

**CERTIFIED SERVICE PROVIDER LICENSE AGREEMENT
BETWEEN THE CITY OF LOS ANGELES AND**

AT LOS ANGELES INTERNATIONAL AIRPORT

THIS CERTIFIED SERVICE PROVIDER LICENSE AGREEMENT (the "Agreement") is made and entered on _____, 20____ ("Execution Date"), by and between the **CITY OF LOS ANGELES**, acting by order of and through its Board of Airport Commissioners ("**Board**"), also known as Los Angeles World Airports (collectively, the "**City**") and _____ ("**Provider**").

The parties hereto, for and in consideration of the covenants and conditions hereinafter contained to be kept and performed, DO HEREBY AGREE AS FOLLOWS:

Section 1. Purpose of Agreement. This Agreement authorizes Provider to provide [Passenger and Security Related Services]/[Passenger Ramp Services]/[Interior Aircraft Cleaning Services]/[Type of Optional Services] (such services, the "**Services**") at Los Angeles International Airport ("**Airport**"). Provider will provide the Services on a non-exclusive basis at Airport. Passenger and Security Related Services, Passenger Ramp Services, and Interior Aircraft Cleaning Services shall be defined by resolution of the Board. Provider shall not be allowed to subcontract for the provision of the Services.

Section 2. Term of Agreement. The term of this Agreement shall commence on _____ (the "**Commencement Date**") and terminate no later than _____ (the "**Term**"), subject, however, to prior termination, with or without cause, by either party, upon giving to the other a thirty (30) day advance written notice thereof and further subject to prior termination as provided herein.

Section 3. Fees.

3.1. **Fees.** For the license rights granted herein, Provider shall pay (i) an application fee ("**Application Fee**"), (ii) an annual fee (the "**Annual Fee**"), and (iii) into-plane fueling fees ("**Into-Plane Fueling Fees**"), if applicable, to City as provided by resolution of the Board. The Application Fee, the Annual Fee and the Into-Plane Fueling Fees adopted by the Board and in effect as of the Commencement Date are attached hereto as Exhibit A.

3.2. **Application Fee.** The Application Fee, as provided by resolution of the Board, shall be due prior to the Commencement Date.

3.3. **Annual Fee.** During the Term, the Annual Fee, as provided by resolution of the Board, shall be due within 30 days from the beginning of the Contract Year for which an Annual Fee is required, without demand or invoice. A "**Contract Year**" means

each of the successive twelve month periods beginning with the Commencement Date and ending on the day preceding each of the successive anniversaries of the Commencement Date. The Annual Fee shall be accompanied by a summary of gross revenue for the applicable Contract Year certified by a Certified Public Accountant.¹

3.4. Into-Plane Fueling Fees. During the Term, the monthly Into-Plane Fueling Fees, as provided by resolution of the Board, shall be due on or before the tenth (10th) day of the following month, without demand or invoice. The Into-Plane Fueling Fees shall be accompanied by a summary of the into-plane fueling services that the Provider has provided for the previous month, including the number of gallons placed into aircraft.

3.5. The Board reserves the right, power, and duty to fix, determine, revise, and readjust the Application Fee, the Annual Fee and the Into-Plane Fueling Fees at anytime throughout the Term.

Section 4. Reports, Audit and Payment.

4.1 Monthly Accounting Report. Provider shall establish and maintain such accounting and recording systems and practices at Airport as will correctly reflect the gross amount billed or received by Provider for all Services provided at Airport. During the Term, Provider shall transmit to City a monthly accounting report of the gross amount billed or received by it for all Services provided at the Airport in such manner and detail and upon such forms as are prescribed by City. Further, said report shall list the names of the persons or entities served and the precise services provided to each person or entity during the prior month. Said accounting report shall reach City within ten (10) days after the last day of the month covered by said accounting report. Provider shall furnish this accounting report to City each month whether or not any amount has been received by Provider for any Services. A FIFTY DOLLAR (\$50) late fee shall apply to all accounting reports that are not received by City within ten (10) days after the last day of the month covered by said accounting report.

4.2 Audit.

4.2.1 City or its duly authorized representatives, shall, at all reasonable times, have the right of access to and the right to examine and audit all records of Provider pertaining to the operation of its business under this Agreement for the purpose of ascertaining the correctness of said accounting. Provider hereby

¹ For example, pursuant to Resolution No. _____, the Provider is to pay an Annual Fee commencing in the second Contract Year. If the commencement date is September 1, 2011 and the term is for 5 years, the Annual Fee for the second Contract Year (September 1, 2012 – August 31, 2013) shall be due within 30 days from September 1, 2012; the Annual Fee for the third Contract Year (September 1, 2013 – August 31, 2014) shall be due within 30 days from September 1, 2013; the Annual Fee for the fourth Contract Year (September 1, 2014 – August 31, 2015) shall be due within 30 days from September 1, 2014; and the Annual Fee for the fifth Contract Year (September 1, 2015 – August 31, 2016) shall be due within 30 days from September 1, 2015.

authorizes its officers, agents and employees to disclose to City any and all information pertaining to its operations under the license rights herein granted, including all account books, ledgers, journals, accounts, records and things done or performed by Provider in connection therewith during the term of this Agreement. Such books, ledgers, journals, accounts, and records necessary to conduct the audit must be made available to City in the greater Los Angeles metropolitan area at Provider's expense, upon notice by City.

4.2.2 It is agreed that examinations of the books, ledgers, journals and accounts of Provider will be conducted in accordance with generally accepted auditing standards applicable to the circumstances and that as such, said examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Provider. Deficiencies ascertained by the use of such testing and sampling methods by applying the percentages of error obtained from such testing and sampling to the entire period of reporting under examination will be binding upon Provider and to that end shall be admissible in court to prove any amounts due City from Provider. In the event there is any net deficiency in the amount of two percent (2%) or greater of the compensation payable to City hereunder, Provider agrees to pay City for the cost of the audit as well as any other deficiencies, payments and liquidated damages due under this or any other provision of this Agreement.

4.2.3 City's right to access such records and information shall survive three (3) years beyond the expiration or early termination of this Agreement. Provider shall retain all records and other information necessary to perform an audit as described above for a minimum of seven (7) years.

4.3 Payment. All fees and compensation payable hereunder shall be paid to the City of Los Angeles, Department of Airports, File 54989, Los Angeles, California 90074-4989, unless and until City designates some other party or place to receive fees and compensation. All payments shall be made in legal tender of the United States.

Section 5. Agreement Rights and Motor Vehicle Operating Rights.

5.1 Agreement Rights.

5.1.1 City grants to Provider, during the Term and on a non-exclusive basis at Airport, the right to conduct the Services. It is understood that City will not require any of the users of such type of services to use Provider.

5.1.2 This Agreement does not include the right or privilege to deliver petroleum products including aviation fuels, lubricants or solvents, to Airport premises. In order to deliver petroleum products to Airport, including aviation fuels, lubricants and/or solvents, a fuel delivery permit is required to be obtained from City authorizing the person(s) to conduct such business at Airport.

5.1.3 This Agreement does not include the right or privilege to conduct any business or activity other than the Services. Provider does not have the right to enter onto the restricted area of the airfield, unless in possession of, and fully compliant with, a valid "City of Los Angeles Department of Airports Motor Vehicle Operating Permit For Los Angeles International Airport." In order to conduct any activity other than that specifically provided for herein, Provider will be required to obtain separate authorization through the appropriate license, permit or agreement authorizing such activity.

5.2 **Motor Vehicle Operating Rights.** If applicable, City grants to Provider, subject to all the terms, conditions and covenants of the "City of Los Angeles Department of Airports Motor Vehicle Operating Permit For Los Angeles International Airport" attached hereto as Exhibit B and which is incorporated by reference to this Agreement, the motor vehicle operating rights contained therein. Provider acknowledges and agrees that the obligations contained therein are in addition to the obligations set forth in this Agreement. If applicable, Provider shall pay fees for both the non-exclusive license rights and the motor vehicle operating rights granted by this Agreement and the issuance of the "City of Los Angeles Department of Airports Motor Vehicle Operating Permit For Los Angeles International Airport".

Section 6. Laws, Rules and Regulations.

6.1. Provider shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state and/or local government authority, including, but not limited to, laws regarding services and accommodations for disabled persons.

6.2. Provider shall be solely responsible for fully complying with any and all applicable present and/or future orders, directives, or conditions issued, given or imposed by the executive director (the "**Executive Director**") of Los Angeles World Airports ("**LAWA**") or the Board which are now in force or which may be hereafter adopted by the Board and/or the Executive Director with respect to the operation of Airport.

6.3. Provider shall comply with the applicable provisions of (i) the Certified Service Provider Program (the "**CSPP**") attached hereto as Exhibit C, as may be amended from time to time, (ii) guidelines issued by the Executive Director pursuant to the CSPP, attached hereto as Exhibit D as may be amended from time to time, and (iii) the "Rules and Regulations Manual for Los Angeles International Airport (LAX)"² as may be amended from time to time ((i) – (iii) collectively the "**LAX Rules**"). The terms of the LAX Rules shall be incorporated by reference and made a material term of this Agreement. Provider agrees to be subject to any penalties prescribed in the LAX Rules.

² The current version is available on the LAWA Website at www.lawa.org/airops/rules.cfm.

6.4. Provider shall be responsible for requesting in writing City-issued identification (“ID”) badges for all employees who will have access to the Security Identification Display Areas on Airport, as designated in Airport’s security program. Each employee must complete the Transportation Security Administration (“TSA”)-mandated training program before an ID badge is issued. As part of the badging process, City will conduct background investigations, including fingerprinting of Provider’s employee badge applicants. Provider shall assist City as necessary to facilitate the badging process. Provider shall be responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignments or terminated from the employ of the Provider or upon termination of this Agreement. In addition, Provider shall pay, or cause to be paid, to City such charges, as may be established from time to time, for the acquisition of ID badges, for lost or stolen ID badges, and for those badges not returned to City in accordance with this Section. City shall also have the right to audit Provider’s compliance with security and ID badge rules and regulations.

6.5. Provider shall be solely responsible for any and all civil and/or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, ordinances, statutes, laws, orders, directives and/or conditions.

6.6. Nothing herein contained shall be deemed to impair Provider’s right to contest, under federal, state or local law, any such rules, regulations, orders, restrictions, directives or conditions or the reasonableness thereof.

Section 7. Notice.

7.1. Notice to City. Written notices to City hereunder, shall be sent to the Executive Director with a copy to the City Attorney of the City of Los Angeles, must be given by registered or certified mail, postage prepaid, and addressed to:

**Executive Director of the
Department of Airports
c/o LAX RCS
1 World Way
Post Office Box 92216
Los Angeles, CA 90009-2216**

**City Attorney
Department of Airports
1 World Way
Post Office Box 92216
Los Angeles, CA 90009-2216**

or to such other address as City may designate by written notice to Provider.

7.2. Notice to Provider. Written notices to Provider hereunder shall be given by registered or certified mail, postage prepaid, and addressed to:

or to such other address as Provider may designate by written notice to City.

7.3 The execution of any such notice by the Executive Director shall be as effective as to Provider as if it were executed by the Board, or by resolution or order of said Board, and Provider shall not question the authority of Executive Director to execute any such notice.

7.4 All such notices, except as otherwise provided herein, may either be delivered personally to Executive Director with a copy to the Office of the City Attorney, Airport Division, in the one case, or to Provider in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail. Such notice may also be delivered by a nationally recognized overnight commercial courier service that requires the recipient's signature for delivery, and shall be effective one (1) business day after delivery by such courier.

Section 8. Limitations on Use of Airport.

8.1 Provider shall not use the Airport, nor any portion thereof, for any purpose other than that set forth above, without first having had and obtained the written consent of the Executive Director, which consent may be withheld in the Executive Director's sole discretion, and which written consent is approved as to form by the City Attorney.

8.2 There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of Airport. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on Airport. Provider agrees not to make any claim or institute legal action against City under any theory of recovery for any interference with Provider's use and enjoyment of the Airport which may result from noise emanating from the operation of aircraft to, from, or upon Airport except for claims or actions brought by third parties against Provider arising from City's operation of Airport [USE GUIDE, paragraph 5]³.

8.3 Provider, by accepting this Agreement, agrees for itself and its successors and assigns that it will not make use of Airport in any manner which might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard to such operations. In the event the aforesaid covenant is breached, City reserves the right to take

³ The paragraph references are to mandatory requirements contained in a document entitled, "LEASE AND USE AGREEMENT GUIDE", dated June 6, 1984, revised May 2001, published by the Federal Aviation Administration.

all action it deems necessary to cause the abatement of such interference at the expense of Provider [USE GUIDE, paragraph 8].

8.4. Provider shall conduct its operations on Airport in such manner as to reduce as much as is reasonably practicable, considering the nature and extent of said operations, any and all activities which interfere unreasonably with the use of other premises at Airport, including, but not limited to, the emanation from Airport of noise, vibration, movements of air, fumes, and odors.

8.5. Provider is prohibited from installing or using any wireless workstations, access control equipment, wireless internet servers, application or system software such as transceivers, modems, or other interface units that access frequencies from 2.0 Gigahertz to 6.0 Gigahertz, inclusive, without first obtaining approval from the Executive Director.

8.6. Provider has no rights under this Agreement to install or use any antennae or telecommunications equipment on the roof or exterior of any building or structure on the Airport, unless such installation or use is directly related to the conduct of Provider's business and in full compliance with City's permit process and telecommunications policies as they may be modified from time to time at the sole discretion of the Executive Director. Provider may not license or sublicense to others the right to install or use antennae or other telecommunications equipment on the Airport.

Section 9. Late Charge and Interest for Delinquent Payment.

9.1. Provider hereby acknowledges that late payment by Provider of compensation, fees and charges provided herein will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any amount due City is not received by City within 10 days after such amount shall be due, then, without any requirement for notice to Provider, Provider shall immediately pay to City a one-time late charge equal to 10% of such overdue amount or \$200, whichever is greater. The parties agree that such late charge represents a fair and reasonable estimate of the costs the City will incur by reason of such late payment. Acceptance of such late charge by City shall in no event constitute a waiver of Provider's default or breach with respect to such overdue amount, nor prevent the exercise of any other rights and remedies granted herein.

9.2. Any monetary payment due City hereunder shall bear interest from the date when due. The interest rate shall be 10% per annum, compounded monthly, but shall not exceed the maximum rate allowed by law. The interest that applies shall be in addition to the late charge.

Section 10. Default and Right of Termination.

10.1 In the event Provider fails to abide by the terms, covenants and conditions of this Agreement, including any default in the payment by Provider of the fees provided for herein, City may give Provider written notice to correct the defect or default and if the same is not corrected within ten (10) days after City's mailing such notification, City may terminate this Agreement forthwith.

10.2 In case of the bankruptcy of Provider, or the appointment of a receiver for Provider, or if a receiver is appointed to take possession of Provider's business operations as a result of any act or omission of Provider, or if Provider makes an assignment of this Agreement for the benefit of creditors, City, at its election, may, without notice, terminate this Agreement.

10.3 Cross Default. A material default or breach of the terms of any other lease, license, permit, or contract held by Provider with City shall constitute a material breach of the terms of this Agreement and shall give City the right to terminate this Agreement for cause in accordance with the procedures set forth herein.

Section 11. Insurance.

11.1. Provider shall procure at its expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on Exhibit E, attached hereto and incorporated by reference herein. The specified insurance shall also, either by provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City, LAWA, its Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk described on Exhibit E, hereof with respect to Provider's acts or omissions in its operations, use, and occupancy of the Airport or other related functions performed by or on behalf of Provider in, on or about Airport.

11.2. Each specified insurance policy (other than workers' compensation and employers' liability and fire and extended coverages) shall contain a severability of interest (cross liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a contractual endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

11.3. All such insurance shall be primary and noncontributing with any other insurance held by LAWA where liability arises out of or results from the acts or omissions of Provider, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Provider. Such policies may provide for reasonable deductibles and/or retentions acceptable to the Executive Director based upon the nature of Provider's operations and the type of insurance involved.

11.4. City shall have no liability for any premiums charged for such coverage(s). The inclusion of City, LAWA, its Board and all of City's officers, employees, and agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Provider in Provider's operations at Airport. In the event Provider fails to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of Provider, and Provider agrees to promptly reimburse City for the cost thereof plus fifteen percent (15%) for administrative overhead. Payment shall be made within thirty (30) days of invoice date.

11.5. At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, Provider shall, within fifteen (15) days of such cancellation of coverage, file with City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

11.6. Provider shall provide proof of all specified insurance and related requirements to City either by production of the actual insurance policy(ies), by use of City's own endorsement form(s), by broker's letter acceptable to the Executive Director in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to the Executive Director. The documents evidencing all specified coverages shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in Sections 11.47 through 11.56 of City's Administrative Code prior to Provider's use of Airport. The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof. City reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

11.7. City and Provider agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Agreement by the Executive Director who may, thereafter, require Provider, on thirty (30) days prior, written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said Executive Director deems to be adequate.

11.8. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Provider agrees, except where exempted, to provide City proof of said insurance by and through a surplus lines broker licensed by the State of California.

Section 12. City Held Harmless. In addition to the provisions of Section 11 herein, Provider shall indemnify, defend, keep, and hold City, including Board, and City's officers, agents, servants, and employees, harmless from any and all costs, liability, damage, or expense (including costs of suit and fees and reasonable expenses of legal services) claimed by anyone by reason of injury to or death of persons, including Provider, damage to or destruction of property, including property of Provider, sustained in, on, or about the Airport or arising out of Provider's use or occupancy of Airport or arising out of the acts or omissions of Provider, its agents, servants, or employees acting within the scope of their agency or employment.

Section 13. Attorneys' Fees. If City shall, without any fault, be made a party to any litigation commenced by or against Provider arising out of Provider's use or occupancy of the Airport, then Provider shall pay all costs, expenses, and reasonable attorneys' fees incurred by or imposed upon City in connection with such litigation. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

Section 14. Hazardous and Other Regulated Substances.

14.1. **Definition of "hazardous substances(s)".** For the purposes of this Agreement, "hazardous substances" means:

14.1.1. Any substance the presence of which requires the investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action, policy or common law; or

14.1.2. Any substance which is or becomes defined as a hazardous waste, extremely hazardous waste, hazardous material, hazardous substance, hazardous chemical, toxic chemical, toxic substance, cancer causing substance, substance that causes reproductive harm, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); or

14.1.3. Any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, council, board, or instrumentality of the United States, the State of California, the City of Los Angeles, or any political subdivision of any of them; or

14.1.4. Any substance the presence of which on the Airport causes or threatens to cause a nuisance upon the Airport or to adjacent properties or poses or

threatens to pose a hazard to the health or safety of persons on or about the Airport; or

14.1.5. Any substance the presence of which on adjacent properties could constitute a trespass by Provider; or

14.1.6. Any substance, without limitation, which contains gasoline, aviation fuel, jet fuel, diesel fuel or other petroleum hydrocarbons, lubricating oils, solvents, polychlorinated biphenols (PCBs) asbestos, urea formaldehyde or radon gases.

14.2. **Environmental Indemnity.** Except for conditions existing prior to the original operation and use of Airport by Provider, Provider agrees to accept sole responsibility for full compliance with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws, and/or other orders of any governmental entity regarding the use, storage, handling, distribution, processing, and/or disposal of hazardous substances, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Airport, on the user of the land, or on the user of the improvements. Provider agrees that any claims, damages, penalties, or fines asserted against or levied on City and/or the Provider as a result of noncompliance with any of the provisions in this Section shall be the sole responsibility of the Provider and that Provider shall indemnify and hold City harmless from all such claims, damages, penalties, or fines. Further, City may, at its option, pay such claims, damages, penalties, or fines resulting from Provider's non-compliance with any of the terms of this Section, and Provider shall indemnify and reimburse City for any such payments.

14.3. In the case of any hazardous substance spill, leak, discharge, release or contamination by Provider or its employees, servants, agents, or contractors, or subcontractors on the Airport or as may be discharged or released in, on or under adjacent property which affects other property of City or its tenants, Provider agrees to make or cause to be made any necessary corrective actions to clean up and remove any such spill, leakage, discharge, release or contamination. If Provider fails to repair, clean up, properly dispose of, or take any other corrective actions as required herein, City may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, discharge, release or contamination. Any such repair, cleanup, or corrective actions taken by City shall be at Provider's sole cost and expense and Provider shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any repair, cleanup, or corrective action it takes.

14.4. If Provider installs or uses already installed underground storage tanks, above-ground storage tanks, pipelines, or other improvements on the Airport for the storage, distribution, use, treatment, or disposal of any hazardous substances, Provider agrees, upon the expiration and/or termination of this Agreement, to remove and/or clean

up, at the sole option of the Executive Director, the above-referred-to improvements. Said removal and/or cleanup shall be at the Provider's sole cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations, as well as with the reasonable directions of the Executive Director.

14.5. **Provider's Provision to City of Environmental Documents.** Provider shall promptly supply City with complete and legible copies of all notices, reports, correspondence, and other documents sent by Provider to or received by Provider from any governmental entity regarding any hazardous substance. Such written materials include, without limitation, all documents relating to any threatened or actual hazardous substance spill, leak, or discharge, or to any investigations into or clean up of any actual or threatened hazardous substance spill, leak, or discharge including all test results.

14.6. **Survival of Obligations.** This Section and the obligations herein shall survive the expiration or earlier termination of this Agreement.

Section 15. Airfield Security.

15.1 Provider shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws, airport security agreements, and/or orders of any federal, state, and/or local governmental entity regarding airfield security. Provider shall be responsible for Airport gates and doors that are controlled or used by Provider. Provider shall comply fully with applicable provisions of the Transportation Security Administration Regulations, 49 Code of Federal Regulations ("CFR"), Sections 1500 through 1550 and 14 CFR Part 129, if applicable, including the establishment and implementation of procedures acceptable to the Executive Director to control access to air operation areas in accordance with the Airport Security Program required by CFR Sections 1500 through 1550.

15.2. In addition to the foregoing, gates and doors controlled or used by Provider which permit entry into restricted areas at Airport shall be kept locked by Provider at all times when not in use or under Provider's constant security surveillance. Gate or door malfunctions which permit unauthorized entry into restricted areas shall be reported to LAWA's Operations Bureau without delay and shall be maintained under constant surveillance by Provider until repairs are affected by Provider or City and/or the gate or door is properly secured.

15.3 Provider shall cooperate with City to maintain and improve Airport security, and shall cooperate in investigations of violations of state and local laws, ordinances, and rules and regulations, of any federal, state and/or local governmental entity regarding airport and airfield security. Provider shall provide necessary assistance to, and cooperate with, City in case of any emergency. Provider shall, upon request, provide City relevant information which will enable City to provide efficient and effective management in response to any airport or airfield emergency.

15.4. All civil penalties levied by the TSA for violation of TSA regulations pertaining to security gates or doors controlled or used by Provider shall be the sole responsibility of Provider. Provider agrees to indemnify City for any federal civil penalty amounts City must pay due to any security violation arising from the breach of any obligation imposed by this Section. Provider is also responsible for City's attorneys' fees and costs.

Section 16. Assignments and Encumbrances.

16.1 Provider shall not, in any manner assign, transfer or encumber this Agreement, or any portion thereof or any interest therein, nor shall Provider license or otherwise authorize the use of, in whole or in part, the rights granted by this Agreement, without the prior written consent of the Executive Director. Any attempts to assign, transfer or encumber this Agreement, or any licensing or authorizing the use of, in whole or in part, the rights granted by this Agreement, shall be void and shall confer no right, title or interest in or to this Agreement, upon any such assignee, transferee, or encumbrancer. Consent to one assignment, transfer, or encumbrance shall not be deemed to be a consent to any subsequent assignment, transfer or encumbrance. This Agreement shall not, nor shall any interest therein, be assignable as to the interest of Provider by operation of law without the prior written consent of the Executive Director.

16.2 When proper consent has been given by the Executive Director, the provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the heir(s), successor(s), executor(s), administrator(s) and assign(s) of the parties hereto.

Section 17. Nondiscrimination and Equal Employment Practices/Affirmative Action Program.

17.1. Federal Non-Discrimination Provisions.

17.1.1. Provider for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on said property described in this Agreement, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Provider shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. [USE GUIDE, Paragraph 1].

17.1.2. Provider for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to

discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Provider shall use the Airport in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. [USE GUIDE, Paragraph 1].

17.1.3. Provider assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Provider or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. [USE GUIDE, paragraph 1]

17.1.4. Provider shall furnish its services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that Provider may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. [USE GUIDE, paragraph 1]

17.1.5. Provider agrees that it shall insert the provisions found in Subsections 17.1.3 and 17.1.4 above in any assignment, license, transfer or sublicense by which said Provider grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Airport.

17.2. Municipal Non-Discrimination Provisions.

17.2.1. Non-Discrimination In Use Of Airport. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, gender identity, gender expression, physical handicap, marital status, domestic partner status, or medical condition in the Agreement, transfer, use, occupancy, tenure, or enjoyment of the Airport or any operations or activities conducted on

the Airport. Nor shall Provider or any person claiming under or through Provider establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, or vendees of the Airport. Any assignment or transfer which may be permitted under this Agreement shall also be subject to all non-discrimination clauses contained in Section 17.2.

17.2.2. **Non-Discrimination In Employment.** During the Term, Provider agrees and obligates itself in the performance of this Agreement not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, physical handicap, marital status, domestic partner status, or medical condition. Provider shall take affirmative action to insure that applicants for employment are treated, during the term of this Agreement, without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code, Sections 10.8, et seq., or any successor ordinances or law concerned with discrimination.

17.2.3. **Equal Employment Practices.** If the total payments made to City under this Agreement are \$1,000 (one thousand dollars) or more, this provision shall apply. During the performance of this Agreement, Provider agrees to comply with Section 10.8.3 of the Los Angeles Administrative Code ("**Equal Employment Practices**"), which is incorporated herein by this reference. A copy of Section 10.8.3 has been attached to this Agreement for the convenience of the parties as Exhibit F. By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Provider to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Provider. Upon a finding duly made that Provider has failed to comply with the Equal Employment Practices provisions of this Agreement, this Agreement may be forthwith terminated, cancelled or suspended.

17.2.4. **Affirmative Action Program.** If the total payments to City under this Agreement are \$100,000 (one hundred thousand dollars) or more, this provision shall apply. During the performance of this Agreement, Provider agrees to comply with Section 10.8.4 of the Los Angeles Administrative Code ("**Affirmative Action Program**"), which is incorporated herein by this reference. A copy of Section 10.8.4 has been attached to this Agreement for the convenience of the parties as Exhibit G. By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of the Los Angeles Administrative Code, the failure of Provider to comply with the Affirmative Action Program provisions of this Agreement may be deemed to be a material breach of this Agreement. No

such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Provider. Upon a finding duly made that Provider has failed to comply with the Affirmative Action Program provisions of this Agreement, this Agreement may be forthwith terminated, cancelled or suspended.

Section 18. Living Wage Ordinance.

18.1. Living Wage Ordinance

18.1.1. General Provisions: Living Wage Policy. This Agreement is subject to the Living Wage Ordinance (“LWO”) (Section 10.37, et seq., of the Los Angeles Administrative Code) which is incorporated herein by this reference. A copy of Section 10.37 has been attached hereto for the convenience of the parties as Exhibit H. The LWO requires that, unless specific exemptions apply, any employees of tenants or licensees of City property who render services on the leased premises or licensed premises are covered by the LWO if any of the following applies: (1) the services are rendered on premises at least a portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit (“EITC”) and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Provider shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by the City. Whether or not subject to the LWO, Provider shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Provider agrees to comply with federal law prohibiting retaliation for union organizing.

18.1.2. Living Wage Coverage Determination. An initial determination has been made that this is a public license under the LWO, and, that it is not exempt from coverage by the LWO. Determinations as to whether this Agreement is a public lease or license covered by the LWO, or whether an employer or employee are exempt from coverage under the LWO are not final, but

are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. In some circumstances, applications for exemption must be reviewed periodically. City shall notify Provider in writing about any redetermination by City of coverage or exemption status. To the extent Provider claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Provider to prove such non-coverage or exemption.

18.1.3. Compliance; Termination Provisions And Other Remedies: Living Wage Policy. If Provider is not initially exempt from the LWO, Provider shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the Commencement Date of this Agreement. If Provider is initially exempt from the LWO, but later no longer qualifies for any exemption, Provider shall, at such time as Provider is no longer exempt, comply with the provisions of the LWO and execute the then currently used Declaration of Compliance Form, or such form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Provider violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Agreement. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO.

Section 19. Alternative Fuel Vehicle Requirement Program. Provider shall comply with the provisions of the Alternative Fuel Vehicle Requirement Program. The rules, regulations, and requirements of the Alternative Fuel Vehicle Program are attached as Exhibit I and made a material term of this Agreement.

Section 20. First Source Hiring Program For Airport Employers. Provider shall comply with the provisions of the first source hiring program adopted by the Board (the "**First Source Hiring Program**"). The rules, regulations, requirements and penalties of the First Source Hiring Program are attached as Exhibit J and made a material term of this Agreement. Provider shall be an "Airport Employer" under the First Source Hiring Program.

Section 21. Business Tax Registration. Provider represents that it has registered its business with the Office of Finance of the City of Los Angeles and has obtained and presently holds from that office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of City's Municipal Code). Provider shall maintain, or obtain as necessary, all such certificates required of it under said ordinance and shall not allow any such certificate to be revoked or suspended during the term hereof.

Section 22. Taxes, Agreement Fees and Licenses.

22.1 Provider shall pay all taxes of whatever character that may be levied or charged upon Provider's operations at Airport, or upon Provider's improvements, fixtures, equipment, or other property on Airport, or upon Provider's use thereof.

22.2 Provider shall also pay for, and cause to be maintained in full force and effect during the term of this Agreement, all licenses or permits necessary or required by law or regulation for the conduct and operation of Provider's business authorized herein, or for use of Airport. Such licenses and permits shall cover not only Provider, but also all of Provider's employees and agents required to be licensed to transact Provider's business at Airport.

22.3 If a claim is made against City for any of the above charges, City shall notify Provider in writing and Provider shall promptly pay said charges; provided, however, that failure by City to give such notice shall not constitute a waiver of Provider's obligation to pay such taxes, license and/or license fees.

22.4 The obligations of Provider under this Section, however, shall not prevent Provider from contesting the validity and/or applicability of any of the above charges and, during the period of any such lawful contest, Provider may refrain from making, or direct the withholding of, any such payment without being in breach of the above provisions. Upon a final determination in which Provider is held responsible for such taxes and/or fees, Provider shall promptly pay the required amount, plus all legally imposed interest, penalties and surcharges. If all or any part of such taxes and/or fees, penalties, or surcharges are refunded to City, City shall remit to Provider such sums to which Provider is legally entitled.

22.5 In addition, by executing this Agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest." If such possessory interest is created, Provider, as the party in whom the possessory interest is vested, shall be subject to the payment of the property taxes levied upon such interest.

Section 23. Disabled Access.

23.1 Provider shall be solely responsible for fully complying with any and all applicable present and/future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access, including any services, programs, improvements or activities provided by Provider. Provider shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, Provider's noncompliance. Further, Provider agrees to cooperate fully with City in its efforts to comply with the Americans with Disabilities Act of 1990 and any amendments thereto, or successor statutes.

23.2 Should Provider fail to comply with Subsection 23.1, then City shall have the right, but not the obligation, to perform, or have performed, whatever work is

necessary to achieve equal access compliance. Provider will then be required to reimburse City for the actual cost of achieving compliance, plus a fifteen percent (15%) administrative charge.

Section 24. Child Support Orders. This Agreement is subject to Section 10.10, Article I, Chapter 1, Division 10 of the Los Angeles Administrative Code related to Child Support Assignment Orders, which is incorporated herein by this reference. A copy of section 10.10 and the Declaration of Compliance Form have been attached hereto for the convenience of the parties as Exhibit K. Pursuant to this Section, Provider shall (1) fully comply with all State and Federal employment reporting requirements for Provider's employees applicable to Child Support Assignments Orders; (2) certify that the principal owner(s) of Provider are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (4) maintain such compliance throughout the term of this Agreement. Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, failure of Provider to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Provider to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Agreement subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Provider by City (in lieu of any time for cure provided elsewhere in this Agreement).

Section 25. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. The subsequent acceptance of compensation hereunder by City shall not be deemed to be a waiver of any preceding breach by Provider of any term, covenant, or condition of this Agreement other than the failure of Provider to pay the particular compensation so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such compensation.

Section 26. City's Right to Contract With Others Regarding Agreement Rights. The rights granted hereunder by this Agreement are not exclusive in nature, and City specifically reserves the right to enter into similar additional Agreement agreements at Airport, at any time.

Section 27. Miscellaneous Provisions.

27.1. **Fair Meaning.** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Provider.

27.2. **Section Headings.** The section headings appearing herein are for the

convenience of City and Provider, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

27.3. **Void Provisions**. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect.

27.4. **Two Constructions**. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

27.5. **Laws of California**. This Agreement shall be construed and enforced in accordance with the laws of the State of California and venue shall lie at Airport.

27.6. **Gender**. The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

27.7. **Exclusivity**. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act [49 U.S.C. 40103(e) and 47107(a)(4) (Public Law 103-272; 108 STAT. 1102)]. [USE GUIDE, paragraph 9]

27.8. **Rights of United States Government**. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation, or maintenance of Airport. [USE GUIDE, paragraph 4]

27.9. **War or National Emergency**. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency. [USE GUIDE, paragraph 10]

27.10. **Time**. Time shall be of the essence in complying with the terms, conditions, and provisions of this Agreement.

27.11. **Integration Clause**. It is understood that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement, not incorporated herein in writing, shall be binding on any of the parties hereto.

27.12. **Force Majeure**. Except as otherwise provided in this Agreement,

whenever a day is established in this Agreement on which, or a period of time, including a reasonable period of time, is designated within which, either party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lockouts, embargoes, unavailability of services, labor or materials, disruption of service or brownouts from utilities not due to action or inaction of City, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control (financial inability excepted) ("**Force Majeure**"); provided, however, that nothing contained in this Subsection shall excuse Provider from the prompt payment of any compensation, fees or other monetary charge required of Provider hereunder.

27.13. **Approvals.** Any approvals required by City under this Agreement shall be approvals of LAWA acting as licensor and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental approvals or rights of the City as a governmental agency, including the approval of any permits required for construction or maintenance on the Airport and the passage of any laws including those relating to zoning, land use, building and safety.

27.14. **Ordinance and Los Angeles Administrative Code (hereinafter referred to as "Code") Language Governs.** Ordinance and code exhibits are provided as a convenience to the parties only. In the event of a discrepancy between the exhibits and the applicable ordinance and/or code language, or amendments thereto, the language of the ordinance and/or code shall govern.

27.15 **Amendments to Ordinances and Codes.** The obligation to comply with any ordinances and codes which have been incorporated into this Agreement by reference, shall extend to any amendments which may be made to those ordinances and codes during the term of this Agreement.

27.16. **Days.** Unless otherwise specified, "days" shall mean calendar days.

27.17. **Deprivation of Provider's Rights.** City shall not be liable to Provider for any diminution or deprivation of Provider's rights under this Agreement which may result from Provider's obligation to comply with any and all applicable laws, rules, regulations, restrictions, ordinances, statutes, and/or orders of any federal, state and/or local government authority and/or court hereunder on account of the exercise of any such authority as is provided in this Subsection, nor shall Provider be entitled to terminate the whole or any portion of the Agreement by reason thereof.

27.18. **City's Consent.** In each instance herein where City's, Board's or the Executive Director's approval or consent is required before Provider may act, such approval or consent shall not be unreasonably withheld, unless otherwise provided.

[signature page follows]

DRAFT

IN WITNESS WHEREOF, City has caused this Agreement to be executed by Executive Director this _____ day of _____, 20_____.

CITY OF LOS ANGELES

By _____
Executive Director
Department of Airports

The foregoing Agreement has been read, is thoroughly understood by the undersigned, and the same is hereby accepted.

By _____
Signature

Print Name

(Print Title)

By _____
Signature

Print Name

(Print Title)

APPROVED AS TO FORM
Carmen A. Trutanich, City Attorney

Dated: _____

By: _____
Assistant/Deputy City Attorney