

## **Appendix A**

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# **BWI Marshall Use and Lease Agreement Special Provisions**



**(AIRLINE)**

**USE AND LEASE AGREEMENT  
NO. MAA-LC-XX-XXX**

**BALTIMORE/WASHINGTON INTERNATIONAL  
THURGOOD MARSHALL AIRPORT**

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**MARYLAND DEPARTMENT OF TRANSPORTATION  
MARYLAND AVIATION ADMINISTRATION**

**BALTIMORE/WASHINGTON INTERNATIONAL THURGOOD MARSHALL  
AIRPORT**

**USE AND LEASE AGREEMENT No. MAA-LC-XX-XXX  
SPECIAL PROVISIONS**

**THIS USE AND LEASE AGREEMENT**, (hereinafter referred to as "Use Agreement") made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the Maryland Department of Transportation Maryland Aviation Administration, (hereinafter referred to as "Administration") whose address is Post Office Box 8766, Baltimore/Washington International Thurgood Marshall Airport, Maryland 21240-0766 and \_\_\_\_\_ (hereinafter referred to as "Airline") whose address is \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, the State of Maryland owns and operates the Baltimore/Washington International Thurgood Marshall Airport (hereinafter referred to as "Airport"), located in Anne Arundel County, State of Maryland; and

**WHEREAS**, Administration manages and operates the Airport for the State of Maryland for the promotion, accommodation and development of air commerce and air transportation between the Baltimore-Washington D.C. Metropolitan areas and other cities of the United States and cities of other nations of the world; and

**WHEREAS**, Airline is an Air Transportation Company conducting an Air Transportation Business at the Airport; and

**WHEREAS**, Airline desires to obtain certain rights, services and privileges in connection with the use of the Airport and its facilities, and Administration is willing to grant and lease the same to Airline upon the terms and conditions hereinafter set forth; and

**WHEREAS**, Airline has met Administration's minimum qualifications for entering into this Use Agreement, which include (a) if Airline is a Passenger Air Transportation Company operating only international flights, providing Scheduled Service at the Airport and payment of FIS Area Fees or (ii) for any other Air Transportation Company, providing annual payments totaling at least the Minimum Annual Guarantee; (b) not having any undisputed past due debts, excluding receivables, under any lease or contract with Administration when this Use Agreement

is executed by Administration; (c) not being currently in default under any lease or contract with Administration when this Use Agreement is executed by Administration; and (d) obtaining bankruptcy court approval to execute this Use Agreement by filing a motion in a form approved by Administration if Airline is in bankruptcy before this Use Agreement is executed by Administration.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, Administration does hereby demise and let unto Airline, and Airline does hereby hire and lease from Administration, certain areas of the Airport in accordance with the terms and conditions agreed to herein and Administration does hereby grant unto Airline, its employees, passengers, guests, patrons and invitees (in common with other duly authorized users) the right to use the Airport together with the appurtenances, facilities, improvements, equipment and services which have been or may hereafter be provided for Common-Use at or in connection with the Airport in accordance with the terms and conditions mutually agreed to herein.

#### **ARTICLE I RECITALS**

The recitals set forth above are hereby made a part of this Use Agreement.

#### **ARTICLE II DEFINITIONS**

The words and phrases in this Use Agreement shall have the following meanings:

**“Active Loading”** shall mean that period of time that commences (a) thirty (30) minutes prior to the scheduled departure time, for an aircraft with less than one hundred (100) seats, (b) forty-five (45) minutes prior to the scheduled departure time, for an aircraft with a number of seats between one hundred (100) and one hundred forty nine (149), (c) sixty (60) minutes prior to the scheduled departure time, for an aircraft with a number of seats between one hundred fifty (150) and one hundred ninety nine (199) seats, or (d) seventy five (75) minutes prior to the scheduled departure time, for an aircraft with two hundred (200) seats or more, and that expires fifteen (15) minutes after the scheduled departure time of the aircraft.

**“Active Unloading”** shall mean that period of time that commences fifteen (15) minutes prior to the scheduled arrival time of an aircraft and expires (a) thirty (30) minutes after the scheduled arrival time, for an aircraft with less than one hundred (100) seats, (b) forty-five (45)

minutes after the scheduled arrival time, for an aircraft with a number of seats between one hundred (100) and one hundred forty nine (149), (c) sixty (60) minutes after the scheduled arrival time for an aircraft with a number of seats between one hundred fifty (150) and one hundred ninety nine (199) seats, or (d) seventy five (75) minutes after the scheduled arrival time, for an aircraft with two hundred (200) seats or more.

**“Activity Report”** shall mean the report required to be submitted by Airline to Administration within ten (10) days following the end of each calendar month in a form acceptable to Administration setting forth aircraft activity and other statistical information reasonably required by Administration related to Airline’s operations at the Airport in connection with Airline’s obligations under this Use Agreement. The Activity Report shall be submitted to Administration in the form of Exhibit 1 attached hereto or other Administration-approved form, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement.

**“Administration”** shall mean the Maryland Department of Transportation Maryland Aviation Administration.

**“Administrative Cost Center”** shall include Costs allocated to the Administrative Cost Center associated with the Airport System or any parts thereof, which are not directly accounted for in the Airfield, Boarding Devices, Landside, Martin State, and Passenger Terminal Cost Centers. Martin State shall be assigned two hundred and forty thousand dollars (\$240,000) in Costs allocated to the Administrative Cost Center in each Fiscal Year. Any remaining Costs allocable to the Administrative Cost Center shall then be distributed to certain other Cost Centers (Airfield, Landside, and Passenger Terminal Cost Centers) based on each such Cost Center’s proportionate share of the O&M Expenses of the Airport directly allocated to such Cost Center.

**“Air Transportation Business”** shall mean the activity of transporting for hire persons, property, cargo and/or mail by aircraft.

**“Air Transportation Company”** shall mean an entity engaged in or desiring to engage in an Air Transportation Business at the Airport.

**“Aircraft Arrival”** shall mean any aircraft arrival at the Airport, including but not limited to, scheduled trips and charters, sightseeing, ferry, test, courtesy, and inspection or other flights. Flights which are diverted to the Airport because of mechanical, meteorological, or other causes, shall be considered the same as an Aircraft Arrival, except that if a revenue flight is

required to return to the Airport because of such mechanical, meteorological, or other precautionary reasons, such arrival shall not be considered an Aircraft Arrival.

**“Aircraft Parking and Storage Areas”** shall mean those portions of the Airfield, except for Passenger Terminal Apron Areas, that are designated by Administration for the parking and storage of aircraft and aircraft support vehicles and the loading and unloading of aircraft, which areas are subject to change from time to time.

**“Aircraft Parking Fees”** shall mean payments received by Administration for the parking of aircraft at the Airport.

**“Airfield”** shall mean (1) the areas of the Airport reserved for aircraft operations and aircraft-related activities, including but not limited to areas provided for aircraft landing, taking-off, taxiing, safety overruns and parking for aircraft and aircraft-related equipment and vehicles, as designated from time to time, (2) all areas recognized by the FAA as the Airfield, and (3) other appurtenances on the Airport related to the aeronautical use of the Airport, including but not limited to Administration-owned or Administration-controlled easement areas designated as approach and transition zones, obstacle-free areas, clear zones, aviation areas or other easements, including any property purchased for noise mitigation purposes which may be modified from time to time by Administration, without amendment or supplement to this Use Agreement.

**“Airfield Cost Center”** shall mean the Cost Center representing Airfield Costs and Airfield Revenues.

**“Airfield Costs”** shall mean Costs related to, functionally attributable to, or allocable to the Airfield.

**“Airfield Revenues”** shall mean Revenues from Landing Fees, Fuel Flowage Fees, and Aircraft Parking Fees.

**“Airline”** shall mean the Air Transportation Company that is a party to this Use Agreement.

**“Airline Cost Centers”** shall mean (1) the Airfield Cost Center, (2) the Boarding Devices Cost Center, and (3) the Passenger Terminal Cost Center.

**“Airport”** or **“BWI Marshall”** shall mean Baltimore/Washington International Thurgood Marshall Airport.

**“Airport Security Program”** shall mean the TSA-approved security program adopted and carried out by the Airport to provide for the safety and security of persons and property in air transportation subject to C.F.R. Title 49, Part 1542.

**“Airport System”** shall mean Baltimore/Washington International Thurgood Marshall Airport and Martin State Airport.

**“ALP”** shall mean the currently approved Airport Layout Plan depicting the physical layout of the Airport and identifying the location and configuration of current runways, taxiways, buildings, roadways, utilities, nav aids, and other improvements.

**“Amortization Requirement”** shall mean (1) the combined unamortized balance of Capital Expenditures, net of any Bond proceeds, federal grants, State grants and passenger facility charge (PFC) revenues, for projects with a Substantial Completion Date prior to March 1, 2003 included in or allocable to a given Airline Cost Center consolidated into a single cost item, and amortized over twenty (20) years starting March 1, 2003 at an interest rate of four and three tenths percent (4.3%), except for the Pier B Extension Project, which will be amortized over the original useful life of that project at an interest rate of four and ninety-two hundredths percent (4.92%) plus (2) Capital Expenditures, net of Bond proceeds, any federal grants, State grants and passenger facility charge (PFC) revenues, for projects with a Substantial Completion Date after March 1, 2003 included in or allocable to a given Airline Cost Center, amortized over the useful life of each project (not to exceed thirty (30) years) starting at the Substantial Completion Date at the current interest rate on the Maryland Transportation Trust Fund’s (TTF) most recently issued bonds.

**“Boarding Devices”** shall mean passenger loading bridges, plane mates, and other devices, if any, to assist with passenger boarding onto and deboarding from aircraft.

**“Boarding Devices Cost Center”** shall mean the Cost Center representing Boarding Devices Costs and Fees.

**“Boarding Devices Costs”** shall mean Costs related to, functionally attributable to, or allocable to the Boarding Devices.

**“Boarding Devices Fees”** shall mean those fees, calculated in accordance with Article VII hereof, established by Administration to recover the Boarding Devices Costs as set forth in Exhibit 2.

**“Boarding Facilities”** shall mean a Passenger Terminal holdroom and Boarding Device.

**“Bond Documents”** shall mean the Trust Agreement between the Maryland Transportation Authority and the Bank of New York Mellon dated as of February 1, 2002, the Trust Agreement between the Maryland Economic Development Corporation and Manufacturers and Traders Trust Company dated as of October 1, 2012, and any other Trust Agreement which is or will be supported by a pledge of Revenue,, as all may be amended and supplemented.

**“Bonds”** shall have the meaning set forth in the Bond Documents.

**“BWI Marshall”** or **“Airport”** shall mean Baltimore/Washington International Thurgood Marshall Airport.

**“Capital Expenditure”** shall mean any debt-funded or equity-funded expenditure, including capitalized interest, in excess of one hundred thousand dollars (\$100,000) for the development, study, analysis, review, design, planning, acquisition, purchase, or construction of an item, which Administration determines to have a useful life of five (5) years or more. The foregoing limitations shall be net of federal funds and PFCs. Expenditures of less than one hundred thousand dollars (\$100,000) will be treated as an O&M Expense.

**“Capital Improvement Project”** shall mean a project funded by a Capital Expenditure.

**“Cargo Air Transportation Company”** shall mean an entity engaged in the Air Transportation Business of transporting property or cargo by aircraft, but not passengers at the Airport.

**“CFO Agreement”** shall mean an agreement for the Conduct of Commercial Flight Operations that has been executed by Administration and a Non-Signatory Airline.

**“COMAR”** shall mean the Code of Maryland Regulations.

**“Common-Use”** shall mean used in common by such user(s) as assigned by Administration and not leased to any single entity.

**“Cost Center(s)”** shall mean the area(s) or functional activity(ies) used in accounting for Administration’s Revenues and Costs, and in calculating and adjusting rentals, fees and charges. Cost Centers include Administrative, Airfield, Boarding Devices, Landside, Martin State, and Passenger Terminal.

**“Costs”** shall mean direct O&M Expenses, allocated Administrative O&M Expenses, Amortization Requirement, Debt Service, Extraordinary Coverage Payments, and/or the cost of Passenger Terminal Administration Space and Off-Airport Administration Space.

**“CPI-U Change”** shall mean the cumulative change in the “Consumer Price Index for All Urban Consumers (CPI-U: Selected Areas, All Items Index (1982-84 = 100) for the “Washington-Arlington-Alexandria, DC-VA-MD-WV”), published by the Bureau of Labor Statistics of the U.S. Department of Labor for the most recent twelve (12) month period for which such figures are available. If the Bureau of Labor Statistics should cease to publish the Index in its present form, calculated upon its present basis, the parties agree to accept a comparable Index concerning costs of living increases or decreases for the Washington and Baltimore Consolidated Metropolitan Statistical Area, published by an agency of the United States Government or by a recognized financial institution or economic periodical mutually acceptable to Administration and Airline.

**“Curbside Check-In Area”** shall mean the portion of Airline’s Leased Premises comprised of curbside check-in positions, all furnishings, fixtures and equipment used in the curbside check-in operation and including passenger queuing and baggage staging space. The Curbside Check-In Area shall be measured from the wall of the Passenger Terminal and shall include passenger queuing space of at least four (4) feet in depth adjacent to the Curbside Check-In positions.

**“CUTE”** shall mean Common-Use Terminal Equipment.

**“Debt Service”** shall mean the aggregate amount of principal and interest and all other related requirements becoming due and payable from Revenues during the Fiscal Year for Bonds issued by or on behalf of Administration.

**“Deplaned Destination Passenger”** shall mean any passenger, except the flight crew, disembarking from an aircraft at the Airport, and subsequently leaving the Airport by other transportation means instead of directly departing on another aircraft of the same or a different Air Transportation Company.

**“Deplaned Passenger”** shall mean any passenger, except the flight crew, disembarking from an aircraft at the Airport, even if such passenger subsequently departs from the Airport on another aircraft of the same or a different Air Transportation Company.

**“Effective Date”** shall mean July 1, 2019 or such date set forth on page one (1) hereof as the made and entered into date, whichever is later.

**“Enplaned Passenger”** shall mean any passenger, except the flight crew, boarding an aircraft at the Airport, even if such passenger previously disembarked from another aircraft of the same or a different Air Transportation Company.

**“Executive Director”** shall mean the Executive Director of Administration, or his/her designee.

**“Exclusive-Use”** shall mean a power, privilege, or other right, authorized under this Use Agreement, excluding another from enjoying or exercising a like power, privilege, or right.

**“Exclusive-Use Areas”** shall mean those areas in the Passenger Terminal at the Airport to which an Air Transportation Company has an Exclusive-Use.

**“Extraordinary Coverage Payments”** shall mean those payments, if any, established under Article IX(D).

**“FAA”** shall mean the Federal Aviation Administration, or its authorized successor(s).

**“FIS Area”** shall mean the area of the Passenger Terminal designated for the separation and screening of arriving international passengers by the Customs and Border Protection of the United States Government, as set forth in Exhibit 3, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement.

**“FIS Area Costs”** shall be equal to the square footage of the FIS Area times the Costs allocable to the Passenger Terminal (less any Amortization Requirement or Debt Service allocable to the Passenger Terminal and less any Passenger Terminal Administration Costs allocable to the Airfield, Boarding Devices, and Landside) divided by the sum of the square footage of the FIS Area and Leasehold Areas plus any Amortization Requirement or Debt Service allocable to the FIS Area after July 1, 2019.

**“FIS Area Fees”** shall mean those fees established by Administration for Deplaned Passengers that exit through the FIS Area.

**“Fiscal Year”** shall mean the twelve-month period commencing on July 1 of each calendar year and ending on June 30 of the succeeding calendar year, or such other twelve-month period as may be established by Administration from time to time.

**“Fuel Flowage Fees”** shall mean payments received by Administration from authorized service providers at the Airport for sale of aviation fuel.

**“Fueling Services”** shall mean the transportation, sale, delivery, dispensing, storage, or draining of fuel or fuel waste products to or from aircraft, vehicles or equipment.

**“Ground Handling Services”** shall mean services provided to Air Transportation Companies by a third party to include, but not necessarily be limited to, fueling services; loading and unloading of passengers, baggage and freight into aircraft; providing passenger service agents; assisting in processing of passengers and crews; furnishing and operating power units, air start units, generators, baggage carts, tugs, forklifts, service trucks, passenger vehicles and other equipment in support of aircraft operations; aircraft cleaning and lavatory service activities; deicing; and aircraft maintenance activities.

**“Ground Handling Gross Receipts”** shall mean the total amount received or realized by or accruing to Airline from all Ground Handling Services authorized by this Use Agreement in Article IV rendered at or from the Airport. Any taxes imposed by law which are separately stated and paid by the customer to Airline, which are directly payable to the taxing authority by Airline, shall be excluded from Ground Handling Gross Receipts.

**“Ground Handling Support Services”** shall mean services provided to Air Transportation Companies by a third party to include, but not necessarily limited to GSE maintenance, inflight or ground catering, skycap and wheelchair, mishandled baggage delivery, and janitorial.

**“GSE”** shall mean ground service equipment.

**“Itinerant Carrier”** shall mean those Air Transportation Companies which do not have a Use Agreement or a CFO Agreement with Administration providing for the payment of Airport use fees directly to Administration.

**“Landing Fees”** shall mean those fees, calculated in accordance with Article V hereof, to be paid by Airline for each Aircraft Arrival as set forth in Exhibit 2.

**“Landside”** shall include all vehicle parking areas, rental car facilities, Airport access roads, airline hangars, fueling facilities, cargo facilities, and all other buildings and areas located at the Airport not already included in other Cost Centers.

**“Landside Cost Center”** shall mean the non-airline Cost Center associated with the Landside, as defined herein.

**“Leased Premises”** shall mean the premises within or attached to the Passenger Terminal that are leased to Airline for its (1) Exclusive-Use or (2) Preferential-Use.

**“Leasehold Areas”** shall mean space leased pursuant to an agreement or on a per use basis, or typically available for lease in the Passenger Terminal at the Airport, such as, but not

limited to, Leased Premises, Common-Use holdrooms, Passenger Terminal Administration Space and the Non-FIS Baggage Claim Areas. Non-Leasable Areas are excluded from the definition of Leasehold Areas.

**“MAA Design Standards”** shall mean those procedures and standards to achieve consistency for design and construction projects at BWI Marshall that are available at <https://www.airportal.maa.maryland.gov/>

**“Martin State”** shall mean Martin State Airport.

**“Martin State Cost Center”** shall mean the non-airline Cost Center representing Martin State, as defined herein.

**“Maximum Landing Weight”** shall mean the maximum certificated gross landed weight in one thousand pound units for each configuration of each type of aircraft operated at the Airport, as established by the PASSUR Landing Fee Management Program, as may be modified from time to time by Administration, without supplement to this Use Agreement.

**“MDOT”** shall mean the Maryland Department of Transportation.

**“MdTA”** shall mean the Maryland Transportation Authority.

**“Minimum Annual Guarantee”** shall mean those payments, if any, established under Article X(D).

**“Minimum Use Requirement”** shall mean continuous operation of an average of at least five (5) jet aircraft daily departures (“departures”) per leased Preferential-Use holdroom, excluding the holdrooms in the commuter terminal, but including all other holdrooms leased under this Use Agreement and other leases with Administration. When determining if Airline has met the Minimum Use Requirement, Administration shall only include departures conducted by Airline in jet aircraft with less than one hundred (100) seats by multiplying number of departures in these aircraft by fifty percent (50%) and departures conducted by Airline in jet aircraft with one hundred (100) or more seats by multiplying the number of departures in these aircraft by one hundred percent (100%). Administration’s calculation of Airline’s average daily departures described above shall include the departures of Airline’s Administration-approved subtenants that notify Administration that they seek to have their aircraft departures included in Airline’s average daily departures calculation rather than their own average daily departures calculation. The average daily departures calculation will be based on activity over the immediately preceding thirty (30) day period.

**“Non-FIS Baggage Claim Areas”** shall mean those areas where Deplaned Destination Passengers not using the FIS Area collect their checked baggage and tug lane areas associated therewith, as shown on Exhibit 4, attached hereto and incorporated by reference herein, and as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement.

**“Non-FIS Baggage Claim Areas Fees”** shall mean those fees, calculated in accordance with Article VIII(B) hereof, established by Administration to recover the Costs of the Passenger Terminal attributable to the Non-FIS Baggage Claim Areas as set forth in Exhibit 2.

**“Non-FIS Baggage Claim Areas Formula”** shall mean that formula which prorates eighty percent (80%) of the Costs of the Passenger Terminal attributable to the Non-FIS Baggage Claim Areas based on the percentage of Airline’s Deplaned Destination Passengers not using the FIS Area at the Passenger Terminal to the total Deplaned Destination Passengers not using the FIS Area at the Passenger Terminal of all Passenger Air Transportation Companies at the Airport, and twenty percent (20%) of the Costs of the Passenger Terminal attributable to the Non-FIS Baggage Claim Areas equally among all Passenger Air Transportation Companies with Scheduled Service at the Passenger Terminal using the Non-FIS Baggage Claim Areas. Each Signatory Airline and its Administration-approved Signatory Airline Affiliate(s) will be treated as a single entity for purposes of determining the Signatory Airline’s portion of the twenty percent (20%) share. Notwithstanding the foregoing, Passenger Air Transportation Companies with fewer than four thousand (4,000) monthly Deplaned Destination Passengers not using the FIS Area at the Passenger Terminal shall not be assessed the twenty percent (20%) share.

**“Non-Leasable Areas”** shall mean those areas in the Passenger Terminal at the Airport that are unusable or areas that are used in common by or for the benefit of Passenger Air Transportation Companies and/or their customers and/or the public, and with other Administration-authorized users, along with all of the facilities, improvements, equipment and services which are, or hereafter may be, provided for such Common-Use. Examples of Non-Leasable Areas include, but are not limited to, utility rooms, duct ways, janitorial rooms and closets, telephone rooms, public circulation areas, restrooms, stairwells, stairways, elevators, escalators, public lounges and areas for the screening of passengers and/or their baggage by the TSA. Administration will advise the Signatory Airlines of any changes to Non-Leasable Areas during the meeting described in Article X(A).

**“Non-Signatory Airline”** shall mean any Air Transportation Company that has not entered into a Use Agreement with Administration.

**“Off-Airport Administration Space”** shall mean all space leased and occupied by Administration that is not on the Airport. The rental cost of Off-Airport Administration Space shall be allocated to the Cost Centers of the Airport (Airfield, Boarding Devices, Landside, and Passenger Terminal Cost Centers) in accordance with Exhibit 2, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement.

**“O&M Expenses”** shall mean the current expenses, paid or accrued, of operating, maintaining, and repairing the Airport System in accordance with generally accepted accounting principles. O&M Expenses shall be allocated to the Cost Centers in accordance with Exhibit 2, as may be modified from time to time by Administration after consultation with the Signatory Airlines, without amendment or supplement to this Use Agreement.

**“Passenger Air Transportation Company”** shall mean an entity engaged in or desiring to engage in the Air Transportation Business at the Airport primarily for the carriage of persons;

**“Passenger Terminal”** shall mean the Airport Terminal Building as shown on Exhibit 5, attached hereto and incorporated by reference herein, as the same may be modified, expanded or improved from time to time by Administration, without amendment or supplement to this Use Agreement.

**“Passenger Terminal Cost Center”** shall mean the Cost Center representing the Passenger Terminal Costs and fees.

**“Passenger Terminal Costs”** shall mean Costs related to, functionally attributable to, or allocable to the Passenger Terminal.

**“Passenger Terminal Administration Space”** shall mean all space in the Passenger Terminal occupied by Administration, the MdTA police, and other administrative or service units as designated by Administration.

**“Passenger Terminal Administration Space Costs”** shall be equal to the square footage of the Passenger Terminal Administration Space times the Costs allocable to the Passenger Terminal divided by the square footage Leasehold Areas. Passenger Terminal Administration Space Costs shall be allocated to the Cost Centers of the Airport (Airfield, Boarding Devices, Landside, and Passenger Terminal Cost Centers) in accordance with Exhibit 2, as may be

modified from time to time by Administration, without amendment or supplement to this Use Agreement.

**“Passenger Terminal Apron Areas”** shall mean those areas of the Airfield co-located with the Boarding Facilities that are designated by Administration for the parking of passenger aircraft and ramp equipment, and the loading and unloading of passenger aircraft, which areas are subject to change from time to time.

**“Permit Committee”** shall mean the committee presided over by Administration, the permitting authority for all tenant construction and installation projects at BWI Marshall. The Permit Committee consists of representatives from various Administration offices which may change from time to time.

**“PFC”** shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 USC App. Section 1513 and regulated by 14 CFR Part 158, as such statute and regulation currently exist or as they may be amended during the Term of this Use Agreement.

**“Pre-Approved Capital Improvement Program”** or **“Pre-Approved CIP”** shall mean planned Capital Improvement Projects as set forth on Exhibit 6. Airline agrees to the inclusion of Costs associated with the Capital Improvement Projects set forth on Exhibit 6 in the identified Airline Cost Centers and in the determination of Airline’s rentals, charges and fees upon the Substantial Completion Date of each Capital Improvement Project.

**“Preferential-Use”** shall mean a right or use having priority, but not exclusivity, over a use by other Air Transportation Companies.

**“Rate Covenant”** shall have the meaning set forth in the Bond Documents.

**“Revenues”** shall mean income received or accrued by Administration in accordance with generally accepted accounting principles from the ownership or operation of the Airport System, or any part thereof, or the leasing or use thereof.

**“Rules and Regulations”** shall mean those rules and regulations promulgated by Administration in COMAR, Volume XII, Title 11, Transportation pursuant to the Administrative Procedure Act, that State statute which applies to Administration and other State administrative agencies not specifically exempted and provides a standard framework of fair and appropriate procedures for State agencies that are responsible for both administration and adjudication of

their respective statutes, (as opposed to Tenant Directives) for the orderly use of the Airport, as the same may be amended, modified or supplemented from time to time.

**“Scheduled Service”** shall mean at least two (2) flights, or one (1) round-trip per week, continuously operated by an Air Transportation Company on a published timetable for eight (8) consecutive weeks in any ninety (90) consecutive days.

**“Signatory Airline”** shall mean any Air Transportation Company that has a fully executed Use Agreement with Administration.

**“Signatory Airline Affiliate”** shall mean a Non-Signatory Airline having a CFO Agreement with Administration, that either (1) operates certain flights at the Airport, pursuant to a code share agreement with a Signatory Airline, on which all seats sold into and out of the Airport on those certain flights are operated exclusively under the same airline code designator as the Signatory Airline, or (2) is wholly owned by the Signatory Airline, is a subsidiary of the same corporate parent as the Signatory Airline, or is the parent of a Signatory Airline. The Signatory Airline shall provide Administration with a completed Exhibit 7, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement, upon execution of this Use Agreement and an updated Exhibit 7 thirty (30) days notice prior to the Signatory Airline designating a new Signatory Airline Affiliate, which designation is subject to Administration approval solely based on a requirement that the proposed Signatory Airline Affiliate meets the above criteria and has an executed CFO Agreement, for which there is not notice of default from Administration outstanding. The Signatory Airline shall provide Administration with a thirty (30) day written notice prior to the cancellation of any designation of a Signatory Airline Affiliate.

**“Signatory Cargo Airline”** shall mean a Cargo Air Transportation Company that is a Signatory Airline.

**“Signatory Passenger Airline”** shall mean a Passenger Air Transportation Company that is a Signatory Airline.

**“Snow Removal Allowance”** shall mean an amount estimated by Administration in the annual and mid-year rate adjustment processes outlined in Article X(A) and X(B) for snow removal expenses not included in the State-appropriated Administration budget.

**“State”** shall mean State of Maryland.

**“Substantial Completion Date”** shall mean the date that a project is ready to be used for its intended purpose, as determined by Administration.

**“Tenant Directive”** shall mean a definite, written course of action, method, or procedure conveyed to tenants at the Airport of a permanent nature to supplement COMAR. Tenant Directives are maintained in the Office of the Director of BWI Airport Operations for tenants to review. To the extent that there is a conflict between any Tenant Directive and this Use Agreement, the Use Agreement shall govern.

**“Tenant Directive 401.1”** shall mean that Tenant Directive published by Administration that establishes rates, fees and charges for airlines, tenants and operators at the Airport, as may be modified from time to time by Administration, without supplement to this Use Agreement.

**“Tenant Information Advisory”** shall mean a written notice used to convey to tenants at the Airport information of a short-term nature.

**“Terminal Building Rental Rate”** shall mean that rental rate, calculated in accordance with Article VIII and Exhibit 2 hereof, to be paid by Airline annually for its Leased Premises and used in the calculation of Airline’s Non-FIS Baggage Claim Areas Fees.

**“Ticket Counter”** shall mean Airline’s Leased Premises extending the length of the back wall of the terminal lobby check-in area and the depth from the back wall to the front of the Ticket Counter millwork. In Ticket Counter configurations that do not include the standard millwork check-in podiums, the depth of the Ticket Counter leased space shall be measured from the back wall out to a distance of ten (10) feet.

**“Ticket Counter Queuing Area”** shall mean Airline’s Leased Premises from the front of the Ticket Counter extending out to a depth of twenty (20) feet.

**“TSA”** shall mean the Transportation Security Administration, or its authorized successor(s).

**“Use Agreement”** shall mean this Use and Lease Agreement between Airline and Administration.

### ARTICLE III TERM

The term of this Use Agreement shall be for a period of seven (7) years commencing on July 1, 2019 and terminating on June 30, 2026, unless cancelled sooner as provided herein, with no further option to extend beyond June 30, 2026 by either party.

## ARTICLE IV RIGHTS OF AIRLINE

- A. The rights granted hereunder are in addition to all rights elsewhere granted in this Use Agreement and relate to the conduct of Airline's Air Transportation Business at the Airport. Airline shall have the right, at its own cost and expense, and in common with others so authorized by Administration, to:
1. Operate an Air Transportation Business at the Airport, including all activities reasonably necessary for such operation.
  2. Use facilities, equipment, and improvements at the Airport for the operation of Airline's Air Transportation Business.
  3. Land, take-off, load, unload, repair, maintain, condition, service, park and store aircraft or other equipment, in areas designated by Administration; provided, however, that Airline shall not use Passenger Terminal Apron Areas to load or unload all-cargo aircraft unless otherwise authorized in writing by Administration; and further provided, however, that Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the pavement design strength or capacity of the Airfield as described in the then-current FAA-approved ALP or other engineering evaluations performed subsequent to the current ALP, including the current Airport Certification Manual.
  4. Erect or install and maintain on the Airport, at locations designated by Administration, adequate storage facilities for gasoline, oil, greases, and other fuel or supplies, in accordance with a separate contract(s) with Administration relating to such erection, installation or maintenance, and in accordance with insurance underwriters' standards and Administration's design criteria, together with the necessary pipes, pumps, motors, filters and other appurtenances incidental to the use thereof, with such facilities and appurtenances to be and remain the severable property of Airline. Should Airline install and maintain such storage facilities, Airline agrees to pay rent for such area(s) to Administration as provided in said separate contract(s).
  5. Sell tickets, document shipments, handle reservations, and load and unload persons, property, and mail at the Airport by motor vehicles or such other means of conveyance, which means of conveyance is subject to the approval of Administration, as Airline may desire or require in the operation of its Air Transportation Business.

6. Purchase, either on or off the Airport, Airline's requirements of gasoline, fuel, lubricating oil, grease, food and other passenger supplies, and any other materials and supplies, from any person or company of Airline's choice, and the right to make arrangements with any person or company of Airline's choice for work to be done for Airline, subject, however, to Airline having notified Administration in writing of such arrangements prior to commencement of the work and Administration's right to require such person or company to enter into a contract or secure a permit to conduct such business at the Airport and subject to such person's or company's compliance with federal and State security requirements.
7. Test aircraft and other equipment being utilized at the Airport in the operation of Airline's Air Transportation Business; provided, however, that said testing shall be incidental to the use of the Airport in the operation by Airline of its Air Transportation Business and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. Administration reserves the right to restrict or prohibit such testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by Administration.
8. Install and maintain identifying signs at the Airport, the general type, design and location of which shall be subject to the prior written approval of Administration. The general type, design, and location of such signs shall be compatible with and not detract from the pattern and décor of the Passenger Terminal.
9. Install, maintain and operate such electronic or electrical devices, radio, communication, meteorological and aerial navigation equipment and facilities in, on and about the Airport as may be necessary or convenient in the opinion of Airline for its operations; provided that the location and nature of such devices, equipment and facilities shall be subject to the prior written approval of Administration and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. Administration reserves the right to restrict or prohibit such electronic or electrical devices, radio, communication, meteorological and aerial navigation equipment and facilities which it reasonably deems will interfere with the use of the Airport.

10. Perform its own Ground Handling Services and Fueling Services of its aircraft and other equipment at the Airport at such locations as may be designated by Administration and in accordance with Administration's Rules and Regulations and Tenant Directives and Tenant Information Advisories; provided, however, if Airline desires to have such services performed by a contractor, it shall notify Administration in writing and employ a ramp contractor having a contract with Administration to perform such services upon the ramp and apron space, aircraft parking positions, and/or other areas for aircraft operators or Airline shall notify Administration in writing prior to commencement of the services that it desires to use the services of a contractor not holding such a contract and Administration will allow such contractor to perform the services, provided the contractor meets Administration's requirements, including but not limited to federal and State security requirements, and will accept a contract from Administration upon the same terms and conditions as regular ramp contractors, except that at Administration's option, there may be omitted from such permit or contract any provisions requiring or permitting the contractor to serve others than Airline. Airline shall have the right to perform all Ground Handling Services and Fueling Services such as it is permitted to perform for itself under this Use Agreement for any other Air Transportation Company operating at the Airport, subject to the prior written approval of Administration.
11. Hire and train, on the Airport, personnel in the employ of, or to be employed by Airline or any other Air Transportation Company, provided that such right shall not be construed as authorizing the conduct of a separate business by Airline, but shall permit Airline to perform such functions as are incidental to the conduct of its Air Transportation Business.
12. Use by Airline, its officers, employees, agents, subcontractors, invitees, and passengers (including persons calling for and delivering passengers) in common with others, of adequate and appropriate vehicular parking space. The use of such space is subject to such charges as are established by Administration.
13. Ingress to and egress from the Airport and Airline's Leasehold Areas for Airline's officers, employees, agents, subcontractors and invitees, including, but not limited to, passengers, suppliers of materials, and furnishers of services, aircraft equipment,

vehicles, machinery and other property. Such right shall be subject to Federal Aviation Regulations (FAR) Part 107, 49 C.F.R. Part 1542 and any successor regulations, applicable laws, and Administration's right in accordance with applicable law to establish reasonable and not unjustly discriminatory Rules and Regulations and Tenant Directives and Tenant Information Advisories; provided, however, that any such Rules and Regulations, Tenant Directives and Tenant Information Advisories of Administration shall not unreasonably interfere with the operation of Airline's Air Transportation Business. Administration may at any time temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway, door, passageway, or other access to Airline's Leasehold Areas or to the Airport, so long as a means of ingress and egress reasonably equivalent is concurrently made available to Airline. Airline hereby releases and discharges Administration from any and all claims, demands, or causes of action which Airline may now or at any time hereafter have arising or alleged to arise out of such a closing or re-routing.

14. With regard to the provision of food and beverages, (i) provide food and beverages or install or maintain vending machines in its non-public Exclusive-Use Areas for the sole use of Airline's employees, subject to the prior written approval of Administration, (ii) provide under a separate contract with Administration for its own flight kitchen, (iii) serve food or beverages to its passengers and crews for consumption aboard its aircraft, except that no such food or beverages may be sold by Airline in the Passenger Terminal or elsewhere at the Airport without the prior written consent of Administration, (iv) sell food and beverages in Airport's "VIP room(s)" or similar private club(s) at the Airport for consumption only in such Leasehold Areas, or (v) only in the case of irregular operations, provide food and beverages without charge to its passengers in Common-Use or Preferential-Use areas.
15. Provide either alone or in conjunction with other Air Transportation Companies or through a sub-contractor having a contract with Administration to provide such service, porter/skycap and wheelchair service or other Ground Handling Support Services for the convenience of the public.
16. Use such rights of way as may reasonably be required by Airline for communications, computer equipment, teletype, telephone, interphone, conveyor systems and power, and

other transmission lines in Airline's Exclusive-Use Areas and Preferential-Use Boarding Facilities, subject to Administration's prior written approval. Administration reserves the right to require the execution of a separate agreement between Administration and Airline for the lease and use of space and/or ground area outside the Passenger Terminal or, in the case of Airport-wide systems, e.g. public address or neutral wireless access, to provide such service directly to Airline.

17. Install such personal property, including furniture, furnishings, supplies, machinery, and equipment, in Airline's Leased Premises as Airline may deem necessary, useful or prudent for the operation of its Air Transportation Business, subject to Administration's prior written approval. Title to such personal property shall remain with Airline, subject to the provisions of this Use Agreement.
  18. Construct such modifications, finishes, and improvements in its Leased Premises, as Airline may deem necessary or prudent for the operation of its Air Transportation Business, subject to Administration's prior written approval.
  19. Enter into agreements providing for pay telephones or internet connectivity by the public in its airline club(s) and VIP room(s), if any; however, Airline shall not enter into any agreements providing for pay telephones or internet connectivity for the public anywhere else in the Passenger Terminal. Airline may not install cash machines (ATMs) or vending machines, sell merchandise or operate any other sort of retail business in its airline club(s) and VIP room(s) at the Airport without the prior written approval of Administration except as specifically authorized herein.
- B.** The rights and privileges granted to Airline pursuant to this Article IV may be exercised on behalf of Airline by other Signatory Airlines or contractors authorized by Administration to provide such services at the Airport, subject to the prior written approval of Administration and further subject to all laws, rules, regulations, Tenant Directives, Tenant Information Advisories, fees and charges as may be applicable to the activities undertaken.
- C.** Airline may exercise on behalf of any other Air Transportation Company any of the rights granted Airline herein, so long as Airline is currently exercising those same rights in the operation of Airline's own Air Transportation Business at the Airport, subject to the prior written approval of Administration and further subject to all laws, rules, regulations, Tenant

Directives, Tenant Information Advisories, fees and charges as may be applicable to the activities undertaken.

- D. Nothing in this Article IV shall be construed as authorizing Airline to conduct any business separate and apart from the conduct of its Air Transportation Business.
- E. The rights and privileges granted to Airline pursuant to this Article IV shall be subject to any and all reasonable and not unjustly discriminatory Rules and Regulations and Tenant Directives and Tenant Information Advisories established by Administration, as may be amended from time to time.
- F. Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Use Agreement are hereby reserved for and to Administration.

#### **ARTICLE V LANDING FEES**

Airline shall pay monthly Landing Fees to Administration for use of the Airfield for each Aircraft Arrival at a landing fee rate per thousand pounds of Maximum Landing Weight. The landing fee rate for any given Fiscal Year shall be computed in accordance with the methodology in Exhibit 2 of this Use Agreement, which methodology shall be used for subsequent landing fee rate adjustments. Such fee shall be published in Tenant Directive 401.1. The landing fee rate for any given Fiscal Year shall be calculated by dividing the Airfield Costs plus the Snow Removal Allowance plus any bad debt expenses allocable to the Airfield minus the Airfield Revenues, excluding Landing Fees, by the sum of (i) the projected aggregate Maximum Landed Weight of the Signatory Airlines' flights, (ii) the projected aggregate Maximum Landed Weight of the Signatory Airline Affiliate's flights, and (iii) one hundred and twenty five percent (125%) of the projected aggregate Maximum Landed Weight of Non-Signatory Airlines' flights.

#### **ARTICLE VI GROUND HANDLING AND OTHER FEES**

Airline shall pay to Administration monthly five percent (5%) of its Ground Handling Gross Receipts from Ground Handling Services it provides to Non-Signatory Airlines, except for Administration-approved Signatory Airline Affiliates, at the Airport. Airline agrees to pay the rentals, charges and fees, as applicable, computed and published by Administration in Tenant

Directive 401.1 for the use of facilities and/or equipment of Administration, if any, not otherwise covered in this Use Agreement.

## **ARTICLE VII BOARDING DEVICE FEES**

- A.** For the use of each Boarding Device at Airline's Preferential-Use Boarding Facilities, Airline shall pay Administration at the rate computed in accordance with the methodology in Exhibit 2 of this Use Agreement, which methodology shall be used for subsequent rate adjustments. Such fees shall be published in Tenant Directive 401.1. The Boarding Device Fee for any given Fiscal Year shall be calculated by dividing the Boarding Device Costs by the number of Boarding Devices at the Airport.
- B.** In addition, Airline shall pay Administration for each use by Airline of Boarding Devices at the Airport other than Airline's Preferential-Use Boarding Facilities, in accordance with Tenant Directive 401.1.
- C.** For each outbound flight at Airline's Preferential-Use Boarding Facilities assigned by Administration to an Air Transportation Company other than Airline, its Signatory Airline Affiliates, or its Administration-approved subtenant(s), a credit shall be granted by Administration to Airline at the rate established in Tenant Directive 401.1. Airline shall be required to file for such credit with Administration in the month following any other Air Transportation Company's use of the Boarding Devices at Airline's Preferential-Use Boarding Facilities.
- D.** In addition, Airline shall pay quarterly the utility costs associated with Airline's metered Preferential-Use Boarding Facilities in conformity with the costs recorded by said meters. Utility costs paid by Passenger Air Transportation Companies shall be credited to the Boarding Device Costs.

## **ARTICLE VIII TERMINAL BUILDING RENTAL RATES AND NON-FIS BAG CLAIM AREA FEES**

- A.** Leasehold Areas
  - 1.** Administration leases to Airline and Airline agrees to lease through the term of the Use Agreement its Leased Premises, subject to this Use Agreement and Airport Rules and Regulations. Airline shall pay Terminal Building Rental Rates to Administration for its Leased Premises shown on Exhibit 8 of this Use

Agreement. Revisions to Exhibit 8 shall be made by Administration from time to time during the Term of this Use Agreement and the revised exhibits shall replace the then current exhibits without an amendment or supplement to this Use Agreement. Administration shall provide Airline with a copy of the revised Exhibit 8 within thirty (30) days of such revision. The Terminal Building Rental Rates were computed in accordance with the methodology in Exhibit 2 of this Use Agreement, which methodology shall be used for subsequent rate adjustments. Such rates shall be published in Tenant Directive 401.1. The ticket counter Terminal Building Rental Rate for any given Fiscal Year shall be calculated by dividing (i) the Passenger Terminal Costs minus the FIS Area Costs, minus any Debt Service or Amortization Requirement allocable to the Non-FIS Baggage Claim Areas, minus Passenger Terminal Administration Costs allocable to the Airfield, Boarding Devices, and Landside Cost Centers, by (ii) the total weighted equivalent square footage of the Leasehold Areas excluding the Passenger Terminal Administration Space. To determine the total weighted equivalent square footage of the Leasehold Areas, all Leasehold Areas excluding the Passenger Terminal Administration Space shall be classified by Administration into the categories shown on Exhibit 2, and the total square footage of each category of Leasehold Areas excluding the Passenger Terminal Administration Space shall be multiplied by the weighted value identified in Exhibit 2.

2. All Leased Premises leased to Airline hereunder are leased in an "as-is" condition.

**B. Non-FIS Baggage Claim Areas**

1. Subject to the provisions of this Article VIII, Airline shall pay monthly Non-FIS Baggage Claim Areas Fees to Administration according to the Non-FIS Baggage Claim Areas Formula.
2. The total square footage of space and facilities in the Non-FIS Baggage Claim Areas, for which Airline in common with other Passenger Air Transportation Companies shall pay Non-FIS Baggage Claim Areas Fees, is shown on Exhibit 2 of this Use Agreement, which shall be subject to adjustment as such areas are

changed from time to time by Administration, without amendment or supplement to this Use Agreement.

3. Non-FIS Baggage Claim Areas Fees at the commencement of this Use Agreement are computed in accordance with the methodology in Exhibit 2 of this Use Agreement, which methodology shall be used for subsequent rate adjustments. Such fees shall be published in Tenant Directive 401.1. The cumulative Non-FIS Baggage Claim Areas Fees shall equal the Costs of the Passenger Terminal attributable to the Non-FIS Baggage Claim Areas (the square footage of the Non-FIS Baggage Claim Areas times the applicable Terminal Building Rental Rate, as determined under Article VIII(A)(1)) plus any Amortization Requirement or Debt Service attributable to the Non-FIS Baggage Claim Areas plus any bad debt expenses allocable to the Passenger Terminal and/or Boarding Devices. Non-FIS Baggage Claim Areas Fees shall be allocated to Passenger Air Transportation Companies based on the Non-FIS Baggage Claim Areas Formula.

#### **ARTICLE IX BOND DOCUMENTS AND EXTRAORDINARY COVERAGE PAYMENTS**

- A. General. In the event of conflicts between this Use Agreement and the Bond Documents, the Bond Documents shall govern. It is mutually understood and agreed that, so long as any Bonds secured by the Bond Documents are outstanding, the Bond Documents shall govern the deposit and application of Revenues.
- B. Internal Revenue Code of 1986. Airline understands that MdTA, MEDCO, and/or MDOT have issued and/or may issue additional Bonds on behalf of Administration. With respect to Bonds that may be issued, the interest on which is intended to be excludable from gross income of the holders for Federal income tax purposes under the Code, Airline agrees that it will not act, or fail to act (and will immediately cease and desist from any action, or failure to act) with respect to the use of its Airline's Leased Premises, if the act or failure to act may cause Administration, MdTA, MDOT, or MEDCO to be in noncompliance with the provisions of the Code, and Airline will not take or persist in any action or omission which may cause the interest on such Bonds to be includable in the gross income of the holders thereof for Federal income tax purposes.

- C. SEC Rule 15c2-12. Upon Administration's written request, Airline shall provide Administration with such information with respect to Airline as Administration may require in writing in order for Administration to comply with continuing disclosure obligations under Securities and Exchange Commission Rule 15c2-12 related to the Bonds, as it may be amended from time to time. Satisfaction of such obligation may be met by Airline referring Administration to the SEC's website, where such requested information about Airline may be publicly-available. To the extent that Airline is an "Obligated Party" with respect to the Bonds as per Securities and Exchange Commission Rule 15c2-12, Airline agrees to execute the Continuing Disclosure Agreement incident to such financing.
- D. Extraordinary Coverage Protection. It is imperative that Administration generate sufficient Revenues to meet the requirements of the Rate Covenant in the Bond Documents. If Administration estimates that it will not meet the requirements of the Rate Covenant in the Bond Documents during any Fiscal Year of the Term hereof, Administration may impose Extraordinary Coverage Payments to meet such requirements, upon thirty (30) days prior written notice to the Signatory Airlines. Such Extraordinary Coverage Payments will be allocated among the Signatory Airlines on the basis of payments of total rates, fees, and charges under this Use Agreement and under Tenant Directive 401.1 for the most recently completed Fiscal Year. Administration will deposit and retain such Extraordinary Coverage Payments in a separate account only to the extent necessary to meet requirements of the Rate Covenant in the Bond Documents. Excess Extraordinary Coverage Payments shall be credited back to each Signatory Airline in proportion to the amounts paid by each Signatory Airline. Administration will provide at least thirty (30) days' notice to the Signatory Airlines of the imposition of and financial information supporting the Extraordinary Coverage Payments. The Extraordinary Coverage Payments will be invested in a manner that does not cause an adverse effect on the tax status of the Bonds.

## ARTICLE X RATE AND FEE ADJUSTMENTS

- A. Annual Rate and Fee Adjustments
1. Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and Terminal Building Rental Rates are published in Tenant Directive 401.1, as may be modified from time to time by Administration, without amendment or

supplement to this Use Agreement, and are subject to adjustment on July 1, 2019 and each July 1 thereafter, during the term of this Use Agreement. Airline shall pay Administration according to the then current rates set forth therein.

2. Administration will meet with the Signatory Airlines at least thirty (30) days prior to the annual adjustment of Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and/or Terminal Building Rental Rates and provide preliminary budget information for the ensuing Fiscal Year, estimated budget information for the current Fiscal Year, and actual financial information for the prior Fiscal Year, including the Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and Terminal Building Rental Rates calculation in writing to the Signatory Airlines no less than forty five (45) days prior to implementation of the adjustment. If the calculation of any rate or fee contemplated in this Article X is not completed by July 1 for any reason, the rate then in effect shall continue to be paid by Airline until such calculation of the adjusted rate is completed. The adjusted rate will be retroactive to the first day of the Fiscal Year and any payments by Airline to Administration shall be adjusted accordingly.

**B. Mid-Year Rate and Fee Adjustments**

1. Administration may implement a mid-year reasonable and not unjustly discriminatory adjustment of Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and/or Terminal Building Rental Rates upon forty-five (45) days prior written notice to the Signatory Airlines, if the total Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and/or Terminal Building Rental Rates payable pursuant to the then-current rates and fees or the total costs in the Passenger Terminal, Airfield, or Boarding Device Cost Center are projected by Administration to vary by five percent (5%) or more from the amounts estimated by Administration at the beginning of the Fiscal Year.
2. Administration will meet with the Signatory Airlines at least thirty (30) days prior to the date of any mid-year Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and/or Terminal Building Rental Rates adjustment.

- C. Year-End Reconciliation of Airline Payments. Within one hundred and eighty (180) days after the completion of a Fiscal Year, Administration shall calculate any surplus or deficit in Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and/or Terminal Building Rental Rates using actual Costs and Revenues from the preceding Fiscal Year to determine any surplus or deficit in the amount of Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and/or Terminal Building Rental Rates paid by Airline during the most recently completed Fiscal Year. In the event any Minimum Annual Guarantee payments are collected from any Signatory Airline for a given Fiscal Year, the Minimum Annual Guarantee payments shall be credited to the other Signatory Airlines which are subject to the Minimum Annual Guarantee in proportion to each of those Signatory Airline's Landed Weight for the Fiscal Year. Any such surplus or deficit shall be paid directly to the other party in a lump sum within two hundred and forty (240) days after the completion of a Fiscal Year.
- D. Minimum Annual Guarantee. If payments by Airline and its Signatory Airline Affiliates of rates, fees, and charges under this Use Agreement or under Tenant Directive 401.1 do not total two hundred thousand dollars (\$200,000) for a given Fiscal Year, Airline shall make supplemental payments as part of the year-end reconciliation such that payments by Airline of rates, fees, and charges under this Use Agreement, under Tenant Directive 401.1, and the Minimum Annual Guarantee payments total two hundred thousand dollars (\$200,000.)
- E. Adjustments to Landing Fees, Boarding Device Fees, Non-FIS Baggage Claim Areas Fees, and/or Terminal Building Rental Rates will be published in the Tenant Directive 401.1 and shall apply without the necessity of formal amendment or supplement of this Use Agreement.

#### **ARTICLE XI INFORMATION TO BE SUPPLIED BY AIRLINE**

- A. Not later than ten (10) days after the end of each calendar month, Airline shall file with Administration a written Activity Report on the form provided by Administration as shown on Exhibit 1, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement, for activity conducted by Airline during said month. Such activity reporting shall include, but not be limited to, all information requested on Exhibit 1. The monthly Activity Report shall also indicate Ground Handling Gross Receipts

earned by Airline from Ground Handling Services it provides to Non-Signatory Airlines, except for Signatory Airline Affiliates, at the Airport, along with a list of those Air Transportation Companies to which Airline provided Ground Handling Services at the Airport during the prior month.

- B.** For Ground Handling Services provided to Itinerant Carriers, Airline shall also be required to submit a separate written Activity Report and collect all applicable landing, parking and other Airport use fees as set forth in the Tenant Directive 401.1, a sample of which is attached as Exhibit 9 of this Use Agreement, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement, from aircraft serviced by Airline, unless the operator of such aircraft shall provide evidence that payment was already made to Administration. Airline shall remit ninety-five percent (95%) of any such Airport use fees collected from Itinerant Carriers to Administration monthly along with its five percent (5%) of Ground Handling Gross Receipts as set forth in Article VI.
- C.** Administration shall have the right to rely on said Activity Reports in determining rentals, fees, and charges due hereunder. Airline shall have full responsibility for the accuracy of said Activity Reports. In the event that Administration implements, after consultation with the Signatory Airlines, a landing fee management program or similar system for invoicing Landing Fees, Administration shall invoice Airline for Landing Fees based on flight activity provided by such system. In the event flight activity information from the landing fee management program or similar system conflicts with Airline's Activity Report, the landing fee management program or similar system shall prevail. Payment deficiencies due to incomplete or inaccurate Activity Reports may be subject to late fees as set forth in Article XII(A)(4) of this Use Agreement, provided that any such late fees for payment deficiencies in Landing Fees or Non-FIS Baggage Claim Area Fees at the Airport shall be credited by Administration against that year's Costs in the calculation of Landing Fees or Non-FIS Baggage Claim Area Fees for the purposes of determining actual surpluses or deficits thereof.
- D.** At least ninety (90) days prior to each July 1 during the Term of this Use Agreement, Airline shall advise Administration in writing of its estimated total Maximum Landing Weight forecast for all of its flights at the Airport for the next succeeding Fiscal Year.

- E. On or before June 30th of each calendar year, Airline shall provide Administration an annual written summary of all Ground Handling Services and Ground Handling Support Services at the Airport. Airline shall notify Administration in writing prior to the commencement of the services of a contractor and Administration will allow such contractor to perform the services provided that the contractor meets Administration's requirements, including but not limited to federal and State security requirements, and enters into a Contract with Administration to provide such services at the Airport. Airline shall promptly notify Administration in writing of new or terminated service contracts.

## ARTICLE XII PAYMENTS

### A. Payments to Administration

1. Administration will invoice Airline for payments of one-twelfth (1/12) of the total annual rent for Airline's Leased Premises as set forth in Article VIII(A) and for Airline's Preferential-Use Boarding Devices as set forth in Article VII(A). Payments shall be due to Administration on the first (1<sup>st</sup>) day of each month during the term of the Use Agreement.
2. Landing Fees as set forth in Article V, per-use Boarding Device Fees as set forth in Article VII(B), Non-FIS Baggage Claim Areas Fees as set forth in Article VIII(B), and other fees as set forth in Article VI will be payable within thirty (30) days of invoice by Administration. Administration will invoice Airline after receipt of the Activity Report. In the event Airline does not submit an Activity Report by its due date, Administration will issue an invoice in accordance with Article XII(C).
3. Activity Reports submitted by Airline are considered final for Administration's billing purposes. Airline may only submit amendments to Activity Reports with prior approval of Administration.
4. Late fees may be assessed at one and one-quarter percent (1.25%) per month of the amount owed to Administration for past due payments. The period for charging a late fee will begin with the payment due date or the due date of the invoice, as the case may be, and continue to the date payment is received whenever payment is received more than thirty (30) days after the due date. This provision shall not preclude Administration from terminating this Use Agreement for default due to the non-

payment of rentals, fees, or charges, as provided for in Article XXIII herein, or from exercising any other rights contained herein or provided by law.

**B. PFCs to be held in Trust**

1. Airline acknowledges that Administration has the right to assess airline passengers a PFC for the use of the Airport in accordance with 49 U.S.C. Section 40117 and the rules and regulations thereunder (14 C.F.R. Part 158, herein the PFC Regulations) and as otherwise hereinafter authorized or permitted. Airline shall collect on behalf of and remit to Administration on a timely basis any such charges in accordance with the requirements of the PFC Regulations, including but not limited to holding any charges collected by Airline, pending remittance to Administration, in trust for the benefit of Administration. Airline shall remit PFC to Administration by separate check and must include an itemized statement with its payment detailing the amount of PFC remitted. Administration shall have the right to use all such PFC collected in any lawful manner.
2. Remittance advices and PFC Quarterly Reports, if any, shall be sent to:  
MAAPFCReports@BWIAirport.com (not case sensitive) or  
PFC Accounting Manager  
Maryland Aviation Administration  
PO Box 46129  
Baltimore MD 21240-6129
3. Airline and Administration shall comply with and shall observe all of the provisions of the PFC Regulations as they apply to each party.
4. If Airline fails to remit PFC revenue collected to Administration within the time limits established by the PFC Regulations and within ten (10) calendar days after receipt of a written notice of non-payment from Administration, Airline shall be deemed to be in default pursuant to Article XXIII(A)(17). In addition, any late payment of the PFC may be subject to late fees computed at the rate of one and one-quarter percent (1.25%) per month from the due date until paid.
5. PFC payments due and payable hereunder shall be paid in lawful money of the United States of America, without set off, by check made payable to the Maryland Aviation Administration or by wire transfer and delivered to:

**Via Wire Transfer**

Wilmington Trust, N.A.  
One Light Street – 14<sup>th</sup> Floor – MD2-L14A  
MD2-L14A  
Baltimore MD 21202  
ABA Number 022 000 046  
Account # 166 298 26 (for ACH only)  
Acct. Title: MTA BWI Airport 2003 Revenue Fund  
Acct. Type: Checking

To Benefit:

**Via U.S. Mail**

Wilmington Trust, N.A.  
One Light Street – 14<sup>th</sup> Floor –  
Baltimore MD 21202

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(Name of Airline)

Addresses or bank accounts may change from time to time upon written notification from Administration to Airline.

- C. In the event Airline fails to submit any monthly Activity Reports on a timely basis as required in Article XI of this Use Agreement, Administration shall estimate the rentals, fees, and charges based upon the highest month of the previous twelve (12) months' activity reported by Airline, or upon the basis of such other estimate thereof as Administration, in its sole discretion, deems reasonable, and issue an invoice to Airline for same. Airline shall be liable for any deficiencies in payments based on estimates made under this provision; payments 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, Administration shall either apply such overpayment as a credit against a subsequent amount due for such rentals, fees, and charges from Airline or issue a refund, provided, however, Airline shall not be entitled to any credit for late fees on payments of such estimated amounts.
- D. In the event Airline's obligations with respect to its Leased Premises or any other 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.
- E. Remittance advices shall be sent to [maaacctreceivable@bwiairport.com](mailto:maaacctreceivable@bwiairport.com). All payments for Airport use fees, except PFC payments, due and payable hereunder shall be paid in lawful

money of the United States of America, without set off, by check made payable to the Maryland Aviation Administration or by wire transfer and delivered to:

**Via Wire Transfer**

Bank of America  
9000 Southside Blvd.  
Jacksonville FL 33256  
ABA # 0520-0163-3 (for ACH Only)  
0260-0959-3 (for Federal Wires)  
Account # 3938706172  
Swift Code: BOFAUS3N  
Acct. Name: State of Maryland J06 Maryland Aviation Administration (BWI)

**Via U.S. Mail**

Maryland Aviation Administration  
PO Box 46129  
Baltimore Washington International Airport  
Baltimore MD 21240-6129

To Benefit:

\_\_\_\_\_  
(Name of Airline)

- F. All or any portion of the payments due from Airline under this Use Agreement shall be paid by Airline to any party designated by Administration in writing with reasonable notice and instructions as to payment.
- G. In the event Airline's past due account is forwarded by Administration to the State of Maryland Central Collection Unit (CCU), Airline will be responsible to pay CCU's standard collection fees (currently seventeen percent (17%)) in accordance with COMAR 17.01.01.07 in addition to any amounts past due.

**ARTICLE XIII PERFORMANCE BOND(S)**

- A. Airline shall be required to execute and deliver to Administration, performance bond(s) in amount indicated in the written notification of Administration as a performance guarantee for Boarding Devices Fees (as set forth in Article VII of this Use Agreement) and rent (as set forth in Article VIII(A) of this Use Agreement) for Airline's Leased Premises payable by Airline to Administration. Airline shall maintain such performance bond(s) for the entire term of the Use Agreement, to include any extension thereto, except as permitted under Article XIII(H) of this Use Agreement.
- B. The performance bond(s) required in Article XIII(A) of this Use Agreement may be combined into one (1) single bond in the required total amount.

- C. The amount of the said performance bond(s) shall be subject to adjustment at the end of each Fiscal Year. Upon the written notification of Administration, Airline shall modify the amount of the performance bond(s) to a dollar amount equal to one fourth (25%) of the amounts reasonably estimated to be invoiced to Airline by Administration in the respective categories described in Article XIII(A) above during the current Fiscal Year.
- D. The performance bond(s) assures performance of Airline's obligations under this Use Agreement and the payment to Administration of all required fees and shall be subject to claim in full or in part by Administration in the event of failure by Airline to fully perform its obligations under this Use Agreement.
- E. The performance bond(s) may be issued for a one (1) year period, provided, however, that evidence of renewal or replacement of the said bond(s) must be submitted annually by Airline to Administration at least thirty (30) days prior to the expiration date of the bond(s). The performance bond(s) shall contain language that the surety company shall notify Administration in writing within fifteen (15) days of a determination that the performance bond(s) is to be terminated or is not going to be renewed.
- F. Airline may substitute in place of a performance bond an irrevocable letter of credit acceptable to Administration and the Attorney General of Maryland from a financial institution approved by the Maryland State Treasurer in the amount required.
- G. The surety, or sureties, upon the required performance bond(s) shall be a corporate surety, or sureties, authorized to do business in the State of Maryland by the Maryland Insurance Administration and the Maryland Department of Assessments and Taxation.
- H. If Airline has had no incidences of late payment of more than thirty (30) days of any invoices not otherwise covered by another performance bond(s) for twelve (12) month period after July 1, 2019, Administration shall, at the request of Airline, waive the performance guarantee. In the event Airline has an incident of late payment of more than thirty (30) days for any invoice not otherwise covered by another performance bond(s), Airline shall provide a performance guarantee in accordance with this Article XIII.

#### **ARTICLE XIV OBLIGATIONS OF AIRLINE**

- A. Airline shall not 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, fire protection, utility, electrical, security or other systems installed or located from time to time at the Airport; and Airline shall not engage in any activity prohibited by Administration's Rules and Regulations or Tenant Directives or Tenant Information Advisories, as amended or supplemented from time to time.

- B.** As soon as possible after release from proper authorities, Airline shall move any of its disabled aircraft to such Aircraft Parking and Storage Areas as may be reasonably designated by Administration, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by Administration; provided, however, and subject to procedures and reimbursements set forth in Article XVIII(C)(6) of this Use Agreement, Airline shall be requested to remove such disabled aircraft from its Preferential-Use Boarding Facilities only if deemed necessary due to congestion of aircraft upon said area, the need to make space available for other aircraft, snow removal or other operational requirements. In the event that Airline shall fail to remove any of its disabled aircraft as expeditiously as possible after release by proper authorities and after Administration's request that such aircraft be removed for a reason set forth above, Administration may, without any liability of Administration to Airline, cause the removal of such disabled aircraft, whereupon Airline shall pay to Administration all costs thereof incurred by Administration plus a twenty-five percent (25%) administrative fee. In such case, Airline also agrees that if Administration moves Airline's aircraft (1) any claim for compensation against Administration and any of its officers, agents, employees, contractors or representatives for any loss or damage sustained to any such disabled aircraft, or any part thereof, by reason of such removal is waived, and (2) Airline shall indemnify Administration and its officers, agents, employees, contractors and representatives against all liability arising out of such removal of said aircraft.
- C.** Airline shall maintain its GSE in good appearance and operating condition. All Airline GSE shall be clearly identified by company markings or decals. Airline shall promptly remove surplus or inoperable GSE from the Airfield.
- D.** The use of Boarding Devices by Airline shall be subject to the following terms and conditions:

1. The Boarding Devices may be operated by employees of Airline but no such employees shall be permitted to operate the Boarding Devices until they have satisfactorily completed a course of instruction conducted by Administration or its designated representative(s) in the proper use and operation of the Boarding Devices, and have received a certificate from Administration or its designated representative(s) qualifying them to operate the Boarding Devices.
  2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by operation of the Boarding Devices by its employees, agents, or representatives.
- E.** Airline shall not maintain or operate in the Passenger Terminal or elsewhere at the Airport a cafeteria, restaurant, bar, or cocktail lounge for the purpose of selling food and beverages to the public or to Airline's employees and passengers, except as may be permitted under Article IV(A)(14) of this Use Agreement.
- F.** Airline shall, at all times, preserve, maintain and keep its Leased Premises in an orderly, clean, neat, and sanitary condition, free from fuel, oil, trash, debris and other foreign objects resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have maintenance, janitorial and operation responsibilities designated to be those of Administration pursuant to Exhibit 10, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement. Airline shall provide for janitorial services in Airline's Exclusive-Use Areas using its own staff or subcontractor and in compliance with the indemnity and insurance provisions outlined in the General Provisions. Airline shall cooperate with Administration in exercising preventive measures for pest control in its Leased Premises.
- G.** Airline shall operate and maintain at its own expense any improvements and/or equipment installed by Airline in its Leased Premises, in addition to its other responsibilities for maintenance, cleaning and operation as set forth in Exhibit 10 of this Use Agreement.
- H.** Airline shall, at all times, use reasonable efforts to conduct all aspects of its Air Transportation Business at BWI Marshall, including but not limited to, (1) management of passenger check-in lines, (2) accurate and timely input of flight information into Administration's systems, e.g. multi-use flight information display system (MUFIDS), and baggage information display system (BIDS), (3) written notification at least sixty (60) days

in advance to Administration of planned schedule changes, including but not limited to equipment changes, flight times, and number of flights, (4) prompt notification to Airport Operations of system disruptions, tarmac delays and operational or equipment changes that will impact Administration or the Airport, (5) wheelchair services, and (6) provide a means (e.g. signs in Non-FIS Baggage Claim Area, phones, computer kiosks, and/or personnel) for customers to submit baggage service needs to Airline.

- I. Airline shall keep all of its furniture, carpeting and other equipment or belongings in its Leased Premises that are accessible to the public in a neat, clean and presentable appearance, as determined by Administration, at all times. Any such furniture, carpeting, equipment, or belongings that are broken or damaged must be repaired or removed expeditiously.
- J. Airline shall advise Administration when its Preferential-Use Boarding Facilities are available for sublease.
- K. Airline shall not do or permit its agents or employees to do any act or thing upon the Airport that will be in conflict with or violate the requirements of the TSA's Federal Aviation Regulations regarding Airport security or any successor document, or Administration's TSA approved Airport Security Program. Airline shall sponsor and control their contractors' SIDA access in accordance with the Airport Security Program. Any fines and/or penalties levied against Administration for security violations at the Airport caused by Airline or any of its employees, agents, contractors, or suppliers not directly under contract or other form of written agreement with Administration while on the Airport for Airline's business, shall be immediately due and payable to Administration by Airline.
- L. Any work by Airline and its contractors shall be conducted in an orderly and proper manner, and shall not otherwise annoy, disturb, create a hazard, or be offensive to others at the Airport, or interfere with other projects on, or the operations of, the Airport. Airline shall promptly comply, and shall cause its contractors to comply, with any reasonable request from Administration to correct the conduct of the contractors. In the event Airline or its contractors fail to so comply, Administration shall have the right to stop any or all work being performed, until such compliance is achieved, without terminating this Use Agreement.

- M. In addition to any other rights and remedies provided to Administration herein, Administration may, without any liability of Administration to Airline, perform any obligations of Airline set forth herein which Airline has reasonably failed to perform in a timely manner, after written notice, in which case Airline shall pay to Administration, upon receipt of invoice, Administration's costs incurred therefor, plus a twenty-five percent (25%) administrative fee, unless a different payment requirement is stated in this Use Agreement.

#### ARTICLE XV OBLIGATIONS OF ADMINISTRATION

- A. Administration agrees that it will at all times, except as otherwise provided in this Use Agreement, maintain and operate the Airport in a first class manner consistent with airports of similar size and in compliance with its obligations set forth on Exhibit 10, and keep the Airport and the appurtenances, facilities and services now or hereafter connected therewith in an orderly, clean, neat and sanitary condition and in reasonable repair consistent with airports of similar size.
- B. Administration agrees, to the extent it is legally able so to do, to use reasonable efforts to keep the Airport and its approaches free from obstruction, congestion, and interference for the safe, convenient, and proper use thereof by Airline.
- C. Administration agrees to make reasonable efforts to keep the Airport reasonably free from ice, snow, and other foreign matter, which could adversely affect Airline's operations, and agrees to maintain and operate the Airport facilities to conform to the requirements of the FAA and other governmental agencies and regulatory authorities having jurisdiction over the Airport.
- D. Administration agrees to appropriately furnish and maintain in safe condition all Non-Leasable Areas in and about the Airport, which are used by, or made accessible to the public, and to provide its other responsibilities for maintenance, utilities, cleaning and operation of Leased Premises as set forth in Exhibit 10 of this Use Agreement, except that Airline shall repair damage in a timely manner when such damage results from improper operation, misuse, abuse or negligence on the part of Airline or its agents, or when such damage results from alterations performed by Airline or any agents operating under the control of Airline, whether or not the alterations were approved by Administration. Should Administration install, or require Airline to install, meters or submeters in Airline's Leased

Premises, Airline shall pay Administration directly for the metered charges. Prior to this change, Administration shall notify the Signatory Airlines of the installation of the meters or submeters and provide an updated Exhibit 2, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement.

- E. Administration shall use reasonable efforts to provide Airline, its employees, passengers and invitees (including persons calling for and delivering passengers) in common with the other Air Transportation Companies at the Airport and their employees, passengers and invitees with adequate vehicular parking space at the Airport at charges to be established by Administration.
- F. **Technological Advances.** It is understood and agreed that, during the term of this Use Agreement, various technological advances may occur that would improve the efficient handling of passengers, baggage, and cargo in and about the Airport and the Signatory Airlines' use of and operations at the Airport. In such event, Administration and Airline agree to consult as to the applicability of such technological advances to the Airport and the efficient use of facilities if required to implement them. It is understood and agreed that Airline shall not have any obligations to share proprietary or commercially sensitive information in connection with software or other technological advancements. Any implementation of CUTE at Airline's Leased Premises during the term of this Use Agreement will be subject to the mutual agreement of Airline and Administration.

## **ARTICLE XVI CAPITAL EXPENDITURES**

- A. **Need for Capital Expenditures.** Administration and Airline recognize that Capital Expenditures to preserve, rehabilitate, protect, enhance, expand, or otherwise improve the Airport, or any part thereof, will be required during the term of this Use Agreement.
- B. **Pre-Approved Capital Improvement Program (Pre-Approved CIP).** Administration has identified on Exhibit 6 of this Use Agreement the Capital Expenditures in the Pre-Approved CIP planned for inclusion in Airline Cost Centers. Airline agrees to the inclusion of Airport Expenses associated with the Capital Improvement Projects set forth on Exhibit 6 in the identified Airline Cost Centers and in the determination of Airline's rentals, charges and fees upon the Substantial Completion Date of each Capital Improvement Project. Modification or amendment of Exhibit 6 shall not require a formal amendment or

supplement to this Use Agreement but shall be subject to the provisions in Article XVI(C)(3)(a)(iii) as applicable.

C. Signatory Airline Review of Proposed Capital Improvement Projects

1. Airline acknowledges that nothing contained in this Use Agreement, including but not limited to the withholding of Capital Improvement Project concurrence by the Signatory Airlines pursuant to Article XVI(C)(4) of this Use Agreement, in any way limits or restricts the rights of Administration to implement Capital Improvement Projects at the Airport at any time.
2. Airline acknowledges that the rights granted in this Article XVI are expressly limited to the withholding of Airline concurrence (in conjunction with the other Signatory Airlines pursuant to the results of a Signatory Airline vote as outlined below) related to the inclusion of the Amortization Requirement or Debt Service of certain Capital Improvement Project(s) and their attributable O&M Expenses in the applicable rate base for the Airline Cost Centers during this Use Agreement's term. Airline acknowledges that all Capital Expenditure, Amortization Requirement, Debt Service, and/or O&M Expenses referred to in this Article XVI are net of PFC and grant funded amounts.
3. Signatory Airline Consultation Process
  - a. Administration shall provide a written notification, including, to the extent available, project description, justification, budget, and schedule, to the Signatory Airlines identifying any Capital Expenditures for which:
    - i. Administration plans to commence implementation of a new Capital Improvement Project not included in the Pre-Approved CIP in the forthcoming Fiscal Year or the Fiscal Year thereafter, to include the Amortization Requirement, Debt Service, and/or the O&M Expenses of the Capital Improvement Project in an Airline Cost Center rate base,
      - for construction, there is a Capital Expenditure estimate, net of PFC and grants, of more than fourteen million dollars (\$14,000,000), as adjusted annually by the CPI-U Change, or
      - for acquisition of moveable capital equipment (consisting of, but not limited to, fire fighting equipment, loading bridges, trucks, tractors, and

snow removal equipment), there is a Capital Expenditure estimate, net of PFC and grants, of more than one million four hundred thousand (\$1,400,000), as adjusted annually by the CPI-U Change, for a single item or a group of similar items in the same Fiscal Year, and

- ii. Administration proposes to include the Amortization Requirement, Debt Service, and/or O&M Expenses of the Capital Improvement Project in an Airline Cost Center rate base.
  - iii. The aggregate Capital Expenditure for the Pre-Approved CIP set forth on Exhibit 6 exceeds the aggregate amount of the previously approved Capital Expenditure for the Pre-Approved CIP by more than the lesser of ten percent (10%) or twenty million dollars (\$20,000,000.)
- b. For the purpose of Article XVI(C)(3)(a) of this Use Agreement, and Administration notification to be issued to the Signatory Airlines, Capital Expenditures shall exclude:
- i. the Pre-Approved CIP, so long as the aggregate Capital Expenditure for the Pre-Approved CIP does not increase more than the lesser of ten percent (10%) or twenty million dollars (\$20,000,000) over the estimated aggregated Capital Expenditure as shown on Exhibit 6;
  - ii. any previously approved Capital Improvement Project so long as the aggregate Capital Expenditure for that Capital Improvement Project does not increase more than the lesser of ten percent (10%) or twenty million dollars (\$20,000,000);
  - iii. any project required by any agency of the United States government having jurisdiction over activities at the Airport or by federal law or executive order;
  - iv. any project whose principal purpose is to repair casualty damage at the Airport or to Airport property;
  - v. any project required to settle claims, satisfy judgments, or comply with judicial orders against the State, MDOT or Administration by reason of ownership, operation, or maintenance of the Airport; and
  - vi. any project that is of an emergency nature, as determined by Administration, in its sole discretion.

- c. No less than thirty (30) days after delivery of the notification described in Article XVI(C)(3)(a) of this Use Agreement, Administration will conduct a consultation meeting for the purpose of discussing any or all of the Capital Improvement Projects outlined in Administration notification. Administration shall inform all Signatory Airlines of the date, time, and location for the consultation meeting.
  - d. Prior to or as part of Administration-Signatory Airline consultation meeting, Administration shall identify the following for each Capital Improvement Project outlined on Administration notification:
    - i. the particular Airline Cost Center rate base in which the cost is to be included, upon the Substantial Completion Date of the project, and
    - ii. the estimated change in rates to be paid by the Signatory Airlines in each of the Airline Cost Centers due to the new Amortization Requirement, Debt Service, and O&M Expenses upon the Substantial Completion Date of the project, as compared to the rates that would otherwise be estimated by Administration if the project's costs were not included in the rate base.
4. Signatory Airline Concurrence Process
- a. During or within 30 days following Administration-Signatory Airlines consultation meeting, Airline may identify in writing those Capital Improvement Projects from the consultation meeting for which it seeks to have Administration conduct a Signatory Airline vote to establish concurrence.
  - b. For those Capital Improvement Projects subject to the Signatory Airline Concurrence Process for which more than fifty percent (50%) of the Signatory Airlines in number requested be subject to a vote to establish Signatory Airline concurrence, pursuant to the paragraph immediately above, Administration shall establish Signatory Airline concurrence by providing all Signatory Airlines with a ballot and conduct a Signatory Airline vote as follows:
    - i. The Capital Improvement Projects to be included on the ballot will be presented individually for Signatory Airline vote.
    - ii. Capital Improvement Projects on the ballot distributed to the Signatory Airlines shall be designated as receiving Signatory Airline concurrence unless concurrence is specifically withheld by Signatory Airlines within thirty (30)

days of the issuance of the ballot and the Signatory Airlines withholding concurrence represent two-thirds (2/3rds) of the cumulative Maximum Landing Weight for projects in the Airfield Cost Center or of the Enplaned Passengers for projects in the Passenger Terminal or Boarding Device Cost Centers under all existing Use and Lease Agreements during the six-month period prior to the distribution of the ballot. It is agreed and understood that Signatory Cargo Airlines shall only have the right to vote on projects in the Airfield Cost Center.

- iii. Failure of a Signatory Airline to provide a responsive ballot within the specified deadline for voting shall be deemed concurrence by that Signatory Airline.
  - iv. The Amortization Requirement, Debt Service, and/or O&M Expenses of Capital Improvement Projects, included on a ballot, that have received Signatory Airline concurrence shall be included in the applicable Airline Cost Center rate base upon the Substantial Completion Date of each such project.
  - v. Capital Expenditures included on a ballot that do not receive Signatory Airline concurrence may not be included in the applicable Airline Cost Center rate base during this Use Agreement unless a subsequent Signatory Airline vote establishing concurrence has taken place.
  - vi. With regard to any Capital Improvement Project for which a Signatory Airline vote has withheld concurrence, Administration may annually call for another Signatory Airline vote to establish Signatory Airline concurrence on that project.
- c. Notwithstanding any other provision of this “Signatory Airline Concurrence Process” section, Signatory Airline concurrence shall not be required or sought for capacity-enhancing Passenger Terminal Capital Improvement Projects that are proposed for implementation when one or more Air Transportation Companies that have requested facilities cannot, in Administration’s judgment, have preferred flight schedules reasonably and conveniently accommodated at existing Passenger Terminal facilities, whether that be related to holdrooms, baggage processing facilities, ticketing areas, or operational support requirements. The Amortization

Requirement, Debt Service, and/or O&M Expenses of any such capacity-enhancing Passenger Terminal Capital Improvement Projects shall be included in the applicable Airline Cost Center rate base upon the Substantial Completion Date of each such project.

- D. Construction and Airport Expansion.** Administration shall have the right, at such times as may be reasonable for purposes of maintaining or constructing improvements, modifications, or expansions to the Airport, including construction of Capital Improvement Projects, to close, relocate, reconstruct, change, alter, or modify the Leased Premises and/or the means of access to the Leased Premises pursuant to this Use Agreement or otherwise, either temporarily or permanently, provided, however, that Administration shall provide:
1. Reasonable notice of the construction activities to Airline;
  2. Adequate means of ingress and egress for the Leased Premises or, in lieu thereof, alternate premises of comparable size, condition, utility, and location to those being vacated by Airline to the extent reasonably possible, with adequate means of ingress and egress.
    - a. In the event of permanent relocation, Administration shall provide Airline an updated Exhibit 8 and adjust payments for Airline's Leased Premises accordingly. Notwithstanding the foregoing, in no event shall permanent relocation increase payments for Airline's Leased Premises by more than ten percent (10%) compared to prior to the relocation without concurrence from Airline.
    - b. In the event of temporary relocation, Airline shall continue paying the rents and fees for Airline's Leased Premises that Airline paid prior to the temporary relocation in conformity with the square footage of Airlines Leased Premises set forth on Exhibit 8.
  3. In the event alternate premises are provided to Airline by Administration, and if there is no Event of Default with respect to Airline, Administration shall pay all costs to effect such relocation, including the undepreciated value (based on straight line depreciation over the useful life of the improvements) of Airline's improvements that are not replaced or relocated. Such payment by Administration of the undepreciated value of Airline Improvements shall only apply in the event of a permanent relocation; and

4. That any Administration-sponsored Capital Improvement Project that is undertaken shall not adversely interfere with Airline's operation to the extent reasonably possible.

## **ARTICLE XVII TERMINAL FACILITY USE AND CONTROL PROVISIONS**

- A. Base Conditions. All Leasehold Areas including, but not limited to ticket counter areas, outbound baggage processing, and holdroom facilities will be designated as Common-Use facilities unless and until specific premises are leased to an Air Transportation Company or other user by Administration.
  1. Administration may enter into similar agreements to lease Leasehold Areas on a multi-year basis to any Signatory Airline, using the same expiration date as this Use Agreement.
  2. Administration will determine, in its sole discretion, whether any additional space desired by Airline may be leased to Airline based on (a) the availability of sufficient unencumbered facilities to accommodate current and anticipated future demand at the Airport, (b) the current and proposed productivity of Airline's use of its Leased Premises under this Use Agreement and Airline's other contracts, if any, with Administration, (c) the need based on Airline's schedule of the facilities proposed to be leased, and (d) the compliance by Airline with all of the terms of this Use Agreement.
- B. Preferential-Use Boarding Facilities. Airline will have Preferential-Use of its Preferential-Use Boarding Facilities during Active Loading and Active Unloading periods.
  1. Airline shall at all times schedule the Active Loading and Active Unloading of aircraft on the fewest possible number of its Preferential-Use Boarding Facilities with the purpose of maximizing the availability of any surplus capacity at one or more of Airline's Preferential-Use Boarding Facilities for the benefit of other Air Transportation Companies and to maximize the utilization of facilities at the Airport.
  2. Administration will make reasonable efforts to avoid scheduling aircraft operations of another Air Transportation Company at Airline's Preferential-Use Boarding Facilities if other conveniently located Common-Use Boarding Facilities are available and are not engaged in Active Loading or Active Unloading of aircraft.
  3. On its Activity Report, Airline shall notify Administration as to the number of aircraft operations by other Air Transportation Companies that Administration scheduled at

Airline's Preferential-Use Boarding Facilities, and the number of times Administration required Airline to tow its aircraft from the Passenger Terminal Apron Area(s) adjacent to Airline's Preferential-Use Boarding Facilities to accommodate aircraft operations by other Air Transportation Companies, and Airline shall be permitted to deduct from its rentals, fees and charges an amount equal to the number of these outbound aircraft operations and towing events multiplied by the then applicable Administration-established per use fee(s), as shown in Tenant Directive 401.1, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement.

- C. Accommodation of Other Air Transportation Companies. Airline acknowledges Administration's obligation under federal law to provide Airport access to all qualified Air Transportation Companies on reasonable terms and without unjust discrimination. As such, Airline agrees that its lease of Preferential-Use Boarding Facilities includes an associated obligation to make best efforts to assist Administration in accommodating, at its Preferential-Use Boarding Facilities, other air services at the Airport, including but not limited to services that enhance competition on routes served by Airline and/or other Air Transportation Companies already operating at the Airport, whether these services are provided by current or future Signatory Airlines or Non-Signatory Airlines.
1. At any time that the use by another Air Transportation Company of Airline's Preferential-Use Boarding Facilities will not interfere with Active Loading and Active Unloading operations by Airline, or its Administration-approved subtenant(s), Administration may schedule aircraft operations of such other Air Transportation Company at these facilities.
  2. From time-to-time, Administration may foresee that it will be unable to reasonably, efficiently, and adequately accommodate the existing or proposed operations of an Air Transportation Company either at its Common-Use Boarding Facilities or at the Preferential-Use Boarding Facilities of any Signatory Airline during those periods of time when Active Loading or Active Unloading of Aircraft at Preferential-Use Boarding Facilities is not occurring.
  3. When this occurs, Administration shall first require the Air Transportation Company seeking to be accommodated to coordinate directly with the Signatory Airlines to

attempt to establish an adequate accommodation arrangement. If this attempt proves unsuccessful as determined by Administration, Administration may provide a written notification by certified mail to all Signatory Airlines of Administration's need to accommodate the proposed operations. The purpose of this notification shall be to encourage the Signatory Airlines to develop a reasonable solution, acceptable to Administration in its sole discretion, which adequately addresses Administration's need to accommodate the proposed operations.

- a. After Administration provides such notice, Airline shall, within 30 days, advise Administration if it can accommodate the proposed operations of the other Air Transportation Company and, if so, it must submit to Administration a written plan for accommodating the additional air service, including all agreements and contracts required for such accommodation. Based on the plans received, Administration will determine how the proposed operations will be accommodated.
  - b. If no Signatory Airline has submitted such a plan within 30 days, or if Administration determines, in its sole discretion, that none of the plans for accommodating the proposed operations of the other Air Transportation Company presented by any Signatory Airline pursuant to this section reasonably, efficiently, and adequately accommodates the proposed operations, then Administration may, by certified mail, advise Airline and Airline shall, on its own or in combination with other Signatory Airlines, accommodate the additional air service in accordance with any reasonable plan developed by Administration.
4. During such period of time that such other Air Transportation Company is using Airline's Preferential-Use Boarding Facilities as required by Administration, Airline's indemnification of Administration as required herein shall not extend to the use, occupancy and operations of said Air Transportation Company at Airline's Preferential-Use Boarding Facilities pursuant to this section, unless damage or injury is caused by Airline, its officers, directors, employees, agents or invitees who have come upon the Preferential-Use Boarding Facilities in connection with Airline's occupancy thereof.
  5. Airline may require Air Transportation Companies being accommodated on its Preferential-Use Boarding Facilities to agree in writing to indemnify Airline in the manner and to the extent required of Airline by Administration hereunder. In addition,

such accommodated Air Transportation Companies shall list Airline as an additional insured to the extent required by Airline to list Administration hereunder.

Notwithstanding anything herein to the contrary, Airline shall not be obligated to indemnify, defend, or hold harmless Administration for the acts of an accommodated Air Transportation Company.

6. Administration may require Airline to tow aircraft from the Passenger Terminal Apron Area adjacent to Airline's Preferential-Use Boarding Facilities, if Administration seeks to use Airline's Preferential-Use Boarding Facilities to accommodate operations by another Air Transportation Company. Administration shall designate the Aircraft Parking and Storage Area to which the aircraft is to be towed and will make reasonable efforts to assign a reasonably convenient parking location. This obligation of Airline to tow any parked aircraft not engaged in an Active Loading or Active Unloading operation shall include, but not be limited to, any parked aircraft remaining-over-night. This towing requirement shall not be invoked by Administration if the period of time between the completion of the Active Unloading and the commencement of the Active Loading periods for a turn-around aircraft operation is less than ninety (90) minutes. Airline shall receive a credit in the amount of two hundred dollars (\$200) (which fee shall be subject to adjustment from time to time after consultation with the Signatory Airlines) from Administration whenever (1) Airline tows aircraft at Administration's direction from the Passenger Terminal Apron Area adjacent to its Preferential-Use Boarding Facilities to accommodate use by another Air Transportation Company and (2) a sublease between Airline and such Air Transportation Company for use of Airline's Preferential-Use Boarding Facilities by such Air Transportation Company is not in place. In the event Airline fails to remove any aircraft which Administration has directed Airline to tow under the provisions hereof, in an expeditious manner as determined solely by Administration, then, in addition to all other rights and remedies included herein, Administration may, but shall not be obligated to, cause the removal of such aircraft without any liability to Airline, whereupon Airline shall pay to Administration (1) all costs thereof incurred by Administration plus a twenty-five percent (25%) administrative fee, or (2) double the towing reimbursement fee set forth above, whichever is greater. In such case, Airline also agrees that, if Administration

moves Airline's aircraft (1) any claim for compensation against Administration and any of its officers, agents, employees, contractors, or representatives for any loss or damage sustained to any such aircraft, or any part thereof, by reason of such removal is waived, and (2) Airline shall indemnify Administration and its officers, agents, employees, contractors and representatives against all liability arising out of such removal of said aircraft.

**D. Change of Facilities Status.** Airline's Preferential-Use Boarding Facilities may, from time to time, be converted to Common-Use facilities subject to the following processes.

1. **Minimum Use Requirement** – Notwithstanding any other paragraph in this Article XVII, at any time after July 1, 2019, Administration may notify Airline that its Preferential-Use Boarding Facilities are subject to this Change of Facilities Status section if Airline fails to meet the Minimum Use Requirement.
  - a. The Minimum Use Requirement is defined in Article II of this Use Agreement.
  - b. If Administration determines that Airline does not meet the Minimum Use Requirement, Administration may notify Airline in writing that it has 30 days to demonstrate to Administration that Airline will, within ninety (90) days, improve its utilization such that Airline then meets the Minimum Use Requirement.
  - c. If Airline does not demonstrate to Administration's satisfaction that Airline will within ninety (90) days of the date of written notice meet the Minimum Use Requirement, or if Airline does demonstrate to Administration's satisfaction that it will meet the Minimum Use Requirement but then fails to do so within ninety (90) days, Administration may delete from Airline's Leased Premises no more than the number of Preferential-Use Boarding Facilities, such that Airline will then meet or exceed the Minimum Use Requirement. In the event that Preferential-Use Boarding Facilities are deleted from Airline's Leased Premises, Airline's payments payable under this Use Agreement shall be adjusted accordingly.
2. **Signatory Airline Schedule Accommodation** – In the event that any of Airline's Preferential-Use Boarding Facilities are deleted from Airline's Leased Premises included in this Use Agreement as a result of a determination that Airline has failed to meet the Minimum Use Requirement, Airline shall use its best efforts to consolidate its aircraft arrivals and departures on its remaining Preferential-Use Boarding Facilities.

3. In the event Airline cannot consolidate its aircraft arrivals and departures on its remaining Preferential-Use Boarding Facilities, Administration shall make all reasonable efforts to accommodate, during Active Loading and Active Unloading periods, Airline's then-current scheduled aircraft arrivals and departures, that had been accommodated on the Preferential-Use Boarding Facilities that were deleted, on the Preferential-Use Boarding Facilities that were deleted for a period of six (6) months following the date on which the Preferential-Use Boarding Facilities were deleted from Airline's Leased Premises.
  - a. For purposes hereof, then-current scheduled aircraft arrivals and departures shall mean Airline's flight schedule (both in number of flights and scheduled flight times) on the date the Preferential-Use Boarding Facilities were deleted from this Use Agreement.
  - b. Administration shall use the Active Loading and Active Unloading definitions to determine which of Airline's then-current scheduled aircraft arrivals and departures cannot be accommodated on Airline's remaining Preferential-Use Boarding Facilities.
  - c. In determining where Airline's then-current scheduled aircraft arrivals and departures will be accommodated during the six (6) month period referenced above, Administration shall make all reasonable efforts to minimize any locational or operational inconvenience and will consider factors such as (1) contract labor work rule differences, where Airline has satisfactorily demonstrated in writing to Administration in its sole discretion, such differences and why such differences should be considered an operational inconvenience, and (2) the bona fide flight schedules of Airline and other Air Transportation Companies.
  - d. In the event Airline's arrivals and departures are accommodated on Administration's Common-Use Boarding Facilities or another Signatory Airline's Preferential-Use Boarding Facilities, Airline shall be responsible to pay Administration-established per use fee for each use of Administration's Common-Use Boarding Facilities or another Signatory Airline's Preferential-Use Boarding Facilities.

- e. In the event Administration enters into a lease with another Signatory Airline for Preferential-Use Boarding Facilities deleted from Airline's Leased Premises, Administration shall retain a right of access to such Preferential-Use Boarding Facilities in the event that Administration decides to accommodate Airline by allowing Airline to continue using such deleted premises in whole or in part, for the six (6) month period defined in Article XVII(D)(3) of this Use Agreement.
  4. Nothing in this Article XIX shall prevent Administration from leasing to another Air Transportation Company and/or Airline any Common-Use facilities that were converted from Preferential-Use or Exclusive-Use to Common-Use pursuant to this Article XVII.
- E. Common-Use Boarding Facilities. Airline recognizes that (a) Administration shall manage and maintain Common-Use facilities at the Airport in order to accommodate growth by Air Transportation Companies serving the Airport and by Air Transportation Companies that may desire to provide air service at the Airport in the future, (b) Common-Use facilities may benefit Airline in the event that Airline seeks to provide additional air service and (c) Common-Use facilities may reduce the frequency with which Administration may need to rely on the "Change of Facilities Status" section herein.
1. Signatory Airline Access to Common-Use Boarding Facilities –Airline shall have access to all Administration Common-Use Boarding Facilities in conjunction with other Signatory Airlines and Non-Signatory Airlines, subject to the applicable Tenant Directive established and updated by Administration from time to time. Upon at least thirty (30) days prior written notice, Administration shall conduct a consultation process with the Signatory Airlines prior to the establishment or any change of the Tenant Directive for Common-Use Boarding Facilities.

## **ARTICLE XVIII PASSENGER TERMINAL APRON AREAS**

- A. Preferential-Use of Passenger Terminal Apron Areas
1. Airline shall have Preferential-Use of the Passenger Terminal Apron Areas adjacent to its Preferential-Use Boarding Facilities during periods of Active Loading and Active Unloading of Airline's passenger aircraft, or the passenger aircraft of Airline's Administration-approved subtenant(s). Airline's use of said Passenger Terminal Apron Areas shall be in conformity with the Tenant Directives, Tenant Information Advisories

and Rules and Regulations prescribed by Administration. Airline's use of said Passenger Terminal Apron Areas shall be limited to (1) the loading and unloading of persons, property, cargo, parcels, mail and in-flight food and related supplies, as well as (2) the refueling, interior cleaning, and minor mechanical maintenance of Airline's passenger Aircraft, and the aircraft of Airline's Administration-approved subtenant(s) and Signatory Airline Affiliates, and (3) subject to the provisions of Article XVII, the parking of Aircraft overnight at Passenger Terminal Apron Areas adjacent to its Preferential-Use Boarding Facilities. Unless otherwise approved by Administration, Airline's right of Preferential-Use of the Passenger Terminal Apron Areas adjacent to its Preferential-Use Boarding Facilities shall not include the parking of any aircraft beyond the size of aircraft identified in Exhibit 5, as may be modified from time to time by Administration, without amendment or supplement to this Use Agreement, for such gate, which aircraft size limitations are subject to change from time to time.

2. Airline shall have the right to stage/store its GSE on the Passenger Terminal Apron Areas adjacent to Airline's Preferential-Use Boarding Facilities only in areas designated for such staging/storage by Administration, subject to the requirement that, unless otherwise approved by Administration, whenever Airline's aircraft (or the aircraft of a subtenant approved by Administration) is not in the process of Active Loading or Active Unloading at a Preferential-Use Boarding Facility, Airline's GSE must be removed expeditiously from such staging/storage areas at Administration's request if necessary to accommodate use of such Preferential-Use Boarding Facilities for another Air Transportation Company's flights.
  - a. Following consultation with Airline, Administration shall, from time to time, designate the areas available for staging/storage of GSE at the Passenger Terminal Apron Areas adjacent to Airline's Preferential-Use Boarding Facilities, which shall be documented in a drawing issued by Administration, delineated with striping on the apron.
  - b. Airline's right to stage/store equipment on the Passenger Terminal Apron Areas shall be limited to amounts and sizes of equipment such that all equipment can fit within the areas designated for such staging/storage. To the extent that Airline's total inventory of GSE exceeds the amount that can be stored in the areas at the

Passenger Terminal Apron Areas adjacent to Airline's Preferential-Use Boarding Facilities designated for GSE staging/storage, Administration reserves the right to require Airline to rent or lease other areas at the Airport to store the excess equipment.

- c. Airline shall immediately remove from the Passenger Terminal Apron Areas and shall not store on the Passenger Terminal Apron Areas any damaged equipment, disabled equipment or mechanically non-operable motorized equipment.
- d. Unless otherwise approved by Administration, Airline shall not stage/store on the Passenger Terminal Apron Areas at the Airport any ramp equipment that is not necessary to support its existing flight schedule at the Airport.

**B. Removal of Aircraft.** To make space available for another aircraft under Article XVII(C) or in the event that an aircraft of Airline shall, due to mechanical failure, accident, snow removal, undue congestion, or any other cause whatsoever, constitute an obstruction to the safe and efficient use by other aircraft or Administration of any portion of the Passenger Terminal Apron Areas, Airline shall exert every reasonable effort to remove the aircraft causing such obstruction at the earliest safe opportunity. Airline shall have all necessary equipment available for said event.

**C. Maintenance of Passenger Terminal Apron Areas**

1. Administration agrees to maintain the Passenger Terminal Apron Areas in good condition and repair. Such obligation shall include snow removal from Passenger Terminal Apron Areas; provided, however, that the extent of such obligation for snow removal from Passenger Terminal Apron Areas shall be limited to general snow and ice removal required for the operation of aircraft and ground equipment, and shall be limited to the area beginning fifty (50) feet out from the Passenger Terminal if Administration is unable to gain reasonable access to closer areas. Airline will reposition its ground equipment and aircraft to permit snow removal as promptly as reasonably practicable. Administration shall, during the term hereof, operate and maintain the Passenger Terminal Apron Areas in all respects in a manner and in accordance with such recommended standards as may be issued by the FAA for airports of similar size as the Airport.
2. Airline shall accomplish the following:

- a. To the extent reasonably practicable, prompt removal of any spilled or deposited petroleum products and of the accumulation of oil and grease caused by Airline's aircraft and ground equipment while operating on the Passenger Terminal Apron Areas or elsewhere at the Airport.
- b. Maintain in a neat, clean, and orderly manner, of all portions of the Airport occupied by Airline's ground support equipment at all times.
- c. Painting and striping of Passenger Terminal Apron Areas as approved by Administration in writing and in accordance with MAA Design Standards. The foregoing provision does not, however, prevent Administration or others authorized by Administration from painting such markings as Administration deems necessary for other aircraft provided, however, such markings shall not interfere with Airline's use of the Passenger Terminal Apron Areas.
- d. Maintain Administration-designated Passenger Terminal Apron Areas adjacent to Airline's Preferential-Use Boarding Facilities in a safe, neat, and attractive condition at all times.
- e. Placement of all of its trash and debris in proper containers, approved by Administration, until properly disposed of in a manner acceptable to Administration.

#### **ARTICLE XIX MOST FAVORED NATIONS**

In the event that Administration shall enter into any lease, agreement, or contract with any other Air Transportation Company operating at the Airport on or after the effective date of this Use Agreement and such lease, agreement or contract contains more favorable provisions, rentals, charges or fees than this Use Agreement, then the same provisions, rentals, charges or fees shall be concurrently and automatically made available to Airline. Nothing in this Article XIX shall be construed to apply to any promotional fee waiver agreement offered by Administration pursuant to the Department of Transportation, Federal Aviation Administration Policy and Procedures Concerning the Use of Airport Revenue, Federal Register, Vol. 64, No. 30, February 16, 1999 and the Air Carrier Incentive Program Guidebook: A Reference for Airport Sponsors provided the program is available to all Air Transportation Companies which are eligible under Administration's promotional fee waiver policy.

## ARTICLE XX SIGNATORY AIRLINE AFFILIATE PRIVILEGES AND OBLIGATIONS

- A. Airline is exempt from any Administration Ground Handling Services fees related to its Administration-approved Signatory Airline Affiliate(s) except as set forth in Article VI of this Use Agreement. At any time Administration receives a written notice from Airline that the Signatory Airline Affiliate designation has been cancelled, the exemption from any Administration Ground Handling Services fees for that Signatory Airline Affiliate shall be suspended as of such cancellation date.
- B. Non-Signatory Airlines that are designated as an Administration-approved Signatory Airline Affiliate of Airline shall not be exempt from any Tenant Directive fees of Administration, except that Administration-approved Signatory Airline Affiliate(s) of Airline (i) shall pay all rates, fees, and charges at the Signatory Airline rates and (ii) are exempt from charges for the equal share of twenty percent (20%) of the costs related to the Non-FIS Baggage Claim Areas.
- C. At any time a Signatory Airline Affiliate of Airline is subject to an uncured written notice of default pursuant to the Signatory Airline Affiliate's CFO Agreement with Administration or Administration receives a written notice from Airline that the Signatory Airline Affiliate designation has been cancelled, the exemption from Ground Handling Services fees and from charges for the equal share of twenty percent (20%) of the costs related to the Non-FIS Baggage Claim Areas, as referenced in items A and B above, shall cease.
- D. The designation by Airline of a Signatory Airline Affiliate does not exempt Airline from any requirements in this Use Agreement related to Administration approval of subtenants.
- E. Airline may elect to pay a Signatory Airline Affiliate's rentals, fees, and charges. However, if a Non-Signatory Airline is designated as a Signatory Airline Affiliate of more than one Signatory Airline, the Signatory Airline shall not have the option to pay a portion of the Signatory Airline Affiliate's rentals, fees and charges or to report partial statistics and activities on behalf of the Non-Signatory Airline unless otherwise agreed to in writing by Administration.
- F. In determining Airline's utilization of facilities pursuant to Article XVII, "Terminal Facility Use and Control Provisions," Administration shall include the activities of the Signatory Airline Affiliate in Airline's use calculations, where appropriate, only if the Signatory Airline Affiliate notifies Administration that it agrees to have its aircraft departures included

in Airline's calculations. If a Non-Signatory Airline is designated as a Signatory Airline Affiliate of more than one Signatory Airline, Airline may only include in its use calculations the aircraft departures conducted from Airline's Preferential-Use Boarding Facilities operated on behalf of Airline.

- G. Neither the number of Signatory Airline Affiliates nor the activities attributable to the operations of a Signatory Airline Affiliate shall be included in any ballot issued pursuant to the Article XVI(B), "Signatory Airline Review of Proposed Capital Improvements" of this Use Agreement.

### **ARTICLE XXI RELINQUISHMENT OF ABANDONED SPACE**

In the event that Administration determines that Airline has abandoned or constructively abandoned its Leased Premises or a portion of, Administration may, upon thirty (30) days prior written notice to Airline, partially terminate this Use Agreement with respect to, and delete from Airline's Leased Premises hereunder, such abandoned space. For purposes of this Article XXI, abandoned or constructively abandoned shall be determined by Administration in its sole discretion but after taking into account planned use by Airline for such premises in the next ninety (90) days and normal seasonal variations. Non-use for a period of more than forty-five (45) days shall constitute abandonment. Airline may request Administration to reconsider its determination of abandonment. In such event, Airline shall provide such documentation to show future plans for service and other information requested by Administration. Administration shall make the determination that it believes best meets its overall goals for the Airport.

### **ARTICLE XXII RELOCATION RIGHTS**

In addition to Administration's relocation rights set forth in Article XVII of this Use Agreement, Administration has the right to require Airline to relocate its Leased Premises, in whole or in part, to substantially similar Leased Premises upon not less than thirty (30) days prior written notice, and if there is no uncured Event of Default with respect to Airline, Administration shall pay all costs to effect such relocation in the event of either a temporary or permanent relocation. In the event of a permanent relocation, Administration shall also reimburse Airline for the undepreciated value (based on straight line depreciation over the useful life of the improvements) of Airline's improvements that are not replaced or relocated.

## ARTICLE XXIII DEFAULT AND RIGHTS AND REMEDIES UPON DEFAULT

A. The occurrence of any of the following events shall be considered an Event of Default by Airline:

1. Airline shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or
2. By order or decree of a court, Airline shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if Airline is a corporation, by any of the stockholders of Airline seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any state thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Airline and petition against Airline shall not be dismissed within sixty (60) days after the filing thereof; or
4. This Use Agreement or the rights and interest of Airline hereunder be transferred to, pass to, or devolve upon, by operation of law or otherwise any other person, firm, or corporation without Administration's prior written approval; or
5. Airline, if a corporation, shall, without the prior written consent of Administration, become a non-surviving merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. Airline is doing business as a partnership, and the said partnership shall be dissolved as the result of any action or omission of its partners or any of them or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or

substantially all of the property of Airline, and such possession or control shall continue in effect for a period of sixty (60) days; or

8. A lien is filed against the Airport property because of any act or omission of Airline and is not removed within thirty (30) days of Airline's receipt of written notice of such filing from the court having jurisdiction; and
9. Airline shall abandon, desert, or vacate all of its Leased Premises, or discontinue performance of its operations and services required by the Use Agreement except as a result of a force majeure event as set forth in Article XXVII of the General Provisions referred to in Article XXIV hereof.
10. Except as otherwise permitted herein, Airline shall not assign, transfer, encumber or subcontract the Use Agreement or any interest therein without the prior written approval of Administration; or
11. Airline shall fail duly and punctually to make any payment required hereunder when due to Administration and shall fail to cure within ten (10) days of receiving written notification from Administration of such failure; or
12. Airline fails to make repairs to its Leased Premises as required herein within sixty (60) days after prior written notice is received from Administration, or, if such work cannot be completed within sixty (60) days, Airline fails to commence said repairs within such sixty (60) day period and continue with due diligence until completion; or
13. Airline conducts business activities at the Airport that are not permitted hereby, and that have not been approved in writing by Administration, and Airline has not ceased such unauthorized business activities within five (5) days of written notice from Administration; or
14. Airline or its subcontractor(s), agents or employees shall fail to keep, perform and observe each and every other promise, covenant, condition, and agreement set forth in the Use Agreement on its part to be kept, performed or observed and Airline does not cure such failure within thirty (30) days after receipt of written notice of non-compliance thereunder from Administration, or, where fulfillment of its obligation requires activity over a period of time, Airline fails to commence performance to the satisfaction of Administration, within thirty (30) days after receipt of written notice, and to continue such performance without interruption.

15. Airline fails, within ten (10) calendar days after receipt of a written notice of non-payment from Administration, to remit all required PFC amounts in compliance with federal laws, regulations, and FAA guidance.
- B.** Upon the occurrence of any Event of Default referenced above or at any time thereafter during the continuance thereof, and after all cure periods have expired, if applicable, Administration may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:
1. Upon five (5) days prior written notice, terminate Airline's right to possession of the Leased Premises and/or terminate this Use Agreement, with or without legal process, take possession of the Leased Premises and remove Airline, any occupant and any property therefrom, using such force as may be necessary, without being guilty of trespass and without relinquishing any rights of Administration against Airline. Administration shall be entitled to recover damages from Airline in an amount equal to the amount herein covenanted to be paid as rent, together with all reasonable expenses of any proceedings (including, but not limited to, legal expenses and attorney's fees) which may be necessary in order for Administration to recover possession of the Leased Premises (including, but not limited to, any commissions paid to any real estate agent, advertising expense and the cost of such alterations, repairs, replacements and decoration or re-decoration as Administration in its sole judgment considers advisable and necessary for the purpose of re-renting the Leased Premises): provided, however, that there shall be credited against the amount of such damages amounts received by Administration from such re-renting of the Leased Premises for the remainder of the term hereunder. Administration shall use its best efforts to re-rent the Leased Premises but in no event shall be liable in any way whatsoever for failure to so re-rent the Leased Premises or, in the event that the Leased Premises are re-rented, for failure after reasonable efforts to collect the rent thereof under such re-renting. No act or thing done by Administration shall be deemed to be an acceptance of a surrender of the Leased Premises unless Administration shall execute a written agreement of surrender with Airline. Airline's liability hereunder shall not be terminated by the execution of a new lease of the Leased Premises by Administration. Airline agrees to pay to Administration, upon demand, the amount of damages herein provided after the amount

of such damages for any month shall have been ascertained; provided, however, that any expenses incurred by Administration shall be deemed to be a part of the damages for the month in which they were incurred. Separate actions may be taken each month or at other times by Administration against Airline to recover the damages then due, without waiting until the end of the term of this Use Agreement to determine the aggregate amount of such damages. Airline hereby expressly waives any and all rights of redemption granted by or under present or future laws in the event of Airline being evicted or being dispossessed for any cause, or in the event of Administration obtaining possession of the Leased Premises by reason of the violation by Airline of any of the covenants and conditions of this Use Agreement,

2. Without waiving any default, pay any sum required to be paid by Airline to parties other than Administration and which Airline has failed to pay, and perform any obligations required to be performed by Airline under the Use Agreement, and any amounts so paid or expended by Administration in fulfilling the obligations of Airline thereunder shall be repaid by Airline to Administration on demand with late fees thereon at the rate of fifteen percent (15%) per annum from the date of such payment or expenditure, without terminating the Use Agreement;
  3. Bring suit for the collection of amounts due for which Airline may be in default or for the performance of any other covenant, promise, or agreement of Airline for performance or damage therefor, all without terminating the Use Agreement;
  4. Assess Airline at the rate of one and one quarter percent (1.25%) per month of any and all fees and amounts not paid to Administration when due, in accordance with Article XII of this Use Agreement, until such fees or amounts are paid.
- C. The rights and remedies of Administration provided under this Article XXIII shall not be exclusive and are in addition to any other rights and remedies which Administration may have at law or in equity or under the Use Agreement.
- D. No waiver by Administration at any time of any of the terms, conditions, covenants, or agreements herein 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. No delay, failure or omission of Administration to take or to exercise any right, power, privilege or option arising from any default, or subsequent

acceptance of fee, then or thereafter accrued, shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein; and no notice by Administration shall be required to restore or revive any option, right, power, remedy or privilege after waiver by Administration of default in one or more instances.

- E.** Airline shall have the right to terminate the Use Agreement in its entirety upon:
1. Ninety (90) days' notice to Administration of Airline's intent to terminate, including the cause therefor; and
  2. Payment in full of all obligations to Administration arising hereunder through the date of termination; and
  3. The occurrence of one or more of the following events, provided any said events shall result in material interference with Airline's normal business operations at the Airport or substantial diminution of Airline's gross revenues from its Air Transportation Business at the Airport, continuing for a period in excess of sixty (60) days;
    - a. The destruction of all or a material portion of the Airport facilities;
    - b. The occupation of the Airport or a substantial part thereof by an agency or instrumentality of the United States Government;
    - c. A military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport or the use of motor vehicles or air transportation by the general public, or a substantial limitation of the supply of automobiles or gasoline for general public use.

#### **ARTICLE XXIV GENERAL PROVISIONS**

This Use Agreement will be subject to the attachment entitled "Lease and/or Concession Contracts - General Provisions," (General Provisions), dated 8/18 which is attached hereto as Exhibit 11 of this Use Agreement, except for the following Articles of the attached General Provisions which shall not be applicable to this Use Agreement:

Article V	Administration's Right of Entry and Alterations
Article X	Approval of Prices for Goods and Services
Article XXXIII	Inspection and Assumption of Operation

Article LI Surrender of Occupancy

Article LIII Vending and Other Commercial Services

In the event of a conflict between these Special Provisions of the Use Agreement and the applicable Articles of the General Provisions, these Special Provisions shall govern.

#### **ARTICLE XXV REMEDIES CUMULATIVE**

All rights and remedies in the Use Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or any remedy available to Administration at law or in equity.

#### **ARTICLE XXVI DAMAGE OR DESTRUCTION**

- A. Partial Damage. If all or any portion of the Leased Premises is partially damaged by fire, explosion, the elements, act(s) of war or terrorism, or other casualty, but not rendered untenable, the same will be repaired with due diligence by Administration at its own cost and expense, and there shall be no abatement of Airline payments, provided, however, that if the damage is caused by the act or omission of Airline, its sublessees, agents, or employees, Airline shall be responsible at its expense for making the necessary repairs as approved by Administration. If Airline fails to make the necessary repairs in a timely manner as determined by Administration, then Airline shall reimburse Administration for the costs and expenses incurred in such repair, plus a twenty-five percent (25%) administrative fee.
- B. Extensive Damage. If damages referred to in Article XXVI(A) of this Use Agreement above shall be so extensive as to render part or all of the Leased Premises untenable, but capable of being repaired in one hundred and twenty (120) days, the same shall be repaired with due diligence by Administration at its own cost and expense, and Airline payments payable herein shall abate, in proportion to the portion of the Leased Premises rendered untenable, from the time of such damage until such time as the Leased Premises are fully restored and certified by Administration's engineers as ready for occupancy provided, however, that if said damage is caused by the act or omission of Airline, its sublessees, agents, or employees, Airline shall be responsible, at its expense, for making the necessary repairs as approved by Administration. If Airline fails to make the necessary repairs in a timely manner as determined by Administration, then Airline shall reimburse Administration

for the costs and expenses incurred in such repair, plus a twenty-five percent (25%) administrative fee.

**C. Complete Destruction**

1. In the event the Leased Premises are completely destroyed by fire, explosion, the elements, act(s) of war or terrorism, or other casualty or so damaged that they are untenable and cannot be replaced except after more than one hundred and twenty (120) days, Administration shall be under no obligation to repair, replace, and reconstruct said Leased Premises and Airline payments shall abate as of the time of such damage or destruction and shall henceforth cease until such time as said Leased Premises are fully restored, or until Administration provides substitute facilities, acceptable to Airline, for use by Airline. If within twelve (12) months after the time of such damage or destruction said Leased Premises shall not have been repaired or reconstructed, and Administration has not supplied substitute facilities, acceptable to Airline, Airline may give Administration written notice of its intention to cancel this Use Agreement in its entirety as of the date of such damage or destruction.
2. Notwithstanding the foregoing, if said Leased Premises are completely destroyed as a result of the act or omission of Airline or its sublessees, agents, or employees, applicable fees and charges shall not abate and Administration may, in its discretion, require Airline to repair and reconstruct said Leased Premises within twelve (12) months of such destruction and pay the costs therefor; or Administration may repair and reconstruct said Leased Premises within twelve (12) months of such destruction and Airline shall be responsible for reimbursing Administration for the costs and expenses incurred in such repair, plus a twenty-five percent (25%) administrative fee.

**ARTICLE XXVII CONDUCT OF BUSINESS**

Airline shall have the right to use public Airport facilities in common with others authorized to do so, which right shall be exercised in accordance with the laws of the United States of America, the State of Maryland and Administration, and the rules and regulations promulgated thereunder.

## ARTICLE XXVIII CONDEMNATION; EMINENT DOMAIN

- A. Total or Substantial Taking. During the term of this Use Agreement, if the whole, or, if such a portion of the Leased Premises as will materially interfere with Airline's conduct of its business be taken or acquired or be sold to a government in lieu thereof under threat of such a taking (each event hereinafter called a "taking") for any public or quasi-public use or purpose under any power of eminent domain or condemnation, then, and in any of such events, the term of the Use Agreement shall cease and terminate on the date that title vests in the condemning authority pursuant to such proceedings or under such sale in lieu thereof. Airline shall pay all required payments apportioned to the date of such termination and shall promptly vacate the Leased Premises. All sums representing prepaid rents, fees or charges, if any, shall be promptly repaid to Airline.
- B. Less than a Total or Substantial Taking. If the taking of the Leased Premises is not the whole or not of such a portion as will materially interfere with Airline's conduct of its business, then the Use Agreement shall expire as to that portion of the Leased Premises taken but shall continue in full force and effect as to that portion of the Leased Premises not taken.

## ARTICLE XXIX OTHER RESPONSIBILITIES OF AIRLINE

- A. Compliance with Laws and Regulations. At its sole cost and expense, Airline shall comply with all valid and applicable present and future federal, State, county, local or other statutes, charters, laws, rules, orders, Tenant Directives, Tenant Information Advisories, regulations and ordinances, including but not limited to those of Administration. Airline shall also comply with all valid and applicable rules, orders, and regulations of: (i) the police, health and fire departments; and (ii) the National Board of Fire Underwriters or successor organizations for the prevention of fire or for the correction of unhealthy or hazardous conditions. Airline shall further comply with the requirements of all insurance Companies having policies of public liability, fire and other insurance in force and effect covering the Leased Premises and other areas and facilities used by Airline. Airline shall pay all costs and expenses incidental to such compliance and shall indemnify and hold the State of Maryland, MDOT, MdTA, Administration and their authorized officers, agents and employees harmless as to, and free from any and all costs, expenses, fees (including

reasonable attorney's fees) and damages the State of Maryland, MDOT, MdTA, Administration and their authorized officers, agents or employees may incur by reason of any notices, orders, violations, directives, liens or penalties (a "violation order") filed against or imposed upon the Leased Premises or the Airport or against Administration because of the failure of Airline to comply with any of the covenants of this Article XXIX except to the extent solely caused by Administration, its officers, employees, agents and contractors. Airline shall have the right, in good faith, to contest, or to seek a review of any such violation orders by appropriate legal proceedings, promptly instituted, conducted at its expense, and diligently pursued. If, by the terms of applicable law, compliance with the violation order may be legally delayed pending the outcome of the legal proceedings without imposing criminal liability, lien or loss upon Administration of the Leased Premises, Administration may delay the requirement to comply pending the outcome of the legal proceedings. If, as a result of any such legal proceedings or actions, the violation order is modified or partially revoked or canceled, Airline shall be obligated to comply with such part thereof as shall remain in force and effect. The term "legal proceedings" shall include reviews and appeals from the administrative or judicial judgments, decrees, orders, notices, or regulations, and appeals from the same. If and whenever any such judgment, decree, order, notice or regulation shall become final and binding, whether before, during or after contest, and even if after the expiration of the term of the Use Agreement, Airline shall promptly comply with the final judgment, decree, order, notice or regulation and this covenant shall survive the termination of the Use Agreement.

- B. Liens.** If any mechanics' liens or other liens or orders for the payment of money shall be filed in a court of competent jurisdiction against the Leased Premises or any improvements thereon or against Airline by reason of, or arising out of, any labor or materials furnished or alleged to have been furnished or to be furnished to Airline in connection with any work of construction, alteration, repair or demolition to all or any part of the Leased Premises by Airline, Airline shall promptly, and in any event, within thirty (30) days after receipt by Airline of actual notice of the filing of the claim in court, from either Administration or the lienor of the claim, cause the same to be canceled and discharged of record by bond approved by the court or as otherwise permitted by such court in which the claim is filed, at the expense of Airline. Airline shall also defend, on behalf of Administration and at

Airline's sole cost and expense, any actions, suits or proceedings which may be brought for the enforcement of any such lien, liens, or orders and Airline hereby covenants and agrees to pay all damages and to discharge all judgments entered thereon and to indemnify, save and to hold the State of Maryland, MDOT, MdTA, Administration, and their authorized officers, agents and employees harmless from and free from any and all costs, expenses, fees (including reasonable attorney's fees) and damages resulting therefrom.

- C. Interference with Air Navigation. Airline agrees that no obstructions to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent or additional regulations of the FAA or any successor agency, will be constructed by Airline or permitted to remain on the Leased Premises. Any obstructions erected by Airline shall be removed by Airline at its expense. Airline agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight between the Airport's control tower and the operations controlled therefrom. Airline further agrees not to install any structures, objects, machinery, or equipment that would interfere with operation of navigation aids or would interfere with the safe and efficient operation of the Airport, or interfere with the operations of the concessionaires, tenants, and users of the Airport.
- D. Antennae. Airline shall comply with all valid and applicable governmental laws, regulations, and requirements (including regulations, directives, and requirements of Administration) as to the placement, erection, repair, and maintenance of each outside antenna that Airline shall be permitted to erect at the Airport and shall pay all fees and minor privilege charges therefor.
- E. Licenses and Fees. Airline shall also pay all licenses and fees, levied by third parties, arising out of its use of the Leased Premises, including, but not limited to, all charges for minor privileges levied against the Leased Premises, the improvements or any part thereof.

#### **ARTICLE XXX ADMINISTRATION'S RIGHT TO ENTER AND MAKE REPAIRS**

- A. Administration and its authorized officers, employees, agents, contractors, subcontractors, and other representatives (including but not limited to Administration's State Fire Marshall's Office) shall have the right, and with as little interruption to Airline's operations as is reasonably practicable, to enter upon Airline's Leased Premises for the following purposes:

1. To inspect such Leased Premises at reasonable intervals during regular business hours (or at any time in an emergency) to determine whether Airline has complied or is complying with the terms and conditions of this Use Agreement.
  2. To perform maintenance and make repairs and replacements where Airline is obligated to do so and has failed after sixty (60) days prior written notice to do so (or less in the case of an emergency which Airline fails to immediately address), in which event Airline shall reimburse Administration for such costs, plus a twenty-five percent (25%) administrative fee, promptly upon demand.
  3. To perform maintenance and make repairs and replacements where Administration is obligated to do so; and in any other case where Administration, in its reasonable judgment, determines that it is necessary or desirable so to do in order to preserve the structural safety of such Leased Premises or of the Passenger Terminal or to correct any condition likely to cause injuries or damages to persons or property.
  4. To take necessary action in the exercise of Administration's police power.
  5. To perform fire/life safety inspections.
  6. To take necessary action for security related purposes.
- B.** No such entry by or on behalf of Administration upon the Leased Premises of Airline shall cause or constitute a termination of the letting thereof or be deemed to constitute an interference with the possession thereof by Airline. During any inspection and repairs, Administration may close doors, entrances, corridors and other facilities, all without any liability to Administration for inconvenience, interference or annoyance. Such repairs and replacements shall be made in coordination with Airline to the best extent possible.

#### **ARTICLE XXXI VENDING AND OTHER COMMERCIAL SERVICES**

Except as stated in Article IV(A)(14) of this Use Agreement, no coin operated amusement or vending machines, public telephones, commercial advertising displays, food, beverage or merchandise facilities or other commercial services shall be installed or provided in or on Airline's Leased Premises except with the prior written approval of Airline and Administration, as to the number, type, kind and locations. Airline shall not permit the installation or vending of any such items, except by a concessionaire authorized by Administration and subject to and in accordance with concessionaire's contract with Administration. Airline shall make no charge to

the concessionaire for the privilege of installing or maintaining such items, and all fees paid by the concessionaire for that privilege shall be the property of Administration.

Neither Airline, nor its agents, employees, contractors, subcontractors, representatives or assigns shall sell or otherwise provide to the public at the Airport with or without charge, any food, beverages or other item or service typically sold or offered at the Airport, except with the prior written approval of Administration or without charge during irregular operations, provided that no approval to provide food and beverages on-board Airline's aircraft shall be required.

#### **ARTICLE XXXII SURRENDER AND HOLDING OVER**

- A. At the expiration of the term of this Use Agreement, or at the earlier termination of the letting thereof, Airline will quit and surrender its Leased Premises in good state and condition, reasonable wear and tear excepted, and Airline shall forthwith remove therefrom all equipment, trade fixtures and personal property belonging to Airline. Such Leased Premises and all structures, foundations, and improvements placed thereon by Airline, and which, by and under the terms of this Use Agreement at the sole election of Administration are to remain on such Leased Premises as the property of Administration, shall be in good usable order and condition, with allowance for reasonable wear and tear and damage by the elements, and Administration shall have the right on such termination, to enter upon and take possession of such Leased Premises. In the event Administration shall elect not to permit structures, foundations and/or improvements to remain in the Leased Premises, Airline shall remove the improvements expeditiously but in no event greater than sixty (60) days after expiration of this Use Agreement.
- B. Should Airline hold over the use of any such Leased Premises after the termination of the letting thereof, such holding over may at Administration's option be deemed a holding over from month to month, and at the rental or fee equal to the monthly rental required for the month prior to the end of the term hereof or as reestablished as provided for herein, payable monthly in advance, and otherwise on the same conditions as herein provided.

#### **ARTICLE XXXIII FURNISHINGS AND EQUIPMENT**

Airline agrees that it will, at its own expense, furnish, decorate, and provide necessary specialized furnishings and equipment for its own Airline operations at all areas of the Leased

Premises leased by Airline from Administration. Such furnishings and equipment for passenger holdrooms or other public areas shall be (1) kept neat, clean and in presentable appearance, (2) maintained in good working condition, and (3) subject to the prior written approval of Administration, such approval not to be unreasonably withheld.

#### **ARTICLE XXXIV ALTERATIONS TO PREMISES**

- A.** Airline may, at its own cost and expense, with the prior written approval of Administration, install in the Leased Premises any trade fixture or improvement or do or make alterations or do remodeling, as to the use herein or hereafter granted. Any trade fixtures, and improvements brought, installed, erected or placed by Airline in, on, or about such Leased Premises shall be deemed to be personal property and shall be and remain the property of Airline, except as otherwise provided herein, and Airline shall have the right at any time during the term hereof, when not in default hereunder, and with Administration's prior written approval, to remove any or all of its property, subject to Airline's obligation to repair damage, if any, resulting from such removal. All trade fixtures, improvements, equipment and other property shall be removed from said Leased Premises on or before the time of the expiration or earlier termination of the letting and the Leased Premises restored to the condition existing at the time of the letting, reasonable wear and tear excepted, unless Administration shall have advised Airline in writing at the time of such installation or not less than sixty (60) days in advance of such expiration or not less than thirty (30) days in advance of such earlier termination, of its willingness to accept title to such trade fixtures, improvements, equipment and other property in lieu of restoration of the Leased Premises.
- B.** Said improvements and all alterations thereof and additions thereto, shall in all respects be constructed in accordance with applicable codes, Rules and Regulations and Tenant Directives of Administration and pursuant to any required building or installation permit to be obtained from Administration's Permit Committee and according to the customary terms and conditions thereof.

#### **ARTICLE XXXV GENERAL RIGHTS**

Insofar as this Use Agreement grants, permits or contemplates the use of space or facilities or the doing of any other act or thing at the Airport by Airline, such use or the doing of such act or

thing is to be in connection with the operation of the Air Transportation Business of Airline for the carriage by aircraft of persons, property, cargo, and/or mail on scheduled or nonscheduled flights, whether as a common carrier, a contract carrier, a private carrier or otherwise. Each of the parties, however, has entered into this Use Agreement solely for its own benefit; and (without limiting the right of either party to maintain suits, actions, or other proceedings because of breaches of this Use Agreement) the Use Agreement does not grant to any third person (excepting a successor party to Administration) a right to claim damages or bring any suits, action, or other proceeding against either Administration or Airline because of any breach hereof.

#### **ARTICLE XXXVI HEADINGS OF ARTICLES AND SECTIONS**

The headings of the various Articles and Sections of this Use Agreement are merely for convenience or reference and do not limit the content of the Article and Section.

#### **ARTICLE XXXVII EMPLOYEES AND AGENTS OF AIRLINE**

Airline shall require all of its employees, agents, subcontractors, or contractors hired by Airline working at the Airport to display appropriate identification at all times.

#### **ARTICLE XXXVIII INSURANCE**

A. Airline shall, at its own cost and expense, take out and carry in effect, through the term of this Use Agreement, a policy or policies of insurance, with an insurance company that is financially sound and upon whom process in any suit or action or other proceeding in the courts of the State of Maryland may be served, insuring Airline against all liability, subject to policy terms, conditions and exclusions, for injuries to persons (including wrongful death) and damages to property caused by Airline's use and occupancy of Leased Premises or otherwise caused by Airline's activities and operations on said Leased Premises or elsewhere at the Airport, the policy limits thereof to be in the minimum(s) as set forth below.

1. Comprehensive Airline Liability Insurance. Airline shall maintain comprehensive airline liability insurance.

- a. The comprehensive airline liability insurance and, if necessary, commercial umbrella insurance shall be a limit of not less than Five Hundred Million Dollars (\$500,000,000) for each occurrence and in the aggregate.
  - b. The comprehensive airline liability insurance shall include with sublimits and aggregates where applicable, but not be limited to, Commercial/Comprehensive General Liability, Bodily Injury and Property Damage to Third Parties, Passenger Liability, Personal Injury and Advertising Injury Liability, Contractual Liability, Passengers' Checked and Unchecked Baggage Liability, Premises, Operations, Independent Contractors, Products-Completed Operations Liabilities, and Cargo Legal Liabilities. Explosion, Collapse and Underground Property Damage Liability Coverage shall not be excluded.
  - c. Mobile Equipment. The comprehensive airline liability insurance shall include coverage for mobile or other ground vehicle equipment operated on those parts of the Airport that are not accessible to the public and are designated as restricted areas with a limit of not less than Twenty-Five Million Dollars (\$25,000,000) for each occurrence. Mobile or other ground vehicle equipment shall include, but not be limited to, baggage tugs, aircraft pushback tugs, provisioning trucks, air stair trucks, belt loaders, and any auto.
  - d. The Comprehensive Airline Liability Insurance shall apply as primary insurance with respect to any other insurance afforded to Administration. There shall be no endorsement or modification of the policy to make it excess over other available insurance. If the policy states that it is excess or prorata, the policy shall be endorsed to be primary with respect to the additional insured.
  - e. Waiver of Subrogation. Airline waives all rights against the State of Maryland, MDOT, Administration and their agents, officers, directors, volunteers, representatives and employees for recovery of damages to the extent these damages are covered by the comprehensive airline liability or commercial umbrella liability insurance obtained by Airline pursuant to this Use Agreement.
2. Aircraft Liability Insurance. Airline shall maintain aircraft liability insurance with a limit of not less than Five Hundred Million Dollars (\$500,000,000), with sublimits and aggregates where applicable, for bodily injury and/or death, personal injury, and

property damage for all owned, operated, maintained, non-owned, leased, or hired aircraft, including passenger coverage, for each occurrence per aircraft and in the aggregate. The aircraft liability insurance may be included in the Comprehensive Airline Liability Insurance Policy. Airline waives all rights against the State of Maryland, MDOT, Administration and their agents, officers, directors, volunteers, representatives, and employees for recovery of damages to the extent these damages are covered by the aircraft liability, comprehensive airline liability, or commercial umbrella liability insurance obtained by Airline pursuant to this Use Agreement.

3. Commercial Automobile Liability Insurance (non-restricted areas).

- a. Restricted Area, Mobile Equipment Coverage. See Article XXXVIII(A)(1)(c) above. This coverage is to be included under the comprehensive airline liability insurance.
- b. Airline shall maintain automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than Five Million Dollars (\$5,000,000) for each accident for vehicles operated in areas other than restricted areas.
- c. Such insurance shall cover liability arising out of any auto.
- d. Coverage shall be written on ISO Form CA 00 01, CA 00 05,
  1. CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- e. Waiver of Subrogation. Airline waives all rights against the State of Maryland, MDOT, Administration and their agents, officers, directors, volunteers, representatives, and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Airline as required by this Use Agreement or under any applicable auto physical damage coverage.

4. Workers' Compensation and Employer's Liability Insurance. Airline shall maintain workers' compensation and employer's liability insurance.

- a. Workers' Compensation. Coverage shall be at statutory limits as required by the laws of the State of Maryland.
  - b. Employer's Liability. The commercial umbrella and/or employer's liability limits shall not be less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
  - c. Waiver of Subrogation. Airline waives all rights against the State of Maryland, MDOT, Administration and their agents, officers, directors, volunteers, representatives, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by Airline pursuant to this Use Agreement. Airline shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.
5. Commercial Property Insurance. Airline shall maintain all-risk property insurance covering the full value and full replacement cost of Airline's property and Airline's improvements and betterments.
- B.** For those insurance Companies not subject to A.M. Best's ratings, they shall have a nationally or internationally recognized reputation and responsibility and shall be approved by Administration with such approval not to be unreasonably withheld. For those insurance Companies subject to A.M. Best's ratings, they shall have an A.M. Best's rating of A- or better and a financial size category of VII or better.
- C.** Insurance shall be written on an occurrence, not claims made basis.
- D.** Evidence of Insurance
1. Prior to the commencement of this Use Agreement, unless otherwise specifically authorized by Administration in writing, and at least annually thereafter, and as soon as possible after renewal but no later than five (5) business days after said renewal, Airline agrees to furnish Administration with certificate(s) of insurance and the required endorsement(s) referenced herein, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements of this Use Agreement.
    - a. Each certificate of insurance shall provide for thirty (30) days written notice to Administration prior to the cancellation, non-renewal, or material change of any

insurance referred to herein, except that ten (10) days written notice shall be provided in the event of nonpayment of premium.

- b. Certificate(s) of insurance shall indicate at a minimum; the type, kind, and amount of insurance in effect, the period of the policies, the Use Agreement Number of this Use Agreement, and any applicable additional insured statement as referred to herein.
- c. Certificate(s) of insurance shall be issued to:

**Maryland Aviation Administration  
Office of Commercial Management  
Terminal Building, Third Floor  
P.O. Box 8766  
Baltimore/Washington International  
Airport MD 21240-0766**

- 2. Administration reserves the right to obtain relevant endorsements, declaration pages, and/or additional relevant information from the insurance policy(s) from Airline evidencing the coverage required herein, upon written demand. Airline shall be entitled to redact or otherwise prevent the disclosure of information that Airline deems to be proprietary or confidential in such portions of the policies provided to Administration. Airline shall provide certified copies of the required items within ten (10) business days of Administration's written request for said copies. Administration shall deem such information confidential commercial and/or confidential financial information. All policies and declaration pages shall be returned to Airline upon review and acceptance by Administration.

**E. Required Endorsements**

- 1. Additional Insureds Endorsement. All policies, except workers' compensation, shall be endorsed to identify the State of Maryland, MDOT, Administration, and their authorized officers, agents, employees, directors, volunteers, and representatives as additional insureds, not named insureds, as their interest may appear in connection with this Use Agreement. A policy endorsement or certificate of insurance evidencing same must be provided to Administration.
- 2. Cancellation or Material Changes Endorsement. All policies shall be endorsed to provide the Administration with at least thirty (30) days, or ten (10) days for non-payment of premium, advance notice, in writing, of cancellation, or material change. A

policy endorsement evidencing same must be provided to Administration or this shall be specified in the certificate of insurance.

- F. The failure of Administration, at any time or from time to time, to enforce the insurance provisions, to demand such certificate(s) or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of Airline to maintain such insurance or to defend and hold Administration harmless with respect to any items of injury or damage covered by this Use Agreement.
- G. Failure to maintain the insurance required by this Use Agreement shall be the basis for immediate termination of this Use Agreement at Administration's option.
- H. No Representation of Coverage Adequacy. By requiring insurance herein, Administration does not represent that coverage and limits will necessarily be adequate to protect Airline, and such coverage and limits shall not be deemed as a limitation on Airline's liability under the indemnities granted to Administration in this Use Agreement.
- I. As indicated above, Airline may use commercial umbrella liability insurance so that Airline has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Use Agreement.
- J. Administration reserves the right at any time throughout the term of the Use Agreement to adjust the aforementioned insurance requirements, if, in Administration's reasonable judgment, the insurance required by the Use Agreement is deemed inadequate to properly protect Administration's interest.
- K. Incidents. To the extent of Airline's knowledge, any accident or event arising in any manner from the performance of the Use Agreement which results in or might have resulted in bodily injury, personal injury, property damage or loss of any kind that is greater than twenty-five thousand dollars (\$25,000) and that occurs on the Airport shall be immediately reported to the BWI Airport Operations Center (410-859-7018). Additionally, Airline shall send a written report to Administration within twenty-four (24) hours or as soon as possible, but no more than four (4) business days, of the incident, accident or other event. A copy of the report shall be sent to:

Overnight Delivery:

**Maryland Aviation Administration  
Office of Safety, Training and Risk Management  
Kauffman Building  
1500 Amtrak Way  
Linthicum MD 21090**

US Mail:

**Maryland Aviation Administration  
Office of Safety, Training and Risk Management  
Kauffman Building  
Post Office Box 8766  
BWI Airport MD 21240-0766**

Address may change from time to time upon written notification from Administration to Airline.

**ARTICLE XXXIX INCONVENIENCES DURING CONSTRUCTION**

Airline recognizes that from time to time during the term of this Use Agreement it will be necessary for Administration to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic, flight activity, and passenger traffic, which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience Airline in its operations at said Airport. Administration's relocation rights are set forth in Article XXII. Administration shall consult with Airline prior to taking any such action that would affect adversely Airline's operations at Airport unless such action is necessitated by circumstances, which, in the opinion of Administration, pose an immediate threat to the health and safety of persons using the Airport. Airline agrees that no liability shall attach to the State of Maryland, MDOT, MdTA, Administration, and their officers, agents, employees, contractors, subcontractors and representatives by reason of such inconvenience and, for and in further consideration of the use of the Leased Premises, Airline waives any right to claim damages or other consideration therefor.

**ARTICLE XL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

Airline, in the operation and use of the facilities described herein, shall not on the grounds of race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity or

disability discriminate or permit discrimination against any persons or group of persons in any manner as set forth in the General Provisions Article XL – Nondiscrimination Provision (Exhibit 11) and Exhibit 12.

This Use Agreement is subject to the provisions of 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services, Subpart B – General Requirements, §.35.130 General prohibitions against discrimination.

#### **ARTICLE XLI LEASE BINDING**

This Use Agreement shall be binding on and extend to the successors and assigns of the respective parties hereto.

#### **ARTICLE XLII USE OF PUBLIC FACILITIES**

- A. The officers, employees, and passengers of Airline and other persons doing business with it shall have the right to use any space, facilities, and conveniences provided by Administration at the Airport for use by aircraft passengers and other persons (including waiting rooms, hallways and corridors, and restaurants). In case, however, such use shall be in common with others authorized by Administration to do so, it shall be only at the times, to the extent, and in the manner and for the purpose for which they are made available for such use, and subject to federal and State security requirements.
- B. Moreover, without exception, no such provisions shall be construed to prevent Administration from charging the operators of vehicles carrying passengers and property for the privilege of entering upon the Airport or using the roadways in or on the Airport, or otherwise operating on the Airport.

#### **ARTICLE XLIII RIGHTS NON-EXCLUSIVE**

Notwithstanding anything herein contained that may be or appears to be to the contrary, the powers, privileges and rights granted under this Use Agreement are not Exclusive-Use (except with respect to the Exclusive-Use Areas leased to Airline hereunder), and Administration reserves the right to grant similar powers, privileges and rights to others.

#### **ARTICLE XLIV INCORPORATION OF EXHIBITS**

All exhibits attached to this Use Agreement are hereby incorporated in this Use Agreement by reference.

#### **ARTICLE XLV EFFECTIVENESS**

It is agreed and understood by all parties hereto that the execution of this Use Agreement and its effectiveness are contingent upon approval by the Secretary of Transportation and the Board of Public Works of Maryland. This Use Agreement shall be considered to bind the parties hereto in accordance with the Constitution and laws of the State of Maryland.

#### **ARTICLE XLVI CAPACITY TO EXECUTE**

The individuals executing this Use Agreement personally warrant that they have full authority to execute this Use Agreement on behalf of the entity for whom they are acting.

#### **ARTICLE XLVII REASONABLENESS OF ADMINISTRATION**

Whenever Administration consent or approval is required herein, such consent or approval will not be unreasonably withheld.

#### **ARTICLE XLVIII NOTICES**

Unless otherwise specified herein, notices required by this Use Agreement shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested or by overnight commercial courier with receipt acknowledgement of delivery. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be delivered. Until any such change is made, notices shall be delivered as follows:

**Administration:**      **Director, Office of Commercial Management**  
                                 **Maryland Aviation Administration**  
                                 **Maryland Department of Transportation**  
                                 **P.O. Box 8766**  
                                 **BWI Airport MD 21240**

**Airline:**

If notice is given in any other manner or at any other place, it shall also be given at the place and in the manner specified herein. The effective date of such notice shall be the date of the receipt as shown by the U.S. Postal Service return receipt.

**IN WITNESS WHEREOF**, the parties hereto have caused this Use Agreement to be executed as of the date first above written.

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_

**BY:**

\_\_\_\_\_

**(SEAL)**

\_\_\_\_\_

**(TITLE)**

**FEDERAL ID NO.**

\_\_\_\_\_

**WITNESS:**

**MARYLAND AVIATION ADMINISTRATION**

\_\_\_\_\_

**BY:**

\_\_\_\_\_

**Ricky D. Smith, Sr.  
Executive Director**

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:**

**BY:**

\_\_\_\_\_

**Delma Wickham-Smith  
Assistant Attorney General**

**CONTRACT NO. MAA-LC-XX-XXX**