the end of each quarter, a complete trial balance for each fund in a standard format as generated from City's system of record, inclusive of any adjusting entries;
- B. Thirty (30) days after the issuance of the auditor's opinion letter, the final year-end audited trial balance, inclusive of any adjusting entries;
- C. Thirty (30) days after the issuance of the auditor's opinion letter, a calculation of all-in Airline payments, inclusive of per-passenger airline payments calculation (i.e., cost per enplanement);
- D. Thirty (30) days after the issuance of the auditor's opinion letter the Comprehensive Annual Financial Report for the Airport; and
- E. Forty-five (45) days after the end of each quarter, a quarterly reporting packet to include balance sheet, income statement, cash flow, debt service reserve calculations, cost per enplanement calculations, quarterly System of Airport Reporting (SOAR) report and unencumbered cash report (all funds). Additionally, the City shall provide each quarter a report with the following information:
 - (1) Budgeted revenues and expenses allocated to each of the City Cost Centers and the Airline Cost Centers (with allocation to subcost centers as appropriate); and
 - (2) Actual revenues and expenses allocated to each of the City Cost Centers and the Airline Cost Centers (with allocation to subcost centers as appropriate).

TITLE X
PAYMENTS AND AUDITS

10.01. – Terminal Rents

Payments of one-twelfth (1/12) of the total annual Terminal Rents for Airline's Premises shall be due, without demand or invoice, on the first (1st) day of the current month. Said Terminal Rents shall be deemed delinquent if payment is not received by the fifteenth (15th) day of the month for which rent is owed.

10.02. – Landing Fees

Payment of Airline's Landing Fees shall be due in the current month, based on scheduled operations. City shall invoice Airline for Landing Fees on the fifth (5th) day of that month and payment shall be due on the twentieth (20th) day of that month. Payment

shall be deemed delinquent if not received by the later of the thirtieth (30th) day of that month or ten (10) days after receipt of the invoice.

10.03. – Other Fees and Charges

Payment of International and Domestic Common Use Charges and remain overnight parking charges shall be made according to invoicing and payment requirements specified in the Common Use Regulations. Payment for all other fees and charges due hereunder shall be due as of the due date stated on City's invoice. Said fees and charges shall be deemed delinquent if payment is not received within thirty (30) days of the due date stated in the invoice.

10.04. – Payment Delinquencies

City shall provide notice of any and all payment delinquencies within thirty (30) days of the date the payment becomes delinquent, including payments of any deficiencies which may be due as a result of City's estimates of activity pursuant to Section 10.05 or due to an audit performed pursuant to Section 10.08; provided, however, interest at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is lower, shall accrue against any and all delinquent payment(s) from the due date until the date payments are received by City. This Section shall not preclude City from canceling this Agreement for default in the payment of rentals, fees, or charges, as provided for in TITLE XVIII, or from exercising any other rights contained herein or provided by law.

10.05. – Estimates

In the event Airline fails to submit its statistical data as required in Section 9.01, City shall estimate the rentals, fees, and charges due from Airline based upon the highest month of the immediately preceding twelve (12) months' activity reported by Airline and issue an invoice to Airline for same. If no activity data is available, City shall reasonably estimate such activity and invoice Airline for same. Airline shall be liable for any deficiencies in payments based on estimates made under this provision; payment for said deficiencies shall be deemed due as of the date such rental fee or charge was due and payable. If such estimate results in an overpayment by Airline, City shall apply such overpayment as a credit against subsequent amounts due for such rentals, fees, and charges from Airline; provided, however, Airline shall not be entitled to any credit for interest on payments of such estimated amounts.

10.06. – Proration

In the event Airline's obligations with respect to Premises or any rights, licenses, or privileges granted hereunder shall commence or terminate on any date other than the first or last day of the month, Airline's rentals, fees, and charges shall be prorated on the basis of the number of days such Premises, facilities, rights, licenses, services, or privileges were enjoyed during that month based on the number of days in that month.

10.07. – Payment Process

All payments due and payable hereunder shall be paid in lawful money of the United States of America, without deduction or set off, by wire transfer or electronic funds transfer (“EFT”) or if there is good cause for not making a wire transfer or EFT, by check made payable to City and delivered to the addresses shown in Section 22.36. Upon ninety (90) days’ written notice to Airline, City may change the addresses to which payments due and payable hereunder must be sent by Airline.

10.08. – Recordkeeping and Audit

- A. Airline shall at all times maintain and keep records reflecting the activity statistics of Airline’s activities at the Airport to be reported pursuant to Section 9.01. Such records shall be retained by Airline for a period of four (4) years subsequent to the activities reported therein, or such other retention period as set forth in applicable Federal Aviation Regulations, and upon reasonable prior written notice to Airline shall be made available, at no cost to City, at the Airline’s corporate headquarters for audit and/or examination by City or its duly authorized representative during all normal business hours. Airline shall produce such books and records within thirty (30) days of City’s notice to do so or pay all reasonable direct expenses, including but not limited to transportation, food, and lodging, necessary for an auditor selected by City to audit said books and records.
- B. The cost of an audit, with the exception of the aforementioned expenses, shall be borne by City; provided, however, the total cost of said audit shall be borne by Airline if either or both of the following conditions exist:
 - (1) The audit reveals an underpayment of more than five percent (5%) of rentals, fees, and charges due on an annual basis hereunder, as determined by said audit; or
 - (2) Airline has failed to maintain true and complete records in accordance with this Section 10.08.

10.09. – Payment Acceptance

The acceptance by City of any payments hereunder shall not preclude City from verifying the accuracy of any reports submitted by Airline to City or recovering from Airline any additional payments to City that are actually due.

10.10. – Payment Under Protest

Notwithstanding anything to the contrary contained in this Agreement, if a dispute shall arise between City and Airline with respect to any obligation of Airline to pay money, the payment by Airline under protest of the amount claimed by City to be due shall not waive any of Airline’s rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then City shall immediately reimburse Airline any amount determined as not due.

TITLE XI
CAPITAL IMPROVEMENT PROJECTS

11.01. – Pre-Approved Projects and Pre-Approved Allowances

City may proceed with Pre-Approved Projects and Capital Improvement Projects funded with Pre-Approved Allowances without being further subject to the Majority-In-Interest process under Section 11.03, unless otherwise provided in Section 11.04; provided, however, City shall not proceed with a Pre-Approved Project unless that project has met the Pre-Approved Project Triggers, if any, specified in **Exhibit D** for that project. City may also proceed with any Capital Improvement Project approved prior to July 1, 2016 under Prior Use and Lease Agreements without being further subject to the Majority-In-Interest process under Section 11.03, unless otherwise provided in Section 11.04.

11.02. – Exempt Projects

A. A Capital Improvement Project that is not an Approved Project, but meets any one of the criteria set forth below, shall be exempt from the requirements of this TITLE XI, with the exception of the consultation requirements in Sections 11.02.A(8) and 11.02.C (“Exempt Project”):

- (1) Except as provided in Section 11.02.A(9), projects with no Airline Rate-Based Capital Costs and annual Airline Rate-Based Operating Expenses of less than One Million Dollars (\$1,000,000) per project (as escalated annually from the Effective Date to the estimated DBO of the Project by the Consumer Price Index for All Urban Consumers for Atlanta).
- (2) Each year, projects with aggregate Airline Rate-Based Capital Costs that are equal to or less than Fifteen Million Dollars (\$15,000,000), provided that:
 - (a) No single project with Airline Rate-Based Capital Costs that are equal to or greater than Five Million Dollars (\$5,000,000) may be exempt under this Section 11.02.A(2) from the Majority-In-Interest process in Section 11.03;
 - (b) On July 1, 2025, the aggregate limit in Section 11.02.A(2) shall increase to Nineteen Million Five Hundred Thousand Dollars (\$19,500,000) from Fifteen Million Dollars (\$15,000,000) and the per project limit in Section 11.02.A(2)(a) shall increase to Six Million Five Hundred Thousand Dollars (\$6,500,000) from Five Million Dollars (\$5,000,000);
 - (c) In the event the Term is extended as provided in Section 2.03, the aggregate limit of Nineteen Million Five Hundred Thousand Dollars (\$19,500,000) and the per project limit of Six Million Five Hundred Thousand Dollars (\$6,500,000) in Section 11.02.A(2)(b) shall be escalated each Fiscal Year from July 1, 2036 to the end of Term by the ENR Building Cost Index; and
 - (d) In any given Fiscal Year, City shall not spend more than the applicable aggregate limit in that Fiscal Year on Capital Improvement Projects exempt under this Section 11.02.A(2).

City shall determine, in its sole discretion, which projects meeting the criteria in Section 11.02.A(2) shall be exempt from the Majority-In-Interest process and which projects it will submit for review under Section 11.03, after consultation with the MII Eligible Signatory Airlines. No Capital Improvement Project exempt under any other part of this Section 11.02 shall count towards the aggregate costs of exempted projects under this Section 11.02.A(2).

- (3) Projects necessary to comply with federal or state law.
- (4) Projects that respond to unplanned, atypical events that must be addressed immediately in order to prevent (i) impairment or failure of a facility or system, (ii) a condition or situation that could halt, hamper, interrupt or prevent airline or aircraft operations, or (iii) a risk to the public safety; in each case which cannot be prevented or managed on a reasonable basis without making immediate temporary or permanent repairs or improvements.
- (5) Projects to repair or replace, to a functionally equivalent level of use, Airport property damaged or destroyed by fire, weather or other casualty, provided that insurance proceeds, if any, received for such fire, weather or other casualty are used to fund or offset the costs of the project.
- (6) Projects undertaken to settle claims or comply with judicial or administrative orders relating to the design, construction, ownership, maintenance or use of the Airport. When it is prudent to do so, City shall contest in good faith any orders that require a Capital Improvement Project exempt under this Section 11.02.A(6).
- (7) Projects necessary to enhance terminal capacity in order to meet current or reasonably anticipated demand for additional terminal space or related facilities; provided that either:
 - (a) a specific Air Carrier commits to fund the project through a special facility bond or other financing mechanism that does not include Airline Rate-Based Capital Costs and the costs of the project are accounted for separately and recovered from the Air Carrier funding the project; or
 - (b) City funds the project through PFCs or from the R&E Fund,

and further provided that such projects shall not (i) prevent the completion of Capital Improvement Projects within the then-current Airport Master Plan; (ii) impact the Funding Plan for Approved Projects in a manner that increases Airline Rate-Based Capital Costs; or (iii) increase Airline Rate-Based Capital Costs.

- (8) Projects necessary to meet the City Common Use Gate Requirement, provided that:
 - (a) all Signatory Airlines are meeting the Minimum Gate Utilization Standard over the immediately preceding twelve (12) month period for their Preferential Use Gates or City has (i) reasonably determined that recapturing

- Preferential Use Gates will not result in City meeting the City Common Use Gate Requirement or (ii) initiated recapture under Section 5.03.C and the Signatory Airline failing to meet the Minimum Gate Utilization Standard has demonstrated compliance pursuant to Section 5.03.C(2);
- (b) City would not reasonably be able to accommodate Passenger Carriers seeking to enter or expand operations at the Airport on International Common Use Gates;
 - (c) the Signatory Airlines do not voluntarily commit to return to City the number of Preferential Use Gates necessary to meet the City Common Use Gate Requirement within thirty (30) days of receiving notice from City of a deficiency in the City Common Use Gate Requirement and actually return such Preferential Use Gates within ninety (90) days of receiving notice from City of a deficiency in the City Common Use Gate Requirement; and
 - (d) the project planned by City to meet the City Common Use Gate Requirement does not prevent the completion of Capital Improvement Projects within the then-current Airport Master Plan.

Prior to implementing an Exempt Project under this Section 11.02.A(8), City shall consult with the MII Eligible Signatory Airlines.

- (9) Hotels or other commercial development projects, provided such projects (a) are not supported by Airline Rate-Based Capital Costs; (b) do not prevent the completion of Capital Improvement Projects within the then-current Airport Master Plan; and (c) will not impact the Funding Plan for Approved Projects. City shall consult with MII Eligible Signatory Airlines prior to committing to any such projects. Any enabling or ancillary project necessary to support such hotel or commercial development projects shall not include any Airline Rate-Based Capital Costs or Airline Rate-Based Operating Expenses and, therefore, shall be exempt from the Section 11.03 Majority-In-Interest process.

An illustrative list of Exempt Projects in the Airport Master Plan in effect on the Effective Date is displayed in **Exhibit P**.

- B. To the extent required by 49 U.S.C. § 40117(f), no Capital Improvement Project shall be subject to the Majority-in-Interest process under this TITLE XI to the extent such Project is fully financed by PFCs or PFC-backed bonds. However, any Capital Improvement Project that includes other funding sources may be subject to the Majority-In-Interest process to the extent of those funding sources, unless otherwise exempt from the Majority-In-Interest process.
- C. Except for emergency projects undertaken pursuant to Section 11.02.A(4), City shall notify all Signatory Airlines in writing of any proposed Exempt Project under this Section 11.02, together with a statement describing the nature, project scope, project cost, project schedule and Funding Plan for the project and an explanation of why it is an Exempt Project and City shall consult with MII Eligible Signatory Airlines prior to implementing the Exempt Project, including consultation over the Funding Plan and alternative forms of financing the Exempt Project. Exempt Projects shall also be subject

to the provisions of Sections 11.04.D and 11.04.E below. For emergency projects undertaken pursuant to Section 11.02.A(4), City will notify all Signatory Airlines in writing with a statement describing the nature, project scope, project cost, project schedule, Funding Plan, and an explanation of the justification for emergency designation of the project as soon as reasonably practicable.

- D. City shall use commercially reasonable efforts to complete Exempt Projects in a manner that minimizes, to the extent practicable, material adverse impacts on the operations of the Signatory Airlines.
- E. Airline acknowledges and agrees that City may delegate responsibilities for the design, construction and equipping of Exempt Projects; provided, however, that all construction and equipping of Exempt Projects shall be done in a good and workmanlike manner, and that City shall retain the power and authority to enforce all terms and provisions of all design, construction and equipment contracts.
- F. Airline shall take such action as City may reasonably request to enable City to implement Exempt Projects in a timely and cost-effective manner, provided that such requested actions are not inconsistent with Airline's rights under this Agreement and do not unreasonably impact Airline's operations.
- G. City shall allocate the Costs of an Exempt Project to the appropriate Airline Cost Centers and City Cost Centers.

11.03. – MII Eligible Signatory Airline Review of Additional Projects

For any Capital Improvement Project that is not a Pre-Approved Project, a Capital Improvement Project funded with Pre-Approved Allowances or an Exempt Project ("Additional Project"), City shall not proceed with the project until City has complied with the following review procedures:

- A. City shall submit a written proposal to all MII Eligible Signatory Airlines by certified mail, overnight mail or hand delivery to the address specified in Section 22.36 that includes the following information for the Additional Project:
 - (1) The project scope and definition;
 - (2) Statement of purpose and justification;
 - (3) Preliminary project schedule and estimated Date of Beneficial Occupancy;
 - (4) Estimated Airline Rate-Based Capital Costs, Total Project Costs and Funding Plan; and
 - (5) Projected impact on the rents, charges and other fees calculated under TITLE VIII of this Agreement.

- B. The Additional Project shall be deemed an Approved Project and City may proceed with the project unless a Majority-In-Interest delivers to City letters stating their disapproval of the Additional Project within thirty (30) days of receipt of City's written proposal.
- C. Within five (5) business days of the expiration of the 30-day review period, City shall provide a notice to the Signatory Airlines summarizing any disapproval letters received from MII Eligible Signatory Airlines and stating whether the Additional Project has been disapproved by a Majority-In-Interest or is deemed approved.
- D. During the Term, City may not proceed with an Additional Project that is disapproved by a Majority-In-Interest unless the Additional Project becomes an Exempt Project or is subsequently reconsidered by and not disapproved by a Majority-In-Interest. If an Additional Project is disapproved by a Majority-In-Interest, City shall be required to wait at least sixty (60) days before resubmitting the same Additional Project to the MII Eligible Signatory Airlines for review under this Section 11.03.

11.04. – **Project Implementation Process**

Approved Projects shall be subject to the project implementation procedures in this Section 11.04 in order to provide the MII Eligible Signatory Airlines an opportunity to provide input on the planning, scheduling, design, construction and financing of these Approved Projects and to collaboratively work with City to mitigate impacts and improve efficiencies in implementing Approved Projects.

- A. The ASC and ALT. The MII Eligible Signatory Airlines shall establish and be represented by an Airline Steering Committee ("ASC") that will staff and fund (through Capital Improvement Projects) an Airlines Liaison Team ("ALT"). The Aviation General Manager will provide the ASC and ALT with quarterly reports on the status of Approved Projects and Exempt Projects.
- B. The PIC. The Chairman of the ASC and the Aviation General Manager will together constitute a Project Implementation Committee ("PIC").
 - (1) The PIC will serve as a forum for consistent and formal communications on project status.
 - (2) The PIC shall meet at least monthly.
 - (3) Written summaries of PIC meetings shall be distributed to all Signatory Airlines and City.
- C. The P&DC. The Department of Aviation Assistant General Manager – Planning and Development ("AGM P&D") and the ALT Director will together constitute a Planning and Design Committee ("P&DC").
 - (1) The purpose of the P&DC is to provide a forum for coordination of project implementation and resolution of issues before they are presented to the PIC.

- (2) The P&DC shall meet at least monthly.
- (3) City will establish the agenda for and provide staffing support for P&DC meetings.

D. City Presentations to P&DC. For each Approved Project and Exempt Project, City shall make six presentations to the P&DC:

- (1) Facility use forecasting and programming.
- (2) Alternatives development, evaluation and recommendation.
- (3) 30% Design Completion. City shall provide information sufficient to support an initial estimate of Airline Rate-Based Capital Costs and Total Project Costs, schedule (including estimated DBO) and Funding Plan. City shall also describe the effect of the project on the Airport-wide Funding Plan for Capital Improvement Projects.
- (4) 60% Design Completion. City shall provide an updated estimate of Airline Rate-Based Capital Costs and Total Project Costs, a current schedule (including estimated DBO) and current Funding Plan, and shall provide an update of the effect on the Airport-wide Funding Plan for Capital Improvement Projects.
- (5) 90% Design Completion. City shall provide an updated estimate of Airline Rate-Based Capital Costs and Total Project Costs, a final schedule (including estimated DBO) and final Funding Plan, and shall provide an update of the effect on the Airport-wide Funding Plan for Capital Improvement Projects.
- (6) Project close out. City shall present final Total Project Costs, proposed rates and charges impacts, and other relevant information reasonably requested by the MII Eligible Signatory Airlines.

E. ALT Participation in Planning, Design Review, and Implementation.

- (1) Facility Use Forecasting and Programing.

City will include the ALT in the planning and definition process and the ALT's input and comments will be considered along with all other comments and ideas.

- (2) Alternatives Development, Evaluation and Recommendation.

City will include the ALT in the alternatives development, evaluation and recommendation process and the ALT's input and comments will be considered along with all other comments and ideas.

- (3) Preliminary Design/Schematic Design/Design Development (Design Review Process).

- (a) The ALT will review design documents and submit comments to the AGM P&D at 30%, 60% and 90% design completion, and at any other additional milestones as are established by City for a specific project. The ALT will complete any review in fourteen (14) days. The ALT will be provided copies of the documentation and direction provided to the project designer as a result of the review process.
 - (b) At each stage of design, the ALT will collaboratively work with City's project managers to confirm the project is within the scope, schedule and budget parameters set forth for the project and report to the P&DC.
 - (c) Each submittal of design documents shall include an updated cost estimate appropriate for the then-current level of design, as determined by City.
 - (d) Should the ALT's review during any phase above indicate disagreement with design, schedule and/or cost/budget of a project, the ALT will submit to City, in writing, specific concerns and City shall consult with the ALT over its concerns.
 - (e) In the event City establishes a third-party peer review process for a project, the ALT shall be allowed to participate in that process.
- (4) Construction.
- (a) The ALT will be invited to participate in project status meetings and City shall give due consideration to Airline comments with respect to operational impacts, cost impacts, schedule impacts and quality during construction.
 - (b) City shall advise the ALT of any proposed changes that materially affect the scope, schedule, or budget during construction. City shall consult with the ALT with respect to any such impacts prior to determining a resolution.

F. Cost Increases of Approved Projects During Design.

- (1) During the design of an Approved Project, the AGM P&D will monitor design and the construction cost estimate generated in support of each presentation listed in Section 11.04.D to be made to the P&DC for consistency with the Approved Project budget. As part of any City presentation to the P&DC, the P&DC shall conduct a further review of the Approved Project as specified in this Section 11.04.F if:
 - (a) Airline Rate-Based Capital Costs for the Approved Project increase more than five percent (5%) above the Original Airline Rate-Based Capital Cost Estimate; or
 - (b) Total Project Costs of the project increase more than ten percent (10%) above the Original Total Project Cost Estimate;

provided, however, that any increase in Costs attributable to an increase in the interest rate on GARBs, shall not be counted in calculating Airline Rate-Based Capital Costs or Total Project Costs in Sections 11.04.F(1)(a) and (b) above.

- (2) City shall then present a plan of action to the P&DC to bring Airline Rate-Based Capital Costs within five percent (5%) of the Original Airline Rate-Based Capital Cost Estimate and Total Project Costs within ten percent (10%) of the Original Total Project Cost Estimate.
- (3) Such cost reviews will continue as necessary during design to ensure that an Approved Project cost estimate remains consistent with the Approved Project budget and that the recommended course of action brings Airline Rate-Based Capital Costs within five percent (5%) of the Original Airline Rate-Based Capital Cost Estimate and Total Project Costs within ten percent (10%) of the Original Total Project Cost Estimate and does not materially alter the scope or purpose of the Project or materially increase the Airline Rate-Based Capital Costs of another Approved Project. City and ALT will work together in good faith to review costs and consult over material budget inconsistencies throughout an Approved Project's design.
- (4) If at ninety percent (90%) design completion, the Airline Rate-Based Capital Costs are not within five percent (5%) of the Original Airline Rate-Based Capital Cost Estimate or Total Project Costs are not within ten percent (10%) of the Original Total Project Cost Estimate, the P&DC shall make a presentation to the PIC recommending a course of action to bring Airline Rate-Based Capital Costs within five percent (5%) of the Original Airline Rate-Based Capital Cost Estimate and Total Project Costs within ten percent (10%) of the Original Total Project Cost Estimate. If the PIC is unable to approve the course of action recommended by the P&DC, the Capital Improvement Project, as then proposed by City, shall be subject to the Majority-in-Interest procedures of Section 11.03.
- (5) In the event a Majority-In-Interest disapproves an Approved Project pursuant to Section 11.04.F(4) above, fifty percent (50%) of any costs incurred by City on that Project shall be allocated to the appropriate Airline Cost Center.

G. Cost Increases of Approved Projects After City Receives Bids.

- (1) At the time City receives bids for an Approved Project, the P&DC shall conduct a further review of the Approved Project as specified in this Section 11.04.G if:
 - (a) Airline Rate-Based Capital Costs for the Approved Project increase more than five percent (5%) above the Original Airline Rate-Based Capital Cost Estimate; or
 - (b) Total Project Costs of the project increase more than ten percent (10%) above the Original Total Project Cost Estimate;

provided, however, that any increase in Costs attributable to an increase in the interest rate on GARBs, shall not be counted in calculating Airline Rate-Based Capital Costs or Total Project Costs in Sections 11.04.G(1)(a) and (b) above.

- (2) City shall then present a plan of action to the P&DC to bring Airline Rate-Based Capital Costs within five percent (5%) of the Original Airline Rate-Based Capital

Cost Estimate and Total Project Costs within ten percent (10%) of the Original Total Project Cost Estimate. If the P&DC agrees to the plan of action, the project shall proceed.

- (3) Should the P&DC not agree on the plan of action, the P&DC will then present a recommended course of action to the PIC that brings Airline Rate-Based Capital Costs within five percent (5%) of the Original Airline Rate-Based Capital Cost Estimate and Total Project Costs within ten percent (10%) of the Original Total Project Cost Estimate and does not materially alter the scope or purpose of the Project or materially increase the Airline Rate-Based Capital Costs of another Approved Project.
- (4) If the PIC is unable to approve the course of action recommended by the P&DC, the Capital Improvement Project, as then proposed by City, shall be subject to the Majority-in-Interest procedures of Section 11.03.
- (5) In the event a Majority-In-Interest disapproves an Approved Project pursuant to Section 11.04.G(4) above, fifty percent (50%) of any costs incurred by City on that Project shall be allocated to the appropriate Airline Cost Center.
- (6) Nothing within this Section 11.04.G shall allow City and any Signatory Airline to confer concerning the selection of any bids.

H. Changes in Project Scope. Any changes in the scope of an Approved Project described in **Exhibit D** or City's written proposal under Section 11.03.A, that either (i) prevent City from accomplishing the purpose of the project, as described in **Exhibit D** or City's written proposal under Section 11.03.A, or (ii) can reasonably be expected to have material adverse impacts on the operations of the MII Eligible Signatory Airlines at the Airport, shall be subject to the Majority-in-Interest procedures of Section 11.03.

I. Changes in the Estimated DBO. City may change the estimated DBO of an Approved Project, provided, however, that City may not accelerate the date upon which City may begin including Debt Service (including capitalized interest and Coverage Requirements) to the Terminal Rate Base Requirement or Airfield Rate Base Requirement from the estimated DBO stated in **Exhibit D** or City's written proposal under Section 11.03.A without submitting the changed DBO for approval by a Majority-In-Interest.

J. Pre-approved Allowances.

- (1) At least sixty (60) days prior to each Fiscal Year, City will present to the PIC a list of specific projects to be implemented and funded from the Airfield Allowance and the CPTC Allowance for the upcoming Fiscal Year. City, PIC and AATC shall consult on which projects should be funded by the CPTC Allowance for the upcoming Fiscal Year. City will take into consideration any recommendations from the PIC and AATC before finalizing the list of such projects to be undertaken that Fiscal Year and funded from the Airfield Allowance and the CPTC Allowance.

- (2) Any unused or unencumbered portion of the Airfield Allowance or CPTC Allowance for a given Fiscal Year must be planned for or encumbered within the following two (2) Fiscal Years, or will be forfeited, provided, however, that actual encumbrances/expenditures for any Fiscal Year shall not be greater than two hundred percent (200%) of that Fiscal Year's Pre-Approved Allowance.

TITLE XII
OPERATIONS AND MAINTENANCE

In addition to the obligations of Airline and City set forth in this TITLE XII, responsibility for maintenance, cleaning, and operation of the Airport shall be as set forth in **Exhibit Q**.

12.01. – Airline Obligations

- A. Airline and the other Signatory Airlines shall be solely responsible, at Airline's and Signatory Airlines' sole cost, for maintaining and operating the CPTC, including all systems and components therein as identified in **Exhibit Q**, in a manner consistent with airports of similar size with qualified personnel and for keeping the CPTC in an orderly, clean, neat and sanitary condition and good repair, subject to Section 12.02 below.
- B. The Signatory Airlines may contract with a third party to provide operations and maintenance services or they may provide operations and maintenance services with their own personnel so long as the CPTC is maintained and operated as required in Section 12.01. In either case, Airline shall be responsible for its share of such operations and maintenance and for the cost thereof. The Signatory Airlines' responsibility to provide operations and maintenance services shall terminate at the exterior envelope of the CPTC, not including structural and non-structural exterior walls but including exterior windows, provided that the public address system on the exterior envelope of the Domestic Terminal and the International Terminal shall be operated and maintained by the Signatory Airlines and the Signatory Airlines shall provide operations and maintenance services for the Aircraft Parking Area and the Aircraft Apron Taxilane Area. Water and electrical utility services will be provided by the Signatory Airlines on the exterior envelope of the CPTC as well as to certain areas of the islands on the entrance roadways at the Domestic Terminal. Electrical utility services will be provided by the Signatory Airlines to the curbside lights at the International Terminal.
- (1) The Signatory Airlines agree to maintain all CPTC systems and components in such a manner as to maintain all manufacturer warranties and the estimated useful life of the systems and components and in accordance with all regulatory requirements and current industry best practices.
- (2) The operations and maintenance third party provider shall annually provide to City the preventive maintenance program for CPTC assets that are the maintenance responsibility of Airline and the other Signatory Airlines. If feasible, the operations and maintenance third party provider shall annually provide to City read only access to the operations and maintenance third party provider's asset management program upon request by City, and any costs

incurred by the operations and maintenance third party provider to provide access to the asset management program, including any costs of training City, shall be invoiced to and paid for by City and such costs shall not be allocated to an Airline Cost Center. In addition, the operations and maintenance third party provider shall annually provide a report to City detailing a preventive maintenance, testing, and inspection program to comply with code and regulatory requirements which include fire protection, fire detection, and environmental.

- (3) Subject to City Council approval, City shall enter into an agreement with the Signatory Airlines' operations and maintenance third party provider for the provision of operations and maintenance to City. The third party operations and maintenance provider shall reasonably allocate a share of its costs to City based on the cost of operating and maintaining City Space and Common Use Premises and submit monthly invoices to City for these costs. City shall timely pay such invoices and shall not allocate any such payments to an Airline Cost Center unless otherwise specified in TITLE VIII.
- (4) The Aviation General Manager shall (a) receive notice of all operations and maintenance third party provider shareholder meetings other than personnel committee meetings, (b) be allowed to attend all such meetings as a non-voting participant, or send a non-voting designee to attend, (c) be provided, upon request, with copies of all documents presented or referenced at the meetings, other than such documents designated as confidential by the personnel committee of the shareholders of the operations and maintenance third party provider, and (d) receive copies of the operations and maintenance third party provider's audited financial reports within forty-five (45) days of their completion. Upon request by the Aviation General Manager, the Signatory Airlines shall cause the operations and maintenance third party provider to provide information reasonably necessary to review and evaluate costs allocated to City, Air Carriers or concessionaires under Section 12.01.B(3) above.
- (5) In the event Airline or any Signatory Airline shall fail to arrange or agree with the other Signatory Airlines with respect to the performance and financing of its share of joint operations and maintenance services under this Section 12.01, and the occurrence of such failure is certified by a simple majority in number of the remaining Signatory Airlines, then Airline or such Signatory Airline's pro rata share of the cost of such operations and maintenance services (as certified by a simple majority) shall be payable by Airline or such Signatory Airline to City on a monthly basis. City shall credit any such payments made to City to the other Signatory Airlines on a monthly basis based on the pro rata shares of their payments of the costs of providing such operations and maintenance services.
- (6) The costs associated with operating and maintaining the CPTC shall be reasonably allocated to Rented Space, City Space, Concessions Support Space and CSS on a monthly basis based on the applicable metric as determined by the Signatory Airlines including, but not limited to, Enplaned Passengers, square

footage in the CPTC, and share of total operations and maintenance charges. Such determination of the Signatory Airlines shall be made, after consultation with City, by a majority-in-interest of the stockholders of AATC as that term is defined in the Certificate of Incorporation (as amended) of AATC. The actual costs to operate and maintain Inside Concessions Space, including but not limited to electricity, exclusive or shared vertical transportation, trash removal, and janitorial services (if requested), shall be invoiced directly to the concessionaire.

- C. Airline shall keep its Exclusive Use Premises, Preferential Use Premises and Shared Use Premises in an orderly, clean, neat and sanitary condition, free of debris, and shall be responsible, at Airline's own expense, for the repair and maintenance thereof.
- D. Airline shall keep, at its own expense, the Aircraft Parking Area free of fuel, oil, debris and other foreign objects resulting from Airline's use thereof.
- E. Notwithstanding anything set forth herein to the contrary, Airline shall operate and maintain, at its own expense, any improvements and/or equipment installed by Airline or City for the exclusive use of Airline, except as City otherwise agrees.
- F. If the Signatory Airlines collectively, or Airline individually, fails to perform its material obligations under this TITLE XII, City shall have the right to perform such activities and to enter any area of the CPTC, including Airline's Premises, as required to do so. Prior to exercising this right, City shall give Airline at least thirty (30) days' notice, unless it is an emergency. In the event of an emergency, City shall provide as much notice as is reasonable under the circumstances. If correction cannot reasonably be completed within such thirty (30) day period, including corrective work undertaken by Airline that is being diligently pursued, this period may be extended at the sole discretion of City. If such right is exercised by City, Airline shall pay City, upon receipt of invoice, the cost of such services plus actual administrative costs as reasonably calculated by City. Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to TITLE XVIII.
- G. Airline shall keep current its flight information on the multi-user flight information display system ("MUFIDS"), the gate information display system ("GIDS") and other information display systems at the Airport in the manner that best suits Airline's operations. At the request of Airline, City shall provide a computer connection to Airline so that Airline can access and update this system.
- H. All of Airline's service providers, agents or contractors must comply with Airport Rules and Regulations, and Airline shall ensure that its service providers, agents or contractors obtain necessary permits or badges from City before providing services to Airline at the Airport.
- I. Airline, the other Signatory Airlines and City shall have the right to undertake certain Capital Renewal and Replacement Projects within the CPTC as follows:

- (1) Airline and the other Signatory Airlines shall have the right, subject to consultation with City and written approval by the Aviation General Manager, to undertake Capital Renewal and Replacement Projects within the CPTC with respect to base building systems and other projects in areas in which Passenger Airlines are operating. Such capital requirements shall include, by way of example only, capital renewal and replacements of the following systems: heating, ventilation and cooling (“HVAC”), elevators, escalators, pedestrian mall moving sidewalks, mechanical systems, electrical systems and vaults, and utilities in the CPTC. Upon request by Airline and the other Signatory Airlines, City shall fund projects undertaken pursuant to this Section 12.01.I(1) and allocate the costs to the CPTC Cost Center, subject to available funding as determined by City in its reasonable discretion.
 - (2) If the Airline and the other Signatory Airlines do not elect to undertake a Capital Renewal and Replacement Project under Section 12.01.I(1) above, City shall perform that Capital Renewal and Replacement Project, but only if the project (a) is a Pre-Approved Project or (b) qualifies as an Additional Project under Section 11.03.
- J. It is agreed that the purpose of the above listed programs is to ensure that proper and adequate maintenance and operating efforts are being made to ensure normal life for all items of capital equipment for the basic systems of the CPTC. Corrective measures and replacement/improvements of parts of the systems, as discovered by any of the inspections permitted under this Agreement shall be accomplished by the Signatory Airlines if such measure would normally be accomplished under the routine maintenance program.

12.02. – City Obligations

- A. City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition and good repair, unless such maintenance, operation, or repair shall be Airline’s or the Signatory Airlines’ obligation pursuant to Section 12.01 and **Exhibit Q** or unless Airline and the other Signatory Airlines elect to undertake the work under Section 12.01.I.
- B. City shall, to the extent it is legally able so to do, use its best efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. City shall, in the operation of the Airport, comply with all applicable local, state and federal laws, rules and regulations.
- D. Joint Inspections
 - (1) Signatory Airlines and City will, on an annual basis, develop a plan to jointly inspect certain areas of the CPTC including terminals, concourses, aircraft aprons, systems and equipment. These inspections will be performed with in-

house resources or specialty contracted resources, as mutually agreed by City and a majority in number of Signatory Airlines. Notwithstanding the foregoing, City may at its expense engage specialty contracted resources to inspect the CPTC. City shall not allocate the costs of such contracts to an Airline Cost Center.

- (2) City and Airline agree that the Signatory Airlines and City will jointly retain independent consulting engineers every third (3rd) year to perform a comprehensive facility assessment of the basic systems of the CPTC, as mutually agreed by City and a majority in number of the Signatory Airlines and City, including building infrastructure, electrical, mechanical, and plumbing and to furnish a report as to the adequacy of the maintenance programs and as to the projected need for capital replacement in the following three (3) years. The first comprehensive facility assessment under this Section 12.02.D shall commence in January 2017 with a request for proposals for a consulting engineer.

E. AGTS

- (1) City shall be solely responsible for maintaining and operating the AGTS. Prior to the commencement of operation of the AGTS, certain standards, specifications, and procedures for levels of staffing, maintenance, and operation of the AGTS (collectively, the “Standards”) were developed. City is a party to an Operations and Maintenance Contract for Automated Guideway Transit System dated July 1, 2015, as amended (the “Contract”), between City and Bombardier Transportation (Holdings) USA Inc., which Contract incorporates the Standards and continues in full force and effect as of July 1, 2016. Upon the expiration or early termination of the Contract, the Standards shall be updated and revised by City and along with the proposed contract, submitted for review and approval of the MII Eligible Signatory Airlines that together have enplaned at least eighty-seven percent (87%) of the total Enplaned Passengers of all MII Eligible Signatory Airlines during the immediately preceding Fiscal Year.
- (2) Beginning with the Fiscal Year following the Effective Date, the annual budget for the maintenance and operation of the AGTS under the Contract or any successor contract for the next Fiscal Year shall be subject to review and approval by the MII Eligible Signatory Airlines that together have enplaned at least eighty-seven percent (87%) of the total Enplaned Passengers of all MII Eligible Signatory Airlines during the immediately preceding Fiscal Year. In the event that MII Eligible Signatory Airlines disapprove the annual budget for the next Fiscal Year, the annual budget for that Fiscal Year shall be the same as the annual budget for the Fiscal Year preceding the disapproval.

F. Walls and Utility Infrastructure

City shall be responsible for performing all structural and non-structural repairs to the exterior walls of the CPTC, all structural and non-structural repairs to the walls of the AGTS tunnel and pedestrian mall, all Infrastructure and Utilities facilities sufficient to

operate the Airport, including but not limited to electricity, natural gas, water and sewer, and all maintenance, repairs, capital replacements or upgrades for such utilities.

G. Allocation of City Costs

All costs incurred by City to meet the requirements of Sections 12.02.A-F shall be reasonably allocated to the appropriate Cost Center(s), unless otherwise specified. Infrastructure and Utilities costs not part of an Approved Project or an Exempt Project shall be allocated to City Cost Centers.

H. MII Review

All Capital Improvement Projects undertaken pursuant to City's obligations, after consultation with the Signatory Airlines, under this TITLE XII that are not Exempt Projects, Pre-Approved Projects, or Pre-Approved Allowances under TITLE XI, shall be subject to approval by City and Majority-In-Interest review pursuant to TITLE XI. Such projects will be accomplished either by a properly authorized City contract or by the Aviation General Manager requesting the Signatory Airlines to provide the project through their contractors. In the event that the Signatory Airlines accomplish the project, City will fund the cost thereof, subject to Section 12.02.G above.

I. Airline O&M Reimbursement

- (1) At the end of each month, the operations and maintenance third party provider shall submit to City the Reimbursable Airline O&M Costs for that month, which shall equal fifty percent (50%) of actual operations and maintenance costs incurred by the operations and maintenance third party provider during that month that are reasonably allocable to CSS multiplied by the ratio of (a) Inside Concessions Space to (b) the sum of Airline Rented Space and Inside Concessions Space.
- (2) City shall calculate the Airline O&M Reimbursement to be given to all Passenger Carriers that are Signatory Airlines by dividing the Reimbursable Airline O&M Costs by the total Enplaned Passengers carried by all of the Passenger Carriers that are Signatory Airlines and their Affiliates. The Airline O&M Reimbursement shall be expressed in dollars and cents per Enplaned Passenger and shall be credited to each Signatory Airline within thirty (30) days of receiving the Reimbursable O&M Costs from the operations and maintenance third party provider.

J. MARTA

The facilities on **Exhibit A** designated for "MARTA" were designed, constructed and financed by City and MARTA separate of the CPTC, and City by separate agreement with MARTA shall retain control of and the responsibility for all maintenance and operation of such facilities, and the Signatory Airlines shall not be liable for any costs, including capital costs, in connection therewith.

12.03. – Maintenance and Operation of Bag Systems

The obligations of City and the Signatory Airlines with respect to the maintenance and operation of bag systems is set forth on **Exhibit Q**.

12.04. – Utilities

- A. Airline agrees to pay or cause to be paid when due all charges for water, gas, sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to Airline upon or in connection with the Premises throughout the term of this Agreement, and to indemnify City and save it harmless against any liability or damage with respect to the charges on such account. In the case of the water and sewer utility services which will be furnished by City, City shall not charge any rate to Airline in excess of rates applicable to other users of such services in the City.
- B. City and Airline and all other Signatory Airlines agree to work together collaboratively to determine if events warrant a change in the name on certain utility service accounts to the City of Atlanta. In such event, City shall receive and pay all applicable utility service invoices received by City and shall invoice Airline for the utility services received by Airline.
- C. Waiver of Damage

Airline hereby expressly waives and releases City from any and all claims for damage arising or resulting from failures or interruptions of utility services furnished by City or others hereunder, including but not limited to electricity, gas, water, plumbing, sewage, telephone, communications, heat, forced air ventilation, or for the failure or interruption of any public or passenger conveniences or facilities, such as elevators, escalators, dumbwaiters and the like, provided however that such failures or interruptions were not occasioned by City's fault or neglect or that of its employees, agents, contractors, subcontractors or other entities under City's control or for which City is responsible. In any event, City shall restore promptly such services when the cause of such failure or interruption has been removed.

12.05. – Recycling Program

City shall have the right, but not the obligation, to establish a recycling program, including contracting with a third party service provider to provide recycling services at no cost to Airline or the Signatory Airlines' operations and maintenance third party provider. In the event City exercises this right, it shall provide the Signatory Airlines with sufficient notice, in no case fewer than thirty (30) days, to cancel any third party recycling service provider contracts with the Signatory Airlines or the operations and maintenance third party provider. City shall consult with Airline regarding the extent of the proposed recycling program, appropriate management of the recycling program and the effects of the program on the customer experience within the CPTC.

TITLE XIII
CONCESSIONS

13.01. – Policy

The City and Airline agree upon, and recognize the importance of the Concessions Program. Except as otherwise expressly provided for in Sections 3.03.A, 3.03.C, 3.03.D and 3.03.F of this Agreement, Airline shall not conduct any activities, including without limitation, the offering of any food, beverages, goods, services and amusements by Airline or by any third-party acting on behalf of Airline, that conflict or compete with the Concessions Program or would reduce the revenue therefrom.

13.02. – Management of Concessions Program

The City and Airline hereby agree that the policy set forth in Section 13.01 for the conduct of the Concessions Program will be implemented through the engagement of a group of Prime Concessionaires, each having responsibility for a portion of the concession activities within the CPTC.

13.03. – Prime Concessionaire Agreements

The Prime Concessionaire agreements which will be entered into between City and the Prime Concessionaires will include the following provisions:

- A. Each Prime Concessionaire shall have sole responsibility for installing and operating all Inside Concessions awarded in its prime concessionaire agreement, including the obligation to pay for all costs of any and all necessary floor coverings, walls, partitions, ceilings, tenant finishes, decorations, systems, equipment (including any special heating, ventilating or air conditioning equipment) trade fixtures, furniture and personal property for all its concessions locations.
- B. The Prime Concessionaires shall be responsible for routine, non-structural maintenance and repairs in their premises, for cleaning, janitorial service, and trash removal, and for their own utilities which shall be metered separately to the extent possible.
- C. The Prime Concessionaires shall pay a monthly fee to City for the exclusive and/or nonexclusive right to operate their Inside Concessions in an amount equal to an agreed upon percentage of gross sales resulting from such Inside Concessions, subject to a minimum annual guarantee.
- D. It is recognized that a Prime Concessionaire may provide services or concessions itself or through sublessees or subconcessionaires, but such Prime Concessionaire shall be fully responsible for all of its respective sublessees' and subconcessionaires' actions, and with their respective compliance with the terms of this Section 13.03. City shall require each Prime Concessionaire to indemnify and protect Airline against damages to Airline's Premises, improvements and equipment caused by such Prime Concessionaire or its sublessees or subconcessionaires, and Airline shall be a third party beneficiary of such provisions.

13.04. – Rights of Parties

- A. Outside Concessions. Notwithstanding any provisions in this Agreement to the contrary, City reserves the right (except for employee parking lots and ground transportation related thereto) to impose charges, rentals, fees, licenses, franchise fees, and any other appropriate charges and fees for Outside Concessions, and such fees and charges will: (1) not be construed as limiting Airline's access to the Premises or as being in conflict with any other provisions of this Agreement; and (2) subject to Section 8.08, be retained one hundred percent (100%) by City.
- B. Location of Concessions. Except as otherwise expressly provided herein, the concessions rights granted to the Prime Concessionaires for Inside Concessions shall be solely and exclusively within the limits and confines of the Inside Concessions Space designated on **Exhibit A**. The spaces reserved for concessions may be revised from time to time at the discretion of City, subject to the limitations set forth in this Section 13.04.B. Except as provided in Section 13.04.D, no concessions services (including advertising, hotel reservation boards, and public telephones) shall be located in the Exclusive Use or Preferential Use Premises of Airline without the prior written consent of Airline, which may be withheld in Airline's sole discretion. Further, prior to granting any concessionaire the right to supply concession services in any portion of the Circulation and Support Space (including advertising, hotel reservation boards, and public telephones) that is not designated as Inside Concessions Space on **Exhibit A**, such additional location shall be subject to consultation with the affected Signatory Airlines.
- C. Limitation on Concession Advertising. Notwithstanding the foregoing, City shall not permit the Prime Concessionaires to advertise an individual airline's transportation services or other goods or services offered in connection therewith in the Circulation and Support Space without the approval of all of the Passenger Carriers that are Signatory Airlines.
- D. Mutual Agreement of Airline and Concessionaire. Subject to the advance written approval of the City, Airline and any Prime Concessionaire may enter into agreements that permit a Prime Concessionaire (or its sublessees or subconcessionaires) to sell food and beverage in Airline's Preferential Use Space, without any additional charge or payment of any nature or kind due to City from Airline or such Prime Concessionaire for such arrangement, but the Prime Concessionaire's gross revenues from such arrangement shall be treated in the same fashion as gross revenues from such Prime Concessionaire's other locations at the Airport.

TITLE XIV
MASTER BOND ORDINANCE

In the event of any conflict between this Agreement and the Master Bond Ordinance, the terms and conditions of the Master Bond Ordinance, as supplemented and amended, will control.

For example, but not by way of limitation, subject to the terms and provisions of the Master Bond Ordinance, it is mutually understood and agreed that, so long as any bonds, contracts or other obligations treated as senior lien bonds or subordinate lien bonds which are secured by “pledged revenues” under the Master Bond Ordinance are outstanding, the deposit and application of airport revenues, or any casualty or condemnation proceeds, shall be governed by the Master Bond Ordinance, but subject to applicable law.

TITLE XV
ENVIRONMENTAL MATTERS

15.01. – Hazardous Materials

A. Standards of Operation – Disposal, Use and Storage of Hazardous Materials. Airline shall not cause or permit to be caused the voluntary or involuntary disposal or Release of Hazardous Materials on the Airport, provided, however that Airline may Release Hazardous Materials, including the discharge of Hazardous Materials into City’s storm and sanitary sewerage systems, in compliance with all applicable Environmental Laws and any and all permits, licenses, or permissions issued to and held by Airline pursuant to any Environmental Laws. Storage and use of Hazardous Materials by Airline on the Airport is prohibited, except:

- (1) Airline may store and use Hazardous Materials of the type and in the quantities typically used in conducting activities permitted by this Agreement on the Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws and with any permits, licenses, or permissions issued pursuant to any Environmental Laws. Airline shall provide the Aviation General Manager with a copy of any application for necessary permits, registrations, licenses, permissions, or notifications related to the use, generation, transportation, handling, or storage of Hazardous Materials on the Premises from any regulatory and/or governmental agency with jurisdiction over the Airline or the Airport and shall also provide a copy of any final or draft permits received from such agency, provided that should any necessary permits, licenses, or permissions not be issued by such agency to Airline, Airline shall immediately cease the related use, generation, transportation, or storage of Hazardous Materials; and
- (2) This Agreement does not authorize the Airline to store, dispose of, discharge, generate, or use Hazardous Materials on the Airport other than the Premises.

B. Liability. Airline shall be solely and fully responsible and liable for:

- (1) Storage, use, generation, handling, transportation, or disposal of Hazardous Materials to, at, from, under, or on the Premises or the Airport by Airline, Airline's officers, agents, employees, contractors, permittees or invitees; or
- (2) Any Hazardous Material Release which is caused by or results from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees on the Premises or the Airport.

- C. Prevention of Release. Airline shall take reasonable precautions to prevent its activities or the activities of Airline's officers, agents, employees, contractors, permittees or invitees from causing, permitting, or contributing to the Release of any Hazardous Materials to, at, from, under, or on the Premises, the Airport, soil, air, surface water or groundwater other than in compliance with all applicable Environmental Laws. Airline shall take reasonable precautions to prevent its activities or the activities of Airline's officers, agents, employees, contractors, permittees or invitees from causing, permitting or contributing to the unlawful Release of Hazardous Materials into City's sanitary or storm drains and sewers at the Airport, except in compliance with all applicable Environmental Laws and any and all permits, licenses, or permissions.
- D. Obligation to Investigate and Remediate. Airline, at Airline's sole cost and expense, shall promptly investigate and remediate:
- (1) any Release or threat of Release of Hazardous Materials at, under, from, or on the Premises unless Airline demonstrates that the Release or threat of Release of Hazardous Materials was caused by a condition that existed prior to Airline entering the Premises or caused by City's activities or negligent or intentional omissions or non-compliance with Environmental Laws (including activities, negligence or non-compliance of its officers, agents, employees or contractors, permittees or invitees, other than Airline), provided, however, that Airline shall promptly investigate and remediate any such Release or threat of Release of Hazardous Materials to the extent such Release or threat of Release of Hazardous Materials was exacerbated by the activities or negligent or intentional omissions of Airline or Airline's officers, agents, employees, contractors, permittees or invitees; or
 - (2) any Release or threat of Release of Hazardous Materials to, at, under, from, or on the Airport (outside of the Premises) to the extent caused by or resulting from the activities or negligent or intentional omissions of Airline, Airline's officers, agents, employees, contractors, permittees or invitees, but excluding the discharge of Hazardous Materials through City's storm and sanitary sewerage systems so long as such disposal complies with all applicable Environmental Laws and permits.

In addition to all other rights and remedies of City hereunder, if Airline does not promptly commence investigation of any such Release or threat of Release of Hazardous Materials or does not diligently pursue appropriate remedial activities as required by applicable Environmental Laws for which Airline is responsible under this Agreement, City, in its discretion, upon prior written notice to Airline, may pay to have same investigated and remediated as required by applicable Environmental Laws, and Airline shall reimburse City for its share of the reasonable and documented costs within thirty (30) days of City's demand for payment. Notwithstanding the foregoing, City shall be entitled to reimbursement only if it first gives written notice to Airline of its intention to commence investigation and/or remediation prior to such commencement and Airline either does not commence diligent pursuit or remedial activities within thirty (30) business days of the notification or does not maintain such diligent pursuit; except prior

notice by City is not required if City determines that investigation or remediation is necessary to prevent imminent Release of Hazardous Materials to the environment or imminent threat of harm to public health. In such event, City will provide notification to Airline as soon as reasonably possible.

- E. Investigation and Remediation Standard. Any investigation, clean up, or remediation conducted pursuant to this Section 15.01 shall be completed in accordance with the standards required by applicable Environmental Laws and consistent with the use of the Airport or the Premises for non-residential airport purposes as reasonably determined by City; provided, however, if a future development project anticipated for the Airport or the Premises would result in a change in the applicable investigation or remediation standards pursuant to Environmental Laws, for either (i) ongoing remediation projects that have not achieved regulatory closure or obtained “no further action” or similar status, or (ii) remediation projects that have not yet been initiated, City shall notify Airline in writing promptly following the time a request for proposal or other such similar document for such future development project has been made public. If additional investigation, clean-up or remediation is required pursuant to Environmental Laws after the site has achieved regulatory closure or obtained “no further action” or similar status, the costs of such investigation, clean-up or remediation shall be allocated to the Air Carrier(s) directly benefiting from the project requiring the additional investigation, clean-up or remediation or, if no such Air Carriers can be identified, City shall allocate the costs to the most appropriate Airline Cost Center(s).
- F. Indemnification. Airline shall defend (with counsel acceptable to City in City’s reasonable discretion), indemnify and hold City harmless from and against all loss, damage, liability (including all consequential damages) and expense (including, without limitation, the reasonable and necessary costs of any cleanup and remediation of Hazardous Materials to the levels specified in Section 15.01.E) which City may sustain as a result of the following associated with operations under this Agreement:
- (1) Storage, use, generation, handling, transportation, or disposal of Hazardous Materials to, at, from, under, or on the Premises or the Airport by Airline, Airline’s officers, agents, employees, contractors, permittees or invitees; or
 - (2) Any Hazardous Material Release on the Premises or the Airport, including but not limited to any Hazardous Materials Release into air, soil, surface water or groundwater or City’s sanitary or storm drains and sewers at the Airport or elsewhere, which is caused by or results from the activities or negligent or intentional omissions of Airline, Airline’s officers, agents, employees, contractors, permittees or invitees.

provided, however, that Airline will not be required to defend, indemnify and hold the City harmless to the extent that the Airline can demonstrate that the loss, damage, liability and expense is caused by a condition existing prior to Airline entering the Premises or by City’s activities or negligent or intentional omissions or non-compliance with Environmental Laws (including activities, negligence or non-compliance of its officers, agents, employees or contractors, permittees or invitees, other than Airline),

unless and to the extent the loss, damage, liability or expense was exacerbated by the activities or negligent or intentional omissions of Airline or Airline's officers, agents, employees, contractors, permittees or invitees.

Loss, damage, liability and expenses relating to Hazardous Materials or Environmental Laws shall be covered exclusively under this TITLE XV and shall not be subject to any other indemnities provided in this Agreement.

- G. Release of Hazardous Materials Claims Against City. Airline releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Airline may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Premises or the Airport, but only to the extent the presence of such Hazardous Materials was not caused by or did not result from the negligence, willful misconduct, acts or omissions of City, City's officers, agents, employees contractors, permittees or invitees. This release shall not apply to any claims for contribution that Airline may have against City in the event that Airline incurs any cost in undertaking any cleanup of Hazardous Material from the Premises or the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a Release of Hazardous Material for which Airline is not responsible and liable under this Agreement.
- H. Suspension of Activities. Upon thirty (30) days' notice from City, Airline shall suspend its activities on the Premises and the Airport, to the extent reasonably necessary for City to investigate, cure or remediate any Hazardous Materials Release or any threat of a Release thereof; provided, however, that in the event of an emergency, City may provide fewer than thirty (30) days' notice, but shall provide as much notice as possible in light of the circumstances. City shall use reasonable efforts to attempt to temporarily accommodate Airline at suitable substitute space in the Airport during the required suspension of Airline activities. Airline shall not recommence its activities on the Premises or the Airport, as appropriate, until notified by City that such Release or threat of Release of Hazardous Material has been investigated, cured and remediated in accordance with Section 15.01.E or such suspension is no longer necessary.
- I. Abatement of Fees and Charges on Airport. Airline shall not be charged fees or charges for use of the Premises or the Airport to the extent that Airline is required to suspend activities on that portion of the Premises or the Airport due to City's efforts to investigate, cure or remediate the Release or threat of Release of Hazardous Material, unless the Release or threat of Release is one for which Airline is responsible under this Agreement.
- J. Records and Inspections
- (1) If Airline makes any written disclosure, or provides any report, to any governmental agency concerning a current or past Release of Hazardous

Materials at the Premises or the Airport, Airline shall promptly thereafter provide a copy of such disclosure or report to City.

- (2) Airline shall promptly deliver a copy to City of all notices that Airline receives from any governmental agency or third party concerning a claim or a notice of violation regarding Hazardous Materials or Environmental Law at the Airport.
- (3) Airline shall maintain, during the term of this Agreement and for a period of not less than five (5) years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate records, as required by applicable Environmental Laws, pertaining to the use, storage, transportation, generation, handling, Release, and disposal of any Hazardous Material(s) by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport.
- (4) Upon request by City, Airline shall furnish City with copies of such records, and such other documentation or reports as the Aviation General Manager, from time to time, and at any time during the term of this Agreement, may reasonably require pertaining to the use, storage, transportation, generation handling, disposal, or Release of any Hazardous Materials by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport. Notwithstanding the foregoing, Airline shall not be required to furnish City with copies of records that would be protected from disclosure under applicable state law (except to the extent that portions of documents, including but not limited to testing and sampling data, are not so protected).
- (5) After the expiration of five (5) years following the termination of this Agreement, Airline may destroy the records pertaining to the use, storage, transportation, generation, handling, disposal, or Release of any Hazardous Materials by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport unless Airline is otherwise reasonably directed by City or otherwise required by applicable laws.
- (6) City shall have the right, under the terms hereof (and at City's sole expense, except when any Release of Hazardous Materials or threat of Release of Hazardous Materials is caused or exacerbated by the activities or negligent or intentional omissions of Airline or Airline's officers, agents, employees, contractors, permittees or invitees), to enter the Premises during the Term hereof to conduct periodic environmental inspections. Prior to conducting environmental testing, City shall provide seven (7) days' written notice to Airline concerning the planned testing procedures and locations. However, in the event of an emergency, no written notice shall be required prior to access to the Premises for any necessary environmental response activities, including environmental testing needed in response to the emergency. City shall endeavor to conduct each inspection or test in the presence of Airline's representative and in a manner that does not unreasonably interfere with Airline's operations and,

upon written request, which may be provided by e-mail, from Airline to City, will provide Airline with split samples of any tests at Airline's sole expense.

- K. No Third Party Beneficiaries. Nothing contained in this TITLE XV shall be construed as conferring any benefit on any person not a party to this Agreement, nor as creating any right in any person not a party to this Agreement to enforcement of any obligation created under this Agreement.
- L. Airline Obligations Upon Termination. Prior to vacating the Premises, and in addition to all other requirements under this Agreement and without limiting Airline's indemnification obligations under Section 15.01.E, Airline shall:
- (1) Remove any Hazardous Materials placed, used, handled, or stored at, under, or on the Premises;
 - (2) Investigate and remediate in accordance with Section 15.01.E any Releases of Hazardous Materials for which Airline is responsible pursuant to applicable Environmental Laws or the terms of this Agreement;
 - (3) Conduct any environmental audits as reasonably may be required by City to demonstrate the removal of Hazardous Materials has been completed according to the terms of this Agreement and that the remediation of any Releases of Hazardous Materials has been conducted in accordance with Section 15.01.E; and
 - (4) In the event Airline fails to fulfill its obligations under Sections 15.01.L(1)-(3) above, City may conduct such reasonable investigation, remediation and/or audit if, after providing Airline with a written notice thirty (30) days in advance, Airline does not diligently commence and pursue such actions. If City incurs such costs, Airline will reimburse City for all reasonable and documented costs.
- M. Survival of Obligations. Airline's obligations under this Section 15.01 shall survive the expiration or earlier revocation or suspension of this Agreement.

15.02. – **Stormwater**

- A. Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that certain properties within the Airport, or on City-owned land, are subject to federal, state and local stormwater rules and regulations. Airline agrees to observe and abide by such stormwater rules and regulations as may be applicable to the Premises, the Airport, City's property and Airline's uses thereof.
- B. Airline acknowledges that any stormwater discharge permit issued to City may name Airline as a co-permittee and/or a co-located facility and agrees to abide by all terms and conditions therein. City and Airline both acknowledge that cooperation is necessary to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Airline acknowledges further that it may be necessary to undertake such actions to minimize the exposure of

stormwater to “significant materials” generated, stored, handled or otherwise used by Airline, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining “best management practices” as that term may be defined in applicable stormwater rules and regulations.

- C. Airline agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Airline, those stormwater permit requirements that specifically apply to Airline’s operations and can reasonably be complied with by a single tenant (as opposed to requiring broader cooperation and expense among several parties) for which it has received written notice from City, and Airline agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

15.03. – Sustainability

City has developed a sustainable procurement policy for the Airport and encourages all airport partners to do the same. Sustainable procurement considers total cost of ownership including the social, environmental and economic impacts of procurement as well as the life-cycle analysis of products and services in development and manufacturing, transportation, use, and disposal at the end of the product life.

TITLE XVI INDEMNIFICATION

16.01. – Airline Indemnification of City

Airline agrees to defend, indemnify and hold harmless City, its officers, agents, officials and employees (hereinafter, collectively referred to as the “Indemnified Parties”) from and against all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney’s fees) and causes of action of every kind and character, whether or not meritorious, against or from City by reason of bodily injuries to or deaths of any persons or damage to any property arising from Airline’s use and occupation of its Premises or the Airport or otherwise arising from Airline’s operations, acts or omissions under this Agreement. Airline also agrees to indemnify and hold harmless the Indemnified Parties from any and all losses, expenses, demands and claims against the Indemnified Parties sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance pursuant to this Agreement by Airline, or any of its agents, contractors, subcontractors, officers or employees. Airline further agrees that its obligation to indemnify and hold harmless the Indemnified Parties shall not be limited to the limits or terms of the liability insurance, required pursuant to this Agreement. However, nothing contained in this Section shall be construed as a release or indemnity by Airline of an Indemnified Party from or against any loss, liability or claim to the extent arising from the negligence or willful misconduct of an Indemnified Party. Airline and City shall give to the other prompt and timely written notice of any claim made or suit instituted against it which in any way directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

16.02. – Indemnification of Accommodating Airlines

In the event that Airline is a Requesting Airline under TITLE IV or TITLE V, the Accommodating Airline shall be an Indemnified Party under Section 16.01 and Airline's indemnification under that section shall inure to the benefit of the Accommodating Airline as a third-party beneficiary for the period of the accommodation.

16.03. – Survival

This TITLE XVI shall survive the termination or expiration of this Agreement.

TITLE XVII
INSURANCE

17.01. – Insurance Requirements of Airline

A. Any and all companies providing insurance required pursuant to this Agreement must meet certain minimum financial security requirements as set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key rating Guide-Property-Casualty or other internationally recognized ratings acceptable to City, in City's reasonable judgment. Each of the companies providing insurance pursuant to this TITLE XVII must have the following ratings and status:

- (1) Best's Rating or other internationally recognized ratings acceptable to City, in City's reasonable judgment, of not less than A- or equivalent rating.
- (2) Best's Financial Size Category or other internationally recognized ratings acceptable to City, in City's reasonable judgment, of not less than Class VII or an equivalent rating acceptable to City, in City's reasonable judgment.

If the issuing company does not meet these minimum requirements written notification shall be mailed by City to Airline, which shall promptly obtain a new policy issued by an insurer meeting such minimum requirements, and shall submit evidence of the same to the Aviation General Manager as required herein. City may waive the requirements of this Section 17.01.A if City determines, in its sole discretion, that the financial security provided by Airline's insurance companies is equivalent to the requirements of this section.

B. Upon failure of Airline to furnish, deliver and maintain such insurance as herein provided, which Airline fails to cure within fifteen (15) business days after notice from City, specifying the insurance which is required to be provided by Airline but which has not been provided by Airline, Airline shall be in default and, in addition to City's other remedies, this Agreement, at the election of City, may be terminated. Failure of Airline to obtain and/or to maintain any required insurance shall not relieve Airline from any liability pursuant to this Agreement, nor shall these requirements be construed to conflict with Airline's indemnification obligations.

- C. Any and all insurance required pursuant to this Agreement shall be maintained by Airline during the Term. Airline shall furnish City and any Accommodating Airline pursuant to TITLE IV or TITLE V with certificates of insurance, and “Additional Insured” endorsements where appropriate, by the Effective Date. City shall have the right to inquire into the adequacy of the insurance coverages set forth in this Agreement and to require reasonable adjustments as necessary. Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this Agreement shall warrant when signing the certificate of insurance that specific authorization has been granted by companies for the agent to bind coverage as required and to execute the certificate of insurance as evidence of such coverage. Any self-insured retention, deductible or similar obligation will be the sole responsibility of Airline.
- D. In the event of any cancellation of any insurance coverage required by or on behalf of Airline pursuant to this Agreement, whether it be for non-payment of premium or for other than non-payment of premium, or in the event of any adverse, material change of any insurance required by this Agreement effected by the insurance carrier providing such coverage, Airline must email a copy of the cancellation notice or notice of adverse, material change to the Department of Aviation’s current Director of Properties & Airline Affairs and mail a copy to the address below no later than thirty (30) business days after the receipt of a cancellation notice or a notice of adverse material change.

City of Atlanta
Department of Aviation
P. O. Box 20509
Atlanta, Georgia 30320
Attention: Director of Properties & Airline Affairs

- E. City shall be covered as an additional insured, as its interest may appear, under any and all liability insurance required of Airline pursuant to this Agreement, and such liability insurance shall be primary and non-contributory with respect to the additional insured. However, this requirement does not apply to Workers’ Compensation, Employer’s Liability, or Professional Liability Insurance. Additional insured status in favor of City and extending to ongoing and completed operations per endorsement CG 20 26 07 04, or the carrier equivalent, shall be provided by Airline. A copy of the additional insured endorsement or the carrier equivalent must be provided by Airline and must be received by City’s Risk Management Department at the address set forth immediately below, as soon as practicable but in no event more than ten (10) days after the Effective Date, or the date that such liability insurance requirement became binding on Airline or Airline’s consultants, agents, contractors and/or subcontractors pursuant to the terms of this Agreement, as the case may be.

Risk Management Mailing Address:

City of Atlanta
Attn: Risk Management
68 Mitchell Street, Suite 9100

Atlanta, Georgia 30303

F. Required Minimum Insurance Amount:

Workers compensation	Statutory
Employer's liability:	
Bodily injury by accident/disease	\$1,000,000 each accident
Bodily injury by accident/disease	\$1,000,000 each employee
Bodily injury by accident/disease	\$1,000,000 policy limit

G. Aviation liability:

Bodily injury and property damage \$100 Million combined single limit

The following specific extensions of coverage shall be provided and indicated on the certificate of insurance.

- (a) Comprehensive form
- (b) Contractual liability (blanket or specific to this Agreement)
- (c) Personal injury
- (d) Property damage
- (e) Premises operations

Airside vehicle and aircraft liability:

Bodily injury and property Damage \$50 Million combined single limit.

The following specific extensions of coverage shall be provided and indicated on the certificate of insurance:

- (1) Comprehensive form
- (2) Owned, hired, leased and non-owned vehicles to be covered
- (3) Specific liability for vehicles operated on the airfield

H. Commercial automobile liability insurance:

Airline must procure and maintain automobile liability insurance in an amount not less than \$1,000,000 bodily injury and property damage combined single limit. The following indicated extension of coverage must be provided:

- (1) Owned, non-owned & hired vehicles
- (2) Waiver of subrogation in favor of the City of Atlanta

If Airline does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Airline's personal automobile policy or the commercial general liability policy.

In addition and in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of City of Atlanta, all vehicles requiring access to the restricted areas of the Airport must be covered by an automobile liability policy in the minimum amount of Ten Million Dollars (\$10,000,000) combined single limit for personal injury and property damage. The Ten Million Dollars (\$10,000,000) limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities. This limit may be achieved with the airside vehicle coverage limit provided under the aviation liability policy

I. Commercial General Liability Insurance:

Airline must procure and maintain commercial general liability insurance on form CG 00 00 01 or equivalent, in an amount not less than Twenty-five Million Dollars (\$25,000,000) combined single limit except as set forth below for Terrorism Coverage. The following specific extensions of coverage must be indicated on the Certificate of Insurance:

- (1) Contractual liability
- (2) Property damage
- (3) Premises operations
- (4) Personal injury
- (5) Advertising injury
- (6) Fire legal liability
- (7) Medical expense
- (8) Independent contractor/consultants/subcontractor/consultants
- (9) Products – completed operations
- (10) Additional insured endorsement (primary & non-contributing in favor of the City of Atlanta)
- (11) Waiver of subrogation in favor of the City of Atlanta
- (12) Terrorism Coverage (\$1 million per occurrence)

The above required Liability limits can be a combination of Primary Limits and Excess Liability/Umbrella limits.

J. Property Insurance: Airline shall obtain a “special risk” policy of property insurance covering reasonably foreseeable risks, insuring the systems, fixtures, equipment, improvements and personal property owned, used or installed by Airline on the Premises and the CPTC (unless the system, fixture, equipment, improvement or personal property

is insured by City), in an amount equal to one hundred percent (100%) of the full replacement value thereof.

No goods, merchandise, or materials shall be kept, stored, or sold in or on Airline's Premises which would have the effect of suspending the insurance upon said Premises or other property of City, or of increasing the rates therefor unless, with respect to such rate increases, Airline pays the cost of the increase resulting therefrom.

K. Pollution Legal Liability.

Coverage shall be maintained by the Airline in an amount not less than Ten Million Dollars (\$10,000,000) for the clean-up costs for sudden and accidental pollution, to the extent required by Environmental Laws, arising out of Airline's activities under this Agreement; provided, however, that every five years City may increase the amount of insurance required by this Section 17.01.K by up to five percent (5%), if such increase is commercially reasonable. Airline may provide for reasonable limits of self-insurance against environmental liability risks in lieu of obtaining coverage from a third-party insurer. All amounts paid to the City by Airline on account of any self-insurance program shall be deemed insurance proceeds for purposes of this Agreement. To the extent Airline self-insures as to environmental liability, the protections afforded the City by Airline shall be the same as if insurance were provided by a third-party insurer on commonly available, commercially reasonable terms for such insurance based on Airline's activities under this Agreement, and Airline shall have all the obligations and liabilities of a third-party insurer hereunder (*e.g.*, obligation to provide a defense for covered claims).

17.02. – Airline Commercial General Liability Insurance in CSS

In view of the fact that CSS will be dedicated to public or common use and will not be under the exclusive control of City or any individual Signatory Airline, it is deemed necessary that liability insurance be provided covering possible liability with respect to said premises of City, all Signatory Airlines and any third party which may be retained to provide operating and maintenance services under Section 12.01 of this Agreement. In order to avoid the costs of overlapping insurance, City may purchase the appropriate coverage and reasonably allocate the costs of such insurance to the appropriate Cost Center(s).

17.03. – Property Insurance

City shall obtain a "special risk" policy of property insurance covering reasonably foreseeable risks, insuring the buildings, systems, equipment and other improvements included in the CPTC and the Airfield, and all additions, extensions, alterations and modifications thereto, financed by City, in an amount equal to one hundred percent (100%) of the full replacement value. City shall maintain such policies in effect, with responsible insurance company(ies) at all times throughout the Term. City shall furnish certificates to each Signatory Airline at least thirty (30) days prior to the Effective Date certifying that such insurance coverage is in force and that it will not be terminated by

expiration or otherwise cancelled, reduced or the coverage changed without at least thirty (30) days' written notice to each Signatory Airline. The City shall reasonably allocate the cost of such insurance coverage to the appropriate Cost Center(s).

17.04. – Other Insurance to be Provided by City

City shall be responsible for providing airport owners & operators liability insurance covering the AGTS in accordance with commercially reasonable coverage terms and amounts. The cost of providing such liability insurance on the AGTS shall be allocated to the CPTC Cost Center.

17.05. - City Right to Obtain Insurance if Airline Cannot

In the event that any of the insurance coverages required under Section 17.01 become unavailable for reasons outside the control of Airline, Airline shall not be in default under this Agreement and City shall not have the right to terminate this Agreement so long as Airline is actively seeking to obtain such insurance, but City shall have the right to obtain coverage, if available, to protect City against potential liability to City resulting from such gap in coverage and to allocate such costs to Airline.

TITLE XVIII
DEFAULT AND TERMINATION

18.01. – Events of Default by Airline

Each of the following shall constitute an “event of default by Airline”:

- A. Airline fails to make due and punctual payment of the rentals and charges payable hereunder or fails to remit PFCs in accordance with Section 8.13, and such default shall continue for a period of fifteen (15) days after receipt of written notice from City of such non-payment.
- B. Airline fails after the receipt of thirty (30) days' written notice from City to keep, perform or observe any other term, covenant, or condition of this Agreement to be kept, performed, or observed by Airline, or if by its nature such default cannot be cured within such thirty (30) day period, Airline has failed to commence to cure or remove such default within said thirty (30) day period and to diligently continue to cure or remove same as promptly as possible.
- C. The failure by Airline to provide and keep in force insurance coverage in accordance with Section 17.01.
- D. The appointment of a trustee, custodian, or receiver of all or a substantial portion of Airline's assets.
- E. The divestiture of Airline's estate herein by operation of law, by dissolution, or by liquidation (not including a merger or sale of assets).

- F. The abandonment by Airline of the Premises, or its conduct of business at the Airport; and, in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a force majeure event as defined in Section 22.12.

18.02. – Continuing Responsibilities of Airline

Notwithstanding the occurrence of any event of default, Airline shall remain liable to City for all rentals, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless City elects to terminate this Agreement, Airline shall remain liable for and promptly pay all rentals, fees, and charges accruing hereunder for the Term of this Agreement.

18.03. – Remedies for Airline’s Default

Upon the occurrence of an “event of default by Airline” enumerated in Section 18.01 and after any applicable notice and cure periods, the following remedies shall be available to City:

- A. City may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified. The various rights and remedies herein contained shall not be considered as exclusive of any other right or remedy but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. In addition to any damages or payments specified herein, City shall be entitled to reimbursement from Airline for any costs of City related to any default by Airline under this Agreement.
- B. City may cancel this Agreement, effective upon the date specified in the notice of cancellation. Upon such date, Airline shall be deemed to have no further rights hereunder and City shall have the right to take immediate possession of the Premises.
- C. City may cure or cause any violation to be cured for the account and at the expense of Airline, and all sums so expended by City related to such cure, together with ten percent (10%) thereof for cost of administration, shall be paid by Airline on demand.
- D. City shall have the immediate right of re-entry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Airline.
- E. Should City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Agreement or relet the Premises and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this Agreement) and at such rental or rentals and upon such other terms and conditions as City in its sole discretion may deem advisable, with the right to make alterations and repairs to improvements on said Premises; provided, however, that City shall be obligated to make a good faith effort to obtain terms and conditions no less favorable to

itself than those contained herein and otherwise use reasonable efforts to mitigate any damages it may suffer as a result of Airline's default. Upon such reletting:

- (1) Airline shall be immediately liable to pay to City, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such reletting, and the present value of the amount, if any, by which the rent reserved in this Agreement for the period of such reletting (up to but not beyond the lease term) exceeds the amount agreed to be paid as rent for the Premises for the period of such reletting, or
- (2) at the option of City, rents received by City from such reletting shall be applied: first, to the payment of any indebtedness, other than rent, due hereunder from Airline to City; second, to the payment of any costs and expenses of such reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable hereunder.

If Airline has been credited with any rent to be received under such reletting pursuant to option (1) and such rent shall not be promptly paid to City by new tenant, or if such rent received from such re-letting under option (2) during any month be less than that to be paid during that month by Airline hereunder, Airline shall pay any such deficiency to City. Such deficiency shall be calculated and paid monthly.

- F. No re-entry, reletting or taking possession of the Premises and any improvements thereon by City shall be construed as an election on its part to terminate this Agreement unless a written notice of such intention is given to Airline.
- G. Notwithstanding any reletting without termination, City may, at any time thereafter, elect to terminate this Agreement for any additional "event of default by Airline," in addition to any other remedy it may have, and in such event, City may recover from Airline all damages to which it may be legally entitled by reason of such "event of default by Airline," including the cost of recovering the Premises, and City may recover at the time of such termination any deficit in the amount of rental and charges due under this Agreement up to the date of termination.

18.04. – [Intentionally Omitted]

18.05. – Events of Default by City

Each of the following events shall constitute an "event of default by City":

- A. City fails after receipt of thirty (30) days' written notice from Airline specifying the nature of the failure in particular detail, to keep, perform or observe any material term, covenant or condition of this Agreement to be kept, performed or observed by City, or if by its nature such default cannot be cured within such thirty (30) day period, City has failed to commence to cure or remove such default within said thirty (30) day period and to diligently continue to cure or remove same as promptly as possible.

- B. City closes the Airport to flying in general or to the flights of Airline for reasons other than weather, acts of God, safety or security requirements or other reasons beyond its control, and fails to reopen the Airport to such flying or flights for a period in excess of thirty (30) days, provided that the reasons for closing the Airport were not caused or contributed to by Airline.
- C. City wrongfully deprives Airline of its right to occupy and use the Premises in accordance with the terms of this Agreement for a period in excess of ten (10) days.

18.06. – Remedies for City’s Default

After the occurrence of an “event of default by City” enumerated in Section 18.05 and after any applicable notice and cure periods, Airline shall have the right to terminate this Agreement upon sixty (60) days’ written notice to City, in which event all rentals and charges payable by Airline under this Agreement shall abate, and Airline shall have the right specified in Section 18.08 of this Agreement, and Airline shall also have all rights and remedies available to Airline at law, in equity or by statute, as the election by Airline to pursue one remedy under this Agreement shall not preclude or prevent the pursuit of another remedy, and such remedies shall not be considered as exclusive of any other right or legal remedy but shall be construed as cumulative.

18.07. – Airline’s Additional Rights of Termination

- A. Airline, in addition to any other right of termination provided for elsewhere herein or by operation of law, may terminate this Agreement upon thirty (30) days’ written notice to City if the Airline is permanently deprived, for any reason beyond its control, of the rights, certificates, or authorizations necessary under applicable law to operate its air transportation business at the Airport.
- B. In the event of such termination, the rentals and charges payable by Airline under this Agreement shall abate.

18.08. – Rights Upon Termination

If Airline is not in default hereunder, Airline shall have the right to remove within thirty (30) days after the expiration or earlier termination of this Agreement, any equipment, systems, fixtures or other installations or improvements referred to in Section 19.02 under the terms provided therein.

18.09. – Notice and Cure Requirements

- A. Notwithstanding anything to the contrary in this Agreement, no termination of this Agreement or (as to Airline) of Airline’s possessory rights under this Agreement declared by City or Airline shall be effective unless and until a minimum of thirty (30) days have elapsed after the date of written notice to the other specifying the date upon which such termination shall take effect and the cause for such termination (and if such termination is by reason of a default under this Agreement, specifying such default with reasonable certitude), and no such termination of this Agreement or (as to Airline) of

Airline's possessory rights under this Agreement shall be effective if such cause is cured or removed during such minimum thirty (30) day period.

TITLE XIX
SURRENDER AND HOLDING OVER

19.01. – Surrender and Delivery

Upon termination or cancellation of this Agreement, Airline shall promptly and peaceably surrender to City the Premises and all alterations, additions or improvements thereon that City elects to retain as provided in Section 19.03 below in good and fit condition, reasonable wear and tear, conditions that existed at the time Airline first occupied the Premises as well as damage or repair which is the responsibility of City excepted. In the event the Premises are not so yielded or delivered to City, City shall remedy said Premises and the cost thereof will be invoiced to Airline; provided, however, that prior to so remedying the condition of the Premises, City shall consult with Airline after providing Airline with a list of any condition deficiencies that City believes require correction in accordance with the terms of this Agreement. City shall determine the condition of the Premises at the termination of this Agreement by expiration or otherwise. However, this Section 19.01 does not cover Hazardous Materials upon surrender, which is provided for in Section 15.01.L.

19.02. – Removal of Property

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 tools, equipment, removable trade fixtures and other personal property not paid for by City, title to which shall remain in Airline, unless otherwise set forth in this Agreement. Airline shall remove such tools, equipment, removable trade fixtures and other personal property not paid for by City within thirty (30) business days following termination of this Agreement, whether by expiration of time or otherwise, as provided herein, subject to any valid lien which City 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 City. Any and all property, other than aircraft, aircraft engines and aircraft parts not removed by Airline within thirty (30) business days following the date of termination of this Agreement shall, at the option of City, (i) become the property of City at no cost to City; (ii) be stored by City at no cost to City or (iii) be sold at public or private sale at no cost to City. Except as may be agreed to otherwise by City and Airline, all City property damaged by or as a result of the removal of Airline's property shall be restored by Airline to the condition existing before such damage at Airline's expense. In no event shall City have any lien on or rights with respect to Airline's aircraft, aircraft engines and aircraft parts, except that City shall have the right to move and store any aircraft, aircraft engines and aircraft parts not removed by Airline within fifteen (15) business days following the date of termination of this Agreement at Airline's sole expense.

19.03. – Removal of Alterations, Additions or Improvements

- A. Upon termination or expiration of this Agreement, City shall have the right, in City's sole discretion, to require Airline to remove any or all alterations, additions or improvements designated for removal by City pursuant to Section 4.08. Airline shall ascertain from City, at least eight (8) months prior to the end of the Term (or as soon as possible if this Agreement is earlier terminated), whether City will require Airline to remove any such alterations, additions or improvements or, if Airline desires to leave the alterations, additions or improvements, whether City will accept such alterations, additions or improvements. If City determines that all or any portion of the alterations, additions or improvements shall be removed, Airline shall, by no later than six (6) months prior to the end of the Term, provide a deconstruction plan to City, which shall include a timeline for completion.
- B. In the event Airline fails to remove, within the timeline for completion in the deconstruction plan, additions or improvements installed at the Premises pursuant to Section 4.08 and required by City to be removed pursuant to this Section 19.03, City may after providing ten (10) days notice enter upon the Premises and remove such alterations, additions or improvements at the sole cost and expense of Airline provided that City uses reasonable efforts to minimize disruptions to Airline's operations. Airline agrees to promptly reimburse City for all costs and expenses of removal, plus ten percent (10%) thereof for administrative overhead. The obligation to reimburse City for such expenditures shall survive the termination of this Agreement. Any receipt showing payment by City of expenditures associated with the removal of Airline's alterations, additions or improvements shall be *prima facie* evidence that the amount of such payment was necessary and reasonable and made by City on Airline's behalf.

19.04. – **Holding Over**

In the event Airline uses its Premises without the written consent of City after this Agreement has been canceled or expires, Airline shall be deemed to be a month-to-month tenant at will. In that event, Airline shall pay the rates and charges required under TITLE VIII; and Airline shall also be entitled to the revenue sharing detailed in and subject to Section 8.08 if Airline and City are at that time actively negotiating in good faith an extension of this Agreement or a new agreement; provided, however, that, if Airline and City have not agreed to extend this Agreement or enter into a new agreement within one hundred and eighty (180) days after this Agreement has been canceled or expires, City shall have the right to impose rates and charges set by City ordinance in accordance with applicable law. Airline and City agree to begin negotiating an extension of this Agreement or a new agreement no less than eighteen (18) months before the end of the Term of this Agreement. If such negotiations fail or have ceased by the time this Agreement expires or is otherwise cancelled, City shall have the right to impose rates and charges set by City ordinance in accordance with applicable law effective immediately upon the cancellation or expiration of this Agreement.

TITLE XX
ASSIGNMENT, TRANSFER AND SUBLETTING

20.01. – General Requirements

- A. Airline shall not directly or indirectly assign, sell, hypothecate or otherwise transfer this Agreement or any interest therein without first obtaining the Aviation General Manager's written consent, nor shall this Agreement or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without first obtaining the written consent of the Aviation General Manager. Airline shall not enter into any sublease of the whole or any portion of the Premises without the prior written consent of the Aviation General Manager; provided, that if Airline submits a request for sublease consent and such request is not acted upon by City with either approval or disapproval within sixty (60) days from the date of such request, such sublease request shall be deemed approved.
- B. Notwithstanding anything set forth herein to the contrary, Airline shall have the right, without first obtaining City's written consent, to assign or transfer this Agreement to (a) an entity controlling, controlled by or under common control with Airline or (b) a successor by merger, consolidation or acquisition to all or substantially all of the assets of Airline.
- C. Airline shall include Section 22.02 of this Agreement in all subleases and cause sublessees to similarly include clauses in further subleases.
- D. Nothing in this TITLE XX shall be construed to release Airline from its obligations under this Agreement, including but not limited to, the payment of rentals, fees, and charges provided herein.

20.02. – City Remedy

In the event that Airline shall, directly or indirectly, assign, sell, hypothecate, or otherwise transfer this Agreement, or any portion of Premises, in contravention hereof without the prior written consent of City, City in its sole discretion may terminate this Agreement upon thirty (30) days' written notice.

20.03. – Content of Airline's Request

Airline shall include with any request for consent to assign or sublease a copy of the proposed assignment or sublease agreement. The assignment or sublease agreement submitted with Airline's request shall include the following information: (a) the term; (b) the area or space to be assigned or subleased; (c) the sublease rental to be charged; and (d) the provision that assignee or sublessee must execute a separate agreement with City for operating at the Airport. Any other information reasonably requested by City pertaining to said sublease or assignment shall be promptly provided by Airline. A fully executed copy of such sublease or assignment shall be submitted to City for final approval within sixty (60) days of the occupancy of Premises, or any portion thereof, by the assignee or sublessee. Such sublease or assignment shall be substantially similar to

the sublease or assignment that was submitted by Airline to City prior to such sublease or assignment for approval.

20.04. – Handling Agreements

In the event Airline agrees to ground handle any portion of the operations of another Air Carrier, Airline shall provide City advance written notice of such proposed activities, including a description of the type and extent of services to be provided and a ground handling agreement between Airline and the Air Carrier. Notwithstanding the foregoing, Airline shall not ground handle any Air Carrier which does not have consent of City for the operation of its Air Transportation Business at the Airport.

20.05. – No Change in Control of Airport

City shall not, directly or indirectly, transfer the ownership, management, operation or control of the Airport except in connection with the adoption and ratification of a local government reorganization act which consolidates the government of the City with another political subdivision or as otherwise provided by the Master Bond Ordinance. Airline desires that City amend the Master Bond Ordinance to prohibit the City from, directly or indirectly, transferring the ownership, management, operation or control of the Airport (except as described in the preceding sentence in this Section 20.05) and to strike any language inconsistent with such prohibition.

TITLE XXI
COMPLIANCE WITH LAWS AND REGULATIONS

21.01. – Compliance with Laws and Regulations; Prohibition on Kickbacks and Gratuities; Other Atlanta City Code Requirements

- A. Airline and its officers, employees, agents, and others under its control shall observe and obey all laws, regulations, and orders of the federal, state, county and municipal governments and City (acting in its governmental capacity) which may be applicable to Airline's operations at the Airport, as such laws, regulations and orders currently exist or may be amended from time to time during the Term of this Agreement.
- B. Airline shall not:
 - (1) Omit or fail to procure at the appropriate time, maintain and comply with any permit, license or other governmental authorization necessary for any of its operations or activities on the Airport; or
 - (2) Omit or fail to do anything or permit anything to be done on or about the Airport, or bring or keep anything on the Airport or in any improvement or facility erected thereon, which will in any way conflict with or violate any valid law, ordinance, rule or regulation which is now in force or which may hereafter be enacted or promulgated by any public authority having jurisdiction over the Airport; or

- (3) Create or suffer to be created a nuisance, or commit or suffer to be committed any waste in or upon the Premises; or
 - (4) Use or allow the Premises to be used for any unlawful purpose; or
 - (5) Commit or suffer to be committed in or upon the Premises any other act or thing which may unreasonably disturb the quiet enjoyment of any other tenant at the Airport.
- C. The occupancy and use by Airline of the Premises and the rights herein conferred upon Airline shall be subject to such Airport Rules and Regulations as are now or may hereafter be prescribed by City through the lawful exercise of its powers; provided, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental entity having appropriate jurisdiction. In adopting, amending or revising Airport Rules and Regulations, City shall consult with the Signatory Airlines and shall give the Signatory Airlines thirty (30) days' notice of any proposed change, except with respect to emergency changes to Airport Rules and Regulations, in which case City shall provide notice and consult with the Signatory Airlines as soon as possible.
- D. Notwithstanding the foregoing provisions of this Section 21.01, except as hereafter provided, Airline shall have the right to contest by appropriate legal proceedings, the validity of any governmental charge, law, ordinance, rule, regulation or requirement of the nature set forth in this Section 21.01, provided Airline furnishes City with such assurances or security (having in mind the risk involved) against loss or injury to City in connection therewith as any court having jurisdiction may require.
- E. Airline hereby acknowledges the prohibitions on kickbacks and gratuities in Section 2-1484(d) of Chapter 2, Code of Ordinances of the City of Atlanta, as it may be amended. In addition to the foregoing, Airline hereby agrees to comply with all other provisions of the Code that are applicable to Airline and Airline's activities and operations conducted by Airline pursuant to this Agreement, subject to Airport Rules and Regulations applicable to Airline at the Airport.
- F. In the exercise and performance of its powers and duties under the Uniform Airports Law, as codified in Title 6, Chapter 3, Article 2 of the Official Code of Georgia, City recognizes and declares that the Airport is being operated and maintained in the public interest, for the public convenience and necessity, and hereby declares its intention to encourage and develop air transportation for the citizens of Georgia and in particular for the citizens of the vicinity of Atlanta, and to that end pledges the maintenance, use, and operation of the Airport for public, governmental, and municipal purposes.

21.02. – Security and Payment of Fines for Violation of Federal Regulations

- A. Airline acknowledges that security is of primary importance at the Airport and that security requirements are likely to change during the Term. Airline, its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, shall comply with security

measures (a) required of Airline by the FAA or the TSA or by City in accordance with applicable requirements of the FAA or the TSA or their authorized successor(s) or (b) contained in any Airport master security plan approved by the FAA or the TSA or their authorized successor(s). Airline shall comply, at its own expense, with the TSA's security requirements applicable to Airline at the Airport including, but not limited to employee security training, badging, criminal background checks, access control, screening and inspections. Airline shall cooperate with the TSA on all security matters.

- B. Compliance with such security measures and requirements shall not relieve Airline of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Airline's obligations with respect to all applicable federal laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at and around the Premises. To comply with TSA requirements, Airline hereby agrees to execute a reasonable Exclusive Area Agreement with City, if required, in form and substance which is reasonably acceptable to the parties. Airline accepts security responsibility to use best efforts to prevent unauthorized access to the Premises. Airline shall be responsible for preventing unauthorized persons from gaining access to the restricted areas of the Airport through the Premises during times that Airline has control of the Premises.
- C. Airline understands and agrees that security requirements may affect Airline's Air Transportation Business operations and costs. Airline further agrees that, in addition to the provisions of Sections 21.02.A and 21.02.B, it shall be strictly liable for the payment of any fines assessed by the City or the payment of (or reimbursement of City for any payments of) any civil penalties assessed against City or Airline relating to security and resulting from the negligence or intentional acts of omission or commission of Airline's officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, and Airline shall be solely and fully responsible for any and all breaches of security and the consequences thereof resulting from the negligence or intentional acts of omission or commission of its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control.
- D. Airline agrees to pay a reasonable cost-based user fee for the privilege of using identification cards or badges to gain access to the Airport security access control system.

TITLE XXII
PROVISIONS OF GENERAL APPLICATION

22.01. – Federal Requirements

- A. This Agreement shall be subordinate and subject to the terms of any "Sponsor's Grant Assurances" or like agreement that has been or may be furnished by City to the United States of America, its boards, commissions, or agencies, including without limitation the FAA, or that is required by applicable laws, as a condition precedent to receiving Federal financial assistance for development of the Airport and other Airport programs

and activities. In the event that the FAA or its successors require any modifications or changes in this Agreement as a condition precedent to the granting of funds for the further improvement of the Airport or otherwise complying with the City's assurances or like agreements, Airline shall not withhold its consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may reasonably be required to obtain such funds. City agrees to provide Airline with advance written notice of any provisions that would adversely modify the material terms of this Agreement.

- B. Nothing contained in this Agreement shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) or 49 U.S.C. § 40103(a)(4) with respect to activity on the Airport, except that, subject to the terms and provisions of this Agreement, Airline shall have the right to exclusive possession of Premises made available to Airline for its exclusive use (if any) under the express terms of this Agreement.
- C. City reserves the right to further develop or improve the Airport and/or aviation facilities in general and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may see fit, so long as such developments and improvements do not adversely affect the use of the Premises by Airline for the purpose outlined in TITLE III of this Agreement and are not in conflict with the provisions of this Agreement.
- D. As required by Airport Improvement Program Grant Assurance 22, Airline shall furnish its accommodations and services on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, however, that Airline may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers. Noncompliance with this Section shall constitute a material breach of this Agreement, and in the event of such noncompliance, City shall have the right to terminate this Agreement and any estate hereby created without liability therefor or, at the election of City or the United States of America, either or both shall have the right to judicially enforce this Section. Airline agrees that it shall insert or incorporate this Section in any agreement by which Airline grants a right or privilege to any person, firm, or corporation to render accommodations or services to the public at the Airport.
- E. Airline, by accepting this Agreement, expressly agrees for itself and its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises, above the main sea level elevation that would exceed FAR Part 77, TERPS, or one-engine inoperative standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right, after reasonable notice under the circumstances (which may include no notice), to enter upon the permitted premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Airline.
- F. City reserves unto itself and its successors and assigns for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the

Airport, including the Premises, for navigation or flight in the said airspace for landing on, taking off from, or operating at the Airport, and such right of flight shall include the right to cause in such airspace such noises as may be inherent to the operation of aircraft now known or hereafter used for navigation of or flight in the air.

- G. Airline, by accepting this Agreement, agrees for itself and its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right, after reasonable notice under the circumstances (which may include no notice), to enter upon the Airport and cause the abatement of such interference at the expense of Airline.
- H. All provisions of this Agreement shall be subordinate to the rights of the United States of America to operate the Airport or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operations of the Airport by the United States of America.

22.02. – **Non-Discrimination**

- A. General. In the use and occupancy of the Airport, Airline shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age or disability.
- B. U.S. DOT Assurance. Airline acknowledges that City has given to the United States of America, acting by and through the FAA, certain assurances with respect to non-discrimination required by Title VI of the Civil Rights Act 1964 (42 U.S.C. § 2000d *et seq.*, 78 Stat. 252), 49 C.F.R. Part 21, 49 C.F.R. § 47123, 28 CFR § 50.3 and other acts and regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (“DOT”) (collectively, and including all amendments thereto, the “Acts and Regulations”) as a condition precedent to receiving Federal financial assistance from FAA for certain Airport programs and activities. The City is required under the Acts and Regulations to include in this Agreement, and Airline agrees to be bound by, the following covenants and requirements:
- (1) Airline, for itself, its assignees and successors in interest, covenants and agrees that it shall assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any program or activity conducted with or benefitting from Federal financial assistance received by City from the FAA. In the event of Airline’s breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.
 - (2) Airline, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and

services in compliance with all requirements imposed by the Acts and Regulations such that no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities.

- (3) In the event of Airline's breach of any of the non-discrimination covenants described in subsection (2), above, City shall have the right to terminate this Agreement, and to enter, re-enter and repossess the Premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This subsection (3) shall not become effective until the procedures of 49 C.F.R. Part 21 are followed and completed, including the expiration of appeal rights.
 - (4) Airline, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that (a) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (b) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) Airline shall use the Premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.
 - (5) In the event of Airline's breach of any of the non-discrimination covenants described in subsection (4), above, City shall have the right to terminate this Agreement, and to enter or re-enter and repossess the Premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This subsection (5) shall not become effective until the applicable procedures of 49 C.F.R. Part 21 are followed and completed, including the expiration of appeal rights.
 - (6) Airline shall include these Sections 22.02.B(1) through (6), inclusive, in Airline's licenses, permits and other instruments relating to the Premises, and shall require that its licensees, permittees and others similarly include these statements in their licenses, permits and other instruments relating to the Premises.
- C. Non-Discrimination. Airline assures that: (1) it shall undertake a program as required by all federal and state laws, rules and regulations pertaining to Civil Rights (and any and all amendments thereto), including, without limitation, 49 C.F.R. Part 21 and 49 U.S.C. § 47123, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the benefits of the program or activity conducted with or benefitting from Federal financial assistance received by City from the FAA; (2) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted

with or benefitting from Federal financial assistance received by City from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 C.F.R. Part 21 and 49 U.S.C. § 47123; and (3) to the extent required by 49 CFR Part 21 and 49 U.S.C., it shall include the preceding statements of this subsection C in contracts and similar documents entered into by Airline in connection with this Agreement, and also require that its contractors and others similarly include these statements in their subcontracts and similar documents. entered into in connection with this Agreement.

D. City's EEO, EBO Ordinance and Certification of Non-discrimination Covenant.

- (1) **Statement of Non-Discrimination.** During the performance of this Lease, Airline agrees to comply with its equal employment opportunity and affirmative action program adopted under Executive Order 11246, Section 503 of the Rehabilitation Act, and under the Vietnam Era Veterans Readjustment Assistance Act and to the extent applicable provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1414 of the Code of Ordinances of the City of Atlanta, Georgia, as amended.
- (2) **Equal Business Opportunity and Disadvantaged Business Enterprises.** During the performance of this Lease, Airline agrees to comply with Part 2, Chapter 2, Article X, Division 12, including Sections 2-1441 through 2-1480 of the Code of Ordinances of the City of Atlanta, Georgia, as amended and/or with the USDOT regulations related to disadvantaged business enterprises located at 49 C.F.R. Part 23 and Part 26, as appropriate, and with all implementing laws, regulations, rules, guidelines and policies in regard thereto and all standards and requirements.

E. Americans with Disabilities Act and Air Carrier Access Act. Airline shall be solely and fully responsible for ensuring that Airline's operations, wherever they may occur at the Airport, and any improvements made by Airline pursuant to this Agreement, shall comply with Title II (to the extent applicable) and III of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., as amended from time to time ("ADA"), and the Air Carrier Access Act, 49 U.S.C. § 41705, as amended from time to time ("ACAA"), including without limitation any obligation to provide boarding and deplaning assistance at the Airport. In the event of a violation of or non-compliance with Title II (to the extent applicable) or III of the ADA or the ACAA, Airline shall develop a work plan to correct such violation or non-compliance. City's approval of or acceptance of any aspect of Airline's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA or the ACAA. Airline agrees to indemnify, defend, and hold City harmless from any and all costs incurred by City with respect to Airline's failure to comply with the ADA or the ACAA for Airline's operations or any improvements made by Airline at the Airport. City shall comply with the ADA and the ACAA as applicable to any facilities constructed by City and any improvements made by City at the Airport.

22.03. – **PFC Act and Assurances**

- A. Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall impair the authority of City to impose a Passenger Facility Charge or to use the Passenger Facility Charge revenue as provided in the Aviation Safety and Capacity Expansion Act of 1990, 49 U.S.C. § 40117 (the “PFC Act”).
- B. Airline acknowledges that City has given to the United States of America, acting by and through the FAA, certain assurances set forth in the PFC Act and implementing regulations at 14 C.F.R. Part 158 (“PFC Assurances”), and Airline agrees that this Agreement shall be subordinate and subject to the PFC Assurances.
- C. In the event that the FAA or its successors require any modifications or changes in this Agreement as a condition precedent to the collection of PFCs or otherwise complying with the PFC Act, Airline shall not withhold its consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may reasonably be required to collect PFCs or comply with the PFC Act. City agrees to provide Airline with advance written notice of any provisions that would adversely modify material terms of this Agreement.

22.04. – [Intentionally Omitted]

22.05. – **Minimum Fire and Police Protection**

City shall provide, or cause to be provided, a level of fire and police protection including emergency medical services for the Airport which will be determined from time to time by City in consultation with the Signatory Airlines. In no event, however, will the level of such protection be less than the minimum requirements of pertinent Federal Aviation Regulations, TSA regulations or such that in the judgment of City the traveling public and others require to be protected. Airline shall have the right, but not be obligated, to provide such additional or supplemental protection as it may desire, but such right, whether or not exercised by Airline, shall not in any way be construed to limit or reduce the obligations of City hereunder nor shall such right interfere with City’s fire and police protection.

22.06. – **Liens and Taxes**

- A. Airline shall keep the Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligation incurred by Airline, its employees, agents, and contractors. Airline shall save City harmless from any costs or expenses in connection with any such liens. Airline shall cause the removal of record of any such lien by good and sufficient bond or by payment, before there could be a foreclosure of City’s interest in the real estate which is the subject of the lien, arising out of such lien. At City’s request, Airline shall furnish City with written proof of payment or posting of a bond of any item that would or might constitute the basis for such a lien on the Premises if not paid.
- B. Airline shall pay or cause to be paid any taxes, assessments and charges of a like nature which may be levied or assessed against Airline on the Premises or improvements, fixtures, and equipment placed upon the Premises; provided, however, that Airline may

pay such taxes or assessments under protest and, without liability or cost or expense to City, may contest the validity or amount thereof provided that all statutory requirements are met by Airline. The property interest of Airline, if any, created by this Agreement may be subject to property taxation, and Airline may be subject to the payment of property tax levied on such interest. Payment of such additional charges for all such taxes, assessments and charges, when and if levied or assessed, shall be made by Airline directly to the taxing or assessing authority charged with collection thereof, in which event Airline shall be responsible for obtaining evidence of payment for all of said taxes, assessments and charges and promptly providing City with evidence of payment therefor.

- C. Upon any termination of this Agreement, all lawful taxes then levied or a lien upon any of such property or taxable interest therein shall be paid in full by Airline forthwith or as soon as a statement thereof has been issued by the tax collector if termination occurs during the interval between the attachment of the lien and the issuance of the statement.
- D. City shall have the right, upon reasonable advance notice to Airline, but not the obligation, to remove any tax lien against the Premises or pay any taxes levied on the Premises, in which case the sum paid by City, if due to Airline's failure to pay amounts due hereunder, shall be immediately due from Airline to City on demand, and shall bear interest at the rate of one and one-half percent (1.5%) per month from the date paid by City until the date City is fully reimbursed by Airline.

22.07. – Treatment of Rental Payments for Tax Purposes

Unless specifically authorized in writing by City to the contrary, Airline shall treat its rental payments under this Agreement as a lease payment for federal income tax purposes and shall not treat such payments as repayments of a loan or an installment sale for federal income tax purposes.

22.08. – Counterparts

This Agreement may be executed in any number of counterparts by the two (2) parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

22.09. – Waiver

No waiver by either party at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Agreement are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein, and

that the exercise of one right, power, option or remedy by either party shall not impair its right to any other right, power, option or remedy, except as specifically provided herein.

22.10. – Dispute Resolution

Except in respect to proceedings in unlawful detainer, in the event of any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, the parties shall use their best efforts to settle the dispute by negotiation. If the City and Airline are still unable to resolve their dispute, each agrees to consider submitting such dispute to mediation or other acceptable form of alternate dispute resolution.

22.11. – Consent Not to be Unreasonably Withheld

Unless otherwise specifically provided in this agreement, whenever consent or approval is required hereunder by either party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

22.12. – Force Majeure

- A. Neither Airline nor City shall be deemed to be in default of this Agreement, by reason of failure to perform any of either party's respective obligations hereunder if, while and to the extent that such failure is due to or results from any force majeure event including strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, terrorism, acts of superior governmental authority, floods, riots, rebellion, sabotage or any other circumstances for which such party is not responsible and which are not within its control. This Section 22.12 shall not apply to events of default specified in Sections 18.01.A, D and E.
- B. No force majeure event will give City the right to terminate Airline's rights to any Premises pursuant to this provision, but will give City the right to permit others to use the Premises during the force majeure period to the extent provided in and subject to the requirements of subsection 22.12.C below.
- C. If Airline is unable to use the Premises due to a force majeure event, City may make the Premises, or applicable portion thereof, available to other Signatory Airlines for temporary use, if and subject to all of the following:
 - (1) A force majeure event has occurred or exists that prevents or is reasonably expected to prevent Airline from using such Premises, or applicable portion thereof, for a period in excess of thirty (30) days, although such Premises are not being repaired or replaced and are in a condition that they can be used.
 - (2) Airline will receive an abatement on its rentals and other charges on the portion of the Premises being so used for the dates of such usage.

- (3) The City will exercise its rights hereunder in a manner that allows Airline to maintain a contiguous gate operation with respect to its remaining Premises not affected by the force majeure event.
- (4) Once City receives notice from Airline that the applicable force majeure event no longer applies, City will return the Premises to Airline as soon as possible, but no later than ten (10) days after receipt of such notice.
- (5) Airline will not be responsible for any damages, injuries or actions arising out of or related to such usage by anyone else pursuant to this provision. Additionally, City will give Airline at least three (3) days' prior written notice of any proposed use and Airline may, if it desires, remove any of its personal property and trade fixtures. The City or the user will restore, at their expense, the premises to its original condition on or before the date of termination of such use arrangement.
- (6) Once such a force majeure event ends and Airline reacquires its use of the Premises in question, Airline will have forty-five (45) days commencing with the first day of the next month to restore Airline's schedule to provide for compliance with the Minimum Gate Utilization Standard. The period of time from the occurrence of the force majeure event through the additional forty-five (45) day period shall not adversely affect Airline's compliance with the Minimum Gate Utilization Standard.
- (7) The inability of an Affiliate of Airline to use Airline's Premises during a force majeure event shall not adversely affect Airline's compliance with the Minimum Gate Utilization Standard. During such a force majeure event, the Affiliate's gate use activity for the purpose of calculating the Minimum Gate Utilization Standard shall be based on its activity during the same period in the immediately preceding Fiscal Year.

22.13. – Covenant Not To Grant More Favorable Terms; Other Provisions

A. Rentals and Charges Payable by Other Airlines

Subject to Section 22.13.B below, it is acknowledged that the intent of this Agreement is that each airline user of the CPTC shall pay its fair pro rata share of the cost of financing, constructing, maintaining and operating the CPTC, which intent shall be effectuated as to Airline through this Agreement and through substantially similar agreements with the other Signatory Airlines. As to others, City will not lease any premises in the CPTC, as presently planned or as it may be expanded, to any airline, air carrier, or other firm engaged in the air transportation of persons, property or mail, on terms or under rentals or charges, which are more favorable to any such airline, air carrier or other firm than the terms, rentals, and charges contained in this Agreement, without extending such more favorable terms, rentals, or charges to Airline.

B. Air Service Incentive Programs

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

C. Other Airlines May Become Signatory Airlines

Any airline, air carrier, or other firm engaged in the air transportation of persons, property, or mail which is authorized under applicable law to serve Atlanta, Georgia, may become a Signatory Airline by entering into an agreement substantially the same as this Agreement.

22.14.– Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation it shall be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement.

22.15. – All Requirements Included in Agreement

The parties agree that all of the requirements applicable to either Airline or City by virtue of this Agreement and to the use and occupancy of the Premises hereunder are stated herein and that neither Airline nor City shall be subject to any requirements not so stated.

22.16. – Incorporation of Exhibits

All exhibits referred to herein (which are listed immediately below), provisions of other documents, appendices, exhibits or schedules which may, from time to time, be referred to herein or in any duly-executed amendment hereto are (and with respect to future amendments, shall be) by such reference incorporated herein and shall be deemed a part of this Agreement as fully as if set forth herein; provided, however, if any conflict exists between any such agreements or documents, appendices, exhibits or schedules and any provisions of this Agreement, the provisions of this Agreement shall prevail.

List of Exhibits

- Exhibit A: Space Drawings*
- Exhibit B: Airfield Drawing*
- Exhibit C: Airport Master Plan and Capital Plan Drawings*
- Exhibit D: Pre-Approved Project and Pre-Approved Allowances List*
- Exhibit E: Direct Operating Expense / Direct and Indirect Costs*
- Exhibit F: Infrastructure and Utilities*

<i>Exhibit G:</i>	<i>Premises Notice</i>
<i>Exhibit H:</i>	<i>Prior Tenant Finishes</i>
<i>Exhibit I:</i>	<i>Standard Aircraft Gate Equivalent (SAGE)</i>
<i>Exhibit J:</i>	<i>Terminal Modernization Project</i>
<i>Exhibit K:</i>	<i>Allocation of Gates</i>
<i>Exhibit L:</i>	<i>Affiliate Operating Agreement and Form of Termination of Status of Affiliate</i>
<i>Exhibit M:</i>	<i>Illustrative Rate Calculations</i>
<i>Exhibit N:</i>	<i>Sources of Funding for 2015-2035 Capital Plan</i>
<i>Exhibit O:</i>	<i>Illustrative Revenue Sharing Calculations</i>
<i>Exhibit P:</i>	<i>Illustrative List of City Exempt Projects in Airport Master Plan</i>
<i>Exhibit Q:</i>	<i>Operations and Maintenance</i>

22.17. – No Personal Liability

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

22.18. – Relationship Between Parties

City is neither a joint venture with nor a partner or associate of Airline with respect to any matter provided for in this Agreement. Nothing herein contained shall be construed to create any such relationship between the parties. It is understood and agreed that neither the method of computation of rentals, fees, and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of landlord and tenant.

22.19. – No Third-Party Beneficiaries

Each of the parties has entered into this Agreement solely for its own benefit. This Agreement does not grant to any third person the right to claim damages or to bring any suit, action, or any other proceeding against either City or Airline because of any breach hereof.

22.20. – Quiet Enjoyment

Airline, upon payment of the rentals and charges and upon observing and keeping the agreements and covenants herein contained on the part of Airline to be observed and kept, shall be entitled to lawfully and quietly hold, occupy, and enjoy the Premises during the term of this Agreement.

22.21. – Time of the Essence

Time is expressed to be of the essence of this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified

herein, shall relieve the other party, without liability, of any obligation to accept such performance.

22.22. – Lease Made in Georgia; Entire Agreement, Amendment

This Agreement has been made in and shall be construed in accordance with the laws of the State of Georgia. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the state courts of Fulton County, Georgia, or if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of Georgia, Atlanta Division. All agreements of City and Airline with respect to the Premises are expressly set forth herein, and this Agreement can be amended only in writing. It is further understood and agreed by Airline and City that neither party nor its agents have made any representations or promises with respect to this Agreement or the making or entry into this Agreement, except such as are in this Agreement expressly set forth, and no claim or liability or cause for termination shall be asserted by either party against the other for, and neither party shall be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement.

22.23. – Headings

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

22.24. – Authority to Execute Agreement

Airline shall submit a copy of any corporate resolution or secretary certificate, if requested by City, which authorizes any director or officer to act on behalf of Airline and which authorizes Airline to enter into this Agreement.

22.25. – [Intentionally Omitted]

22.26. – Savings

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against City by reason of the preparation of this Agreement by City.

22.27. – Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

22.28. – References to Titles and Sections

Unless otherwise indicated, references to titles or sections in this Agreement refer to titles or sections of this Agreement.

22.29. – Contracts and Leases other than this Agreement

Nothing contained in this Agreement shall be deemed or construed to nullify, restrict, or modify in any manner the provisions of any other lease or contract between City and Airline authorizing the use of Airport, its facilities, and appurtenances, and the provisions of this Agreement do not apply to the premises leased under other contracts between the City and Airline. Compliance or failure to comply by City or Airline with the terms of such other agreements shall not be deemed a breach under this Agreement. Likewise, compliance or failure to comply by City or Airline with the terms of this Agreement shall not be deemed a breach under such other contracts between City and Airline.

22.30. – Agent for Service

It is expressly understood and agreed that if Airline is not a resident of the State of Georgia, or is an association or partnership without a member or partner resident of said state, Airline shall appoint an agent for the purpose of service of process in any court action between it and City arising out of or based upon this Agreement. Airline shall immediately, within ten (10) days of execution of this Agreement, notify City, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of Georgia for service upon a non-resident engaging in business in the state. It is further expressly agreed, covenanted, and stipulated that, if for any reason, such service of process is not possible, as an alternative method of service of process, Airline may be personally served out of the State of Georgia by the registered mailing of such service at the address set forth in Section 22.36.

22.31. – Waiver of Visual Artists' Rights

Airline shall not install any object in the Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 and applicable state law unless and until Airline has (a) obtained the prior written approval of the Aviation General Manager and (b) provided City with a written waiver from the author of such work of visual art, in form and substance reasonably satisfactory to City, which waiver shall identify specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. § 106A(e)(1) and applicable state law.

22.32. – Continuing Disclosure

Airline, upon request by City, shall provide City with such publicly available information as City may reasonably request in writing, including via email, to comply with City's continuing disclosure undertakings as the same may be amended from time to time; provided, however, that (1) Airline is given the right to review how such information from Airline will be utilized or presented by City, and (2) Airline may in lieu of providing the requested information direct City to an Airline or SEC website where the requested information is then currently available. Airline covenants that any

information so provided, either directly or by reference to an Airline or SEC website, shall not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

22.33. – Georgia Open Records Act

Information provided to City is subject to disclosure under the Georgia Open Records Act. Pursuant to O.C.G.A. § 50-18-72(a)(34), “[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]”

22.34. – Memorandum of Lease

In the event that City so requests, Airline shall execute, attest, acknowledge, and deliver for recording a short form Memorandum of Lease of this Agreement.

22.35. – [Intentionally Omitted]

22.36. – Notices

Except as otherwise provided for herein, all notices, consents, and approvals to be given hereunder shall be in writing and signed by a duly authorized representative of the party by or on whose behalf they are given and shall be deemed given when delivered by nationally recognized overnight carrier (for example, by FedEx or UPS) or three (3) days after deposit in the U.S. mail postage pre-paid and certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party):

A. City:

City of Atlanta

Department of Aviation
P. O. Box 20509
Atlanta, Georgia 30320
Attention: Aviation General Manager

With a copy to:

City of Atlanta

City of Atlanta Law Department
55 Trinity Avenue, SW, Suite 5000
Atlanta, GA 30303
Attention: City Attorney

B. Airline:

With a copy to:

IN WITNESS WHEREOF, the parties, acting by and through their duly constituted officers, have caused this instrument to be executed this _____ day of _____, _____.

ATTEST

AIRLINE
(seal)

Corporate Secretary

By: _____
(Title)

CITY OF ATLANTA:

Municipal Clerk

Mayor

APPROVED AS TO INTENT:

APPROVED:

Aviation General Manager

Chief Procurement Officer

APPROVED AS TO FORM:

City Attorney