

**City of Atlanta  
Department of Aviation  
Hartsfield-Jackson Atlanta International Airport**

**LEASE AGREEMENT  
AREA**

**with**

**Delta Air Lines, Inc.**

**for**

**City South Hangar**

1000 South Inner Loop Road  
Atlanta, Georgia 30320

**LEASE AGREEMENT**  
**TABLE OF CONTENTS**

<b>SECTION 1 - LEASED PREMISES:</b> .....	8
Subsection 1.01 - Description of Leased Premises.....	10
Subsection 1.02 - Ingress and Egress .....	10
<b>SECTION 2 - TERM</b> .....	10
Subsection 2.01 - Inspection of Leased Premises.....	10
Subsection 2.02 - Inspection of Leased Premises Prior to Expiration of the Term.....	11
Subsection 2.03 - Right to Terminate this Lease.....	11
Subsection 2.04 – End of Term.....	11
<b>SECTION 3 – RENTAL</b> .....	11
Subsection 3.01 - Place of Payment and Late Fees.....	11
Subsection 3.02 - Proration of Rental Payments.....	12
Subsection 3.03 – Lease Security.....	12
Subsection 3.04 – Surety Bond or Letter of Credit.....	12
Subsection 3.05 – Ancillary Charges.....	12
Subsection 3.06 – Ramp Use Charges.....	12
Subsection 3.07 – FAA Rent Determination.....	12
<b>SECTION 4 - USE OF LEASED PREMISES:</b> .....	12
Subsection 4.01 - Restrictions on Use of Leased Premises.....	13
Subsection 4.02 – Storage within Leased Premises.....	14
Subsection 4.03 - Hazardous Materials.....	15
Subsection 4.04 - Signs and Advertising.....	17
<b>SECTION 5 - IMPROVEMENTS BY LESSEE</b> .....	17
Subsection 5.01 – General.....	17

**LEASE AGREEMENT**

Subsection 5.02 - Realty Improvements, Tenant Improvements, Equipment and  
Fixtures.....18

Subsection 5.03 - Removal & demolition.....19

Subsection 5.04 – Refrigeration Equipment Upgrades.....

**SECTION 6 - RESPONSIBILITY FOR MAINTENANCE OF THE CARGO  
BUILDING AREA.....19**

Subsection 6.01 – General.....19

Subsection 6.02 - Lessee’s Trade Fixtures.....19

Subsection 6.03 - Lessee’s Responsibility.....19

Subsection 6.04 - City's Responsibility.....20

Subsection 6.05 – Maintenance & Operation Service Charge (M&O).....20

Subsection 6.06 - The Initial M&O Charge Rate.....20

**SECTION 7 - COMPLIANCE WITH LAWS AND REGULATIONS.....21**

Subsection 7.01 - Airport Rules and Regulations.....21

**SECTION 8 – ABANDONMENT.....21**

**SECTION 9 – LIENS.....22**

**SECTION 10 – TAXES.....22**

**SECTION 11 – UTILITIES.....22**

Subsection 11.01 - Utility Services.....22

Subsection 11.02 - Waiver of Damages.....23

Subsection 11.03 - Utility Charges.....23

**SECTION 12 - TRASH AND REFUSE.....23**

Subsection 12.01 - Removal and Disposal.....23

Subsection 12.02 - Storage Containers.....23

Subsection 12.03 – Foreign Object Debris.....24

Subsection 12.04 - Deleterious Wastes.....24

**LEASE AGREEMENT**

Subsection 12.05 – City’s Right to Perform.....24

**SECTION 13 – INSURANCE.....24**

**SECTION 14 - DAMAGE OR DESTRUCTION OF THE LEASED PREMISES...28**

**SECTION 15 – BONDS.....29**

**SECTION 16 - INSPECTION OF THE LEASED PREMISES.....30**

**SECTION 17 – STATISTICAL REPORTING OF CARGO DATA.....30**

**SECTION 18 - TITLE.....30**

**SECTION 19 - EVENTS OF DEFAULT BY THE LESSEE.....30**

**SECTION 20 - RESULTS OF THE LESSEE’S DEFAULT.....31**

    Subsection 20.01 – Rescission of Security Badge Privileges.....31

    Subsection 20.02 - Termination by the City.....32

    Subsection 20.03 - Other Rights and Remedies of the City.....32

**SECTION 21 - TERMINATION BY LESSEE.....33**

**SECTION 22 - RIGHTS UPON TERMINATION.....33**

**SECTION 23 - NON-WAIVER OF DEFAULTS.....33**

**SECTION 24 - LESSEE’S ENCUMBRANCES.....34**

**SECTION 25 – USUFRUCT.....34**

**SECTION 26 - HOLDING OVER.....34**

**SECTION 27 - REDELIVERY OF PREMISES.....34**

**SECTION 28 - CITY’S LIEN.....34**

**SECTION 29 - QUIET ENJOYMENT.....34**

**SECTION 30 - LIMITATIONS ON ASSIGNMENT, TRANSFER, AND  
    SUBLETTING.....35**

**SECTION 31 – WAIVERS.....35**

**SECTION 32 - AGENT FOR SERVICE OF PROCESS.....35**

**LEASE AGREEMENT**

**SECTION 33 - WAIVER OF CLAIMS.....36**

**SECTION 34 - SAFETY AND SECURITY ARRANGEMENTS.....36**

**SECTION 35 - PUBLIC USE AND FEDERAL GRANTS.....37**

    Subsection 35.01 - Grant Agreements.....37

    Subsection 35.02 - Non-exclusive Rights.....37

    Subsection 35.03 - Right to Develop the Airport.....37

    Subsection 35.04 - Subordination of Lease.....37

    Subsection 35.05 - Federal Non-Discrimination Covenant.....38

    Subsection 35.06 - Right to Amend.....39

**SECTION 36 - CITY’S EEO ORDINANCE AND CERTIFICATION OF NON-DISCRIMINATION COVENANT.....39**

    Subsection 36.01. City’s EEO Ordinance.....39

    Subsection 36.02. Equal Business Opportunity and Disadvantaged Business Enterprises.....39

**SECTION 37 – CONSENT NOT TO BE UNREASONABLY WITHHELD.....39**

**SECTION 38 - PREVENTION OF TRESPASS; PAYMENT OF FINES FOR VIOLATION OF FEDERAL REGULATIONS.....40**

**SECTION 39 – NOTICES.....40**

**SECTION 40 - RELATIONSHIP BETWEEN THE PARTIES.....40**

**SECTION 41 - TIME OF THE ESSENCE.....40**

**SECTION 42 - LEASE MADE IN GEORGIA.....41**

**SECTION 43 - SURRENDER AND MERGER.....41**

**SECTION 44 - SUCCESSORS AND ASSIGNS.....41**

**SECTION 45 – HEADINGS.....41**

**SECTION 46 – SEVERABILITY.....41**

**SECTION 47 – ENTIRE AGREEMENT.....41**

**LEASE AGREEMENT**

**SECTION 48 – CUMULATIVE RIGHTS.....42**  
**SECTION 49 – FORCE MAJEURE.....42**  
**SECTION 50 – REAL ESTATE BROKERAGE COMMISSION.....42**  
**SECTION 51 – PROHIBITION ON KICKBACKS AND GRATUITIES.....42**  
**SECTION 52 – INDEMNIFICATION.....43**  
**SECTION 53 – COUNTERPART PROVISIONS.....43**  
**SECTION 54 – ADDENDUM .....44**

**ADDENDUM**

**EXHIBIT A, A1, A2, A3, A4, A5, A6, A7 – MAP DRAWING**

**EXHIBIT B, B1, B2, B3, – RENTAL RATES**

**EXHIBIT C, C1 - MAINTENANCE**

**EXHIBIT D – CODE OF CONDUCT**

**APPENDIX I – RESOULTION**

**LEASE AGREEMENT**

**LEASE AGREEMENT**

for **City South Hangar:**

at

Hartsfield-Jackson Atlanta International Airport

GEORGIA CLAYTON COUNTY

THIS AGREEMENT AND LEASE (the "Lease"), made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 201\_ by and between the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (hereinafter referred to as the "City") and **DELTA AIR LINES, INC.** a company incorporated and existing under the laws of the state of Georgia (hereinafter referred to as "Lessee").

WITNESSETH THAT:

**WHEREAS**, the City owns and operates Hartsfield-Jackson Atlanta International Airport (hereinafter referred to as the "Airport,") situated in the Counties of Fulton and Clayton, Georgia, on which there exist certain facilities designed and constructed by the City for use by firms engaged in the business of transporting passengers, cargo, and mail by aircraft, among which are facilities located in an area designated as and hereinafter referred to as the "City South Hangar"; and

**WHEREAS**, Lessee is engaged in the aircraft operations and support business; and

**WHEREAS**, Lessee desires to lease certain portion of premises in the City South Hangar Area for use in its business, and the City is willing to lease such premises to Lessee, subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, the execution of this Lease has been authorized by Resolution No \_\_\_\_\_ of the Council of the City of Atlanta adopted on \_\_\_\_\_, and approved on \_\_\_\_\_ by the Mayor of the City of Atlanta, a copy of which is attached hereto as Appendix I and made a part hereof.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS** hereinafter set forth, the City hereby leases and demises to Lessee, and Lessee hereby hires and takes from the City for its exclusive use, and for the uses and purposes herein enumerated, the leased premises hereinafter described, subject to the following terms and conditions:

## LEASE AGREEMENT

### SECTION 1 - LEASED PREMISES:

Subsection 1.01 - Description of Leased Premises. The leased premises herein demised consist of approximately:

CITY SOUTH HANGAR the areas identified on Exhibits A1 and A2:

- (a) Hangar Building Area: 95,877 square feet of interior hangar area
- (b) Preferential Ramp Area: 101,332.00 square feet of land
- (c) Blast Fence Area: 3,024 square feet of land

The above-referenced area shall be for Lessee's exclusive use and shall hereinafter be known as the "Exclusive Leased Premises". The Exclusive Leased Premises and the "Non-exclusive Leased Premises" (as defined below) shall together comprise the "Leased Premises".

Lessee shall have non-exclusive use (the "Non-exclusive Leased Premises"), subject to any restrictions referred to in Section 2 hereof, of the following areas:

- (a) Taxiway;
- (b) Taxi-lane or taxiing apron not within any tenant's lease boundaries;
- (c) Aircraft Parking Ramp in the City South Hangar Area which non-exclusive use shall be subject to prior arrangements made with the City or its designated North and South Cargo Area Ramp Manager<sup>[A1]</sup> as indicated on Exhibit A2;
- (d) Blast fence area as indicated on Exhibit A2.

The Leased Premises are being received by Lessee in its "as-is" condition, including, but not limited to, any existing Hazardous Materials (as that term is defined hereinafter), if any, as the same exist on the effective date hereof.

Subsection 1.02 - Ingress and Egress. Lessee, its officers, directors, employees, patrons, customers, invitees, guests, and suppliers of materials or furnishers of services shall have the right of ingress to and egress from the Leased Premises 24 hours per day, seven (7) days per week, over Airport roadways, including the use of common use roadways, subject to such reasonable rules and regulations as may be established by the City and other governing jurisdictions with respect to such use, and subject to applicable law.



## LEASE AGREEMENT

### SECTION 2 - TERM:

The term of this Lease shall commence from the date of execution by the City as indicated above and shall continue through December 31, 2026, subject to the provisions below (the "Term").

Subsection 2.01 - Inspection of Leased Premises. Contemporaneously with the execution of this Lease, a walk through inspection of the Leased Premises shall be made by the Aviation General Manager or his designee and a representative of Lessee for the purpose of noting the condition of the Leased Premises at the time of execution of this Lease.

Subsection 2.02 - Inspection of the Leased Premises Prior to Expiration of the Term. A walk through inspection of the Leased Premises shall be made by the Aviation General Manager or his designee and a representative of Lessee not less than thirty (30) days prior to the expiration of the Term hereof, for the purpose of noting deficiencies in the maintenance of the Leased Premises. The Lessee shall correct or repair any and all deficiencies prior to the expiration of the Term noted during such inspection.

Subsection 2.03 - Right to Terminate this Lease. It is further covenanted and agreed that, in addition to any other right of termination provided hereunder, the City shall have the right to terminate this Lease for convenience at any time during the Term with at least one-hundred and twenty (120) days prior written notice to the effective date of such termination.

Subsection 2.04 – End of Term. Upon the expiration or other termination of the Term, Lessee shall quit and surrender to the City the Leased Premises in good order and condition, ordinary wear and tear excepted. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

### SECTION 3 - RENTAL:

Lease payments will begin on the Date of Occupancy regardless if this date is earlier than the Date of Execution. Lessee hereby covenants and agrees to pay on the first day of each month of the Term hereof to the City in lawful money of the United States of America, without deduction or offset (except as specifically authorized herein), and in advance and without demand, at the City's principal place of business as indicated in Subsection 3.01 of this Lease or at such place or places or to such person or persons as may be designated from time to time by the City, the total monthly rental which shall be calculated based on the Leased Premises as outlined in Exhibit A and under the rate schedule set forth in Exhibit B attached hereto and made a part hereof by reference (the "Rental"). The Rental shall be subject to an escalation during the entire period of occupancy, including Holdover if any. The Rent as described in Exhibit B shall increase 3% annually every July 1.

Subsection 3.01 - Place of Payment and Late Fees. All amounts due pursuant to this Lease shall be payable to the

## LEASE AGREEMENT

CITY OF ATLANTA  
DEPARTMENT OF AVIATION  
P.O. BOX 920500  
ATLANTA, GA 30392

Via Electronic Funds Transfer (EFT)  
Bank: Wells Fargo Bank  
Account Name: City of Atlanta-DOA  
Routing Number: 121000248  
Account Number: 2000132044372

or such other place as designated by the Aviation General Manager. Any amount that is not paid within five (5) days of the due date shall accrue interest from the due date at a rate of one and a half percent (1.5%) per month until paid. Notwithstanding the foregoing, Lessee shall not abate, suspend, postpone, set-off or discontinue any payments of fees payable hereunder.

Subsection 3.02 - Proration of Rental Payments. For any period of less than one calendar month that this Lease shall be in effect, the aforesaid rental payments shall be pro-rated.

Subsection 3.03 – Lease Security. A security deposit of three (3) months Rental is required. In addition, the requirement for a security deposit may be re-evaluated in the future depending on the Lessee's payment history and general economic conditions.

Subsection 3.04 – Surety Bond or Letter of Credit. Lessee shall file with the City a Surety Bond or Irrevocable Letter of Credit in the initial amount of three (3) months' Rental and charges, as collateral security for the payment of the rents and charges to become due to the City from Lessee under this Lease, and for faithful performance by Lessee of all the other obligations under this Lease, and for payment of any and all sums of money for which Lessee may be or become liable under this Lease. If the Lessee is in default under this Lease more than two (2) times within any twelve-month period, regardless of whether such default is cured, then, without limiting the City's other rights and remedies provided for in this Lease or at law or equity, the Surety Bond or Letter of Credit shall automatically be increased to an amount equal to four (4) months Rental, which shall be provided by the Lessee to the City forthwith on demand.

Subsection 3.05 – Ancillary Charges. Failure to pay ancillary charges shall result in a default as defined in Section 19 herein.

Subsection 3.06 – Ramp Use Charges. Lessee will incur a separate Ramp Use charge according to the daily rates established by the City for common use apron parking at the airport for any business materials, vehicles or equipment stored by Lessee outside of their designated leasehold. Further, if storage of these items prevent use of the ramp by the City for aircraft parking, the Lessee will be charged at the rate of the applicable aircraft that

## LEASE AGREEMENT

was not able to be accommodated. Failure to pay Ramp Use Charges shall result in a default as defined in Section 19 herein<sup>[A2]</sup>.

Subsection 3.07 – FAA Rent Determination<sup>[A3]</sup>. In the event the FAA reviews this Lease Agreement and determines that the rental rates contained herein are inconsistent with FAA regulations or violate any Grant Assurance applicable to the Airport, Delta agrees to pay such additional sums necessary to bring the Airport into compliance with such regulations or assurances. Further should the City be penalized as a result of such determination, then Delta agrees to reimburse the City for any sums the City is required to pay.

### SECTION 4 - USE OF LEASED PREMISES:

The Leased Premises shall be subject to the terms and conditions of this Lease, and applicable federal, state and local laws, regulations, rules, codes, ordinances, and executive orders, solely for such uses and purposes as are a part of or incidental to administrative support, training, and maintenance operations required for aircraft maintenance and support services, including offices, storage areas, maintenance rooms, engine testing facilities, and equipment<sup>[A4]</sup>. The Leased Premises shall be used for no other purpose than that stated without the prior written consent of the City's Aviation General Manager. Any revenue received by Lessee for uses of the Leased Premises not authorized herein shall inure immediately and completely to the City. Violation of this paragraph shall be deemed a default under Section 19 herein.

Lessee shall not do anything, or cause or permit anything to be done, in or about the Leased Premises, which will create a nuisance, or in any way obstruct or interfere with the rights of others at the Airport, or injure or annoy them, or allow any sale by auction on the Leased Premises, or use or allow the Leased Premises to be used for any improper, immoral, unlawful purpose, or any purpose which violates applicable Airport rules or regulations, or obstruct the streets, roads or common passageways, in front of, within, or adjacent to the Leased Premises or the Airport, or do or permit to be done anything in any way tending to injure the reputation of the City, or the appearance of the Airport.

Lessee agrees that the Leased Premises shall be used solely for airport- purposes.

#### Subsection 4.01 - Restrictions on Use of Leased Premises.

- (A) Passenger Handling. Lessee shall not, except in case of an emergency whereupon Lessee shall provide immediate notice to City, use or allow others to use the Leased Premises in any manner in connection with the serving or handling of passengers into or out of the Airport, nor shall Lessee use or allow others to use the Leased Premises for passenger accommodations.
- (B) Vending Machines & Public Phones. Coin operated amusement devices shall not be placed or used upon the Leased Premises without the written permission of the City.

## LEASE AGREEMENT

Public telephones will be permitted on the Leased Premises only subject to terms, fees, and conditions of an appropriate written permit issued therefor by the City. Lessee shall have the right to install, maintain and operate vending machines upon the Leased Premises for the purpose of providing and making available foods, beverages, and sundry items only to employees of Lessee or its tenants.

- (C) Obstruction of Ingress & Egress. Lessee shall not obstruct ingress and egress to other facilities nor any easement in the Area in its use of the Leased Premises.
- (D) Parking/Storage Outside Leased Premises. Lessee shall not use any Non-exclusive Leased Premises for the purpose of parking or storing business materials, vehicles, or equipment. In the event Lessor so permits, Lessee will be charged at daily common use rates per Section 3.06 contained herein for common use parking/storage.
- (E) Ground Support Equipment (“GSE”) shall be parked/stored in an orderly manner that maximizes ground handling efficiency and ramp space use. Damaged, broken, leaking, dilapidated, or non-functioning GSE must be repaired to full functionality within seventy-two (72) hours or removed from the leased Premises at the expense of the Lessee unless otherwise agreed to in writing by City.
- (F) All fuel, hydraulic, and other spills or leaks on the ramp in the Lessee’s Exclusive Leased Premises and/or the Non-exclusive Leased Premises caused by Lessee, agents, employees, contractors or subcontractors shall be cleaned, removed and remediated immediately upon discovery by the Lessee, notification by the other tenants or the City, at the Lessee’s expense in accordance with subsection 4.03.
- (G) Traffic and operations. The area abutting the leased premises and accompanying infrastructure are designed primarily to facilitate air cargo. Therefore, the City reserves the right to review and restrict activities on the leased facilities which may negatively impinge upon the air cargo service. (ie. Truck-to Truck traffic)

In addition to the remedies reserved by City above, if after thirty (30) calendar days written notice from the City during which time Lessee may cure, Lessee fails to perform, or fails to cause its employees, agents, contractors or subcontractors to perform in accordance with any of the foregoing restrictions or requirements, then the City may, but shall not be obligated to perform such act, corrective measure of removal as City deems necessary under the circumstances, and Lessee shall pay the cost thereof to the City upon demand. City reserves the right to perform said measures at a charge of 150% of cost at Lessee’s expense. Any unpaid amounts under this Subsection 4.01 shall bear interest at the rate of one and a half percent (1.5%) per month until paid in full.

Subsection 4.02 - Storage Within Leased Premises. Throughout the Term, Lessee shall use cargo storage procedures and equipment to maximize use of space at the Premises and to most efficiently use the Premises for aeronautical storage purposes. Per Section 30 hereinafter, Lessee shall not sublet the space to any other tenant or third-party.

## LEASE AGREEMENT

Lessee shall use all such equipment, including storage racks, cargo, containers, cranes, and associated cargo equipment (hereinafter, "Storage Equipment") as it deems necessary to operate the Premises as an efficient aeronautical cargo facility, maximizing capacity and, subject to the reasonable phasing-in of the installation of Storage Equipment, to allow for the full and efficient utilization of the Premises at all times for said purpose. With respect to Storage Equipment, Lessee shall give the Landlord not less than one hundred eighty (180) days' notice of the manufacturer and specifications of such Storage Equipment prior to the installation thereof, and shall submit to the Lessor a construction or tenant alteration application covering any installation and planned operation of Storage Equipment or construction work required in connection with any such Storage Equipment including, without limitation, any such work required for its attachment, connection to, or integration with any mechanical, electrical or other system or any structure at the Premises.

### Subsection 4.03 - Hazardous Materials.

- (A) Lessee, in conducting any activity on the Leased Premises, shall comply with all Environmental Laws, including but not limited to requirements regarding the generation, storage, use and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment and to facilities and structures.
- (B) Lessee shall not cause or permit any Hazardous Materials to be generated, placed, held, stored, processed, treated, released or disposed of on or at the Leased Premises except (i) in the minimum amounts necessary for the operation of an air cargo facility, aircraft support facility or a catering facility, including Lessee's equipment maintenance, and (ii) in full compliance with Environmental Laws.
- (C) Lessee shall not cause and it shall prohibit any actual or threatened discharge, release, spill, or leak of any Hazardous Materials (including any Hazardous Materials present on the Leased Premises on the effective date hereof) to storm or sanitary sewer systems, surface water, ground water, air or the Airport except in compliance with Environmental Laws.
- (D) In the case of a discharge, release, spill, or leak of Hazardous Materials (including any Hazardous Materials present on the Leased Premises on the effective date hereof) as a result of the Lessee's activities or that of any of its agents, employees, contractors or subcontractors, Lessee shall immediately notify the City in writing of the discharge, release, spill or leak, the proposed control and remediation response actions by Lessee, and any responses, notifications or actions taken by any federal, state or local agency with regard to such discharge, release, spill or leak. Lessee shall control and remediate all contaminated media to the extent required by

## LEASE AGREEMENT

Environmental Law at no expense to the City; provided that the City's approval of such actions, and the contractors to be used by the Lessee in connection therewith, shall first be obtained except where such prior approval would prevent Lessee from complying in a timely manner control or remediate such a discharge, release, spill, or leak of Hazardous Materials at, on, under, from or about the Leased Premises.

- (E) Lessee shall make available for the City's review and approval all documents and materials that Lessee prepares pursuant to any requirement under this Section. The City's approval shall be required prior to Lessee submitting any such documents or materials to any governmental agency, except where such prior approval would prevent Lessee from complying in a timely manner with any requirement to file any notice or report regarding any release or threatened release of Hazardous Materials at, on, under or about the Leased Premises. Lessee shall provide the City copies of all such notices and reports of releases or threatened releases when they are filed with the appropriate governmental agency.
- (F) At the City's request, Lessee shall conduct testing and monitoring as is necessary to determine whether any Hazardous Materials (including any Hazardous Materials present on the Leased Premises on the effective date hereof) have entered storm or sanitary sewer systems, or the air, soil, groundwater, or surface water at, on, or under the Airport as a result of Lessee's activities. Lessee shall provide copies of all results of such testing and monitoring to the City.
- (G) Lessee hereby indemnifies the City from and against any breach by Lessee of the obligations stated in this Subsection 4.03, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost liability, and/or expenses (including, without limitation, fines assessed against the Lessee, the City or others for whom the City may be responsible, diminution in value of the Airport, damages for the loss or restriction on use of rentable or usable space or of any amenity on the Airport, damages arising from any adverse impact on leasing of space on the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term (as defined in Section 2 herein) as a result of such breach. This indemnification of the City by the Lessee also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Airport which results from such a breach.
- (H) As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, pollutant, or waste which is or becomes regulated by any state or local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b)

## LEASE AGREEMENT

designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 et seq. (42 U.S.C. § 903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601) and any rules or regulations promulgated pursuant to such statutes or any similar Environmental Laws.

- (I) As used herein, the term "Environmental Laws" shall mean all federal, state and local statutes, laws, codes, rules, regulations, ordinances, orders, standards, permits, licenses or requirements (including consent decrees, judicial decisions and administrative orders), currently in force, as amended or re-authorized, pertaining to the protection, preservation, conservation, or regulation of the environment, or imposing requirements relating to public or employee health and safety, or protection of the environment including, without limitation, the FWPCA, RCRA, CERCLA, the Emergency Planning and Community Right to Know Act, 42 U.S.C. sec. 11001 et seq., the Clean Air Act, 42 U.S.C. sec. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. sec. 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. sec. 300F et seq., and the Occupational Safety and Health Act, 29 U.S.C. sec. 651 et seq., each as amended or re-authorized.
- (J) The City and its employees, representatives and agents shall have access to the Leased Premises during reasonable hours and upon reasonable notice to the Lessee in order to conduct periodic environmental inspections and tests of Hazardous Material contamination on or at the Leased Premises. Such periodic environmental inspections shall not be performed in a manner which will unreasonably disrupt the operations of the Lessee.

Subsection 4.04 - Signs and Advertising. Lessee is hereby granted the right to install identification and directional signs on and about the Leased Premises, subject to prior written approval by the Department of Aviation's division of Planning & Development (or such other department as the Aviation General Manager may, from time to time, direct) of their sizes, designs, texts, locations, specifications and characteristics of such identification and directional signs.

### **SECTION 5 - IMPROVEMENTS BY LESSEE:**

Subsection 5.01 - General. All development, construction, and use of improvements on the Leased Premises shall be in accord with the applicable provisions of the "The Design and Construction Guidelines for Tenant Construction and Modifications" for the Airport, a copy of which is on file in the Facilities Division of the Department of Aviation of the City ( <http://apps.atlanta-airport.com/engineeringguidelines/> ) and all applicable laws, regulations and ordinances.

## LEASE AGREEMENT

Further, it shall be unlawful to construct, erect, or alter any airport tenant space or property without construction documents approved in advance by the Fire Chief or his designee for Fire Department accessibility, fire hydrant requirements, or Life Safety Code requirements. If Lessee's operations result in a higher fire rating requirement by applicable building codes or fire codes or laws or regulations than is served by the existing fire safety system, upgrades to the existing fire protection system shall be made by Lessee at no cost or expense to the City. Operations requiring such an upgrade to the fire protection system shall not be conducted on the Premises prior to completion of upgrade work. In accordance with fire prevention code, section 105.6.47 Fire Inspection and Operational Permit Fees, the Fire Chief of the Atlanta Fire Rescue Department or his designee is authorized to charge and collect fees, on a yearly, one time or location basis for the issuance of permits for activities including storing of certain materials that constitute fire hazards for which permits are required by the Fire Prevention Code.

### Subsection 5.02 – Realty Improvements, Tenant Improvements, Equipment and Fixtures.

No improvements, including landscaping, shall be erected or placed on the Leased Premises, and no alterations ( structural or non-structural) shall be made to the Leased Premises without prior written approval of the City's Aviation General Manager of such improvements or alterations; provided, however, that: (1) all such alterations or improvements shall be commenced only after plans and specifications therefore have been submitted to and approved in writing by the City's Aviation General Manager in full conformance with Article 13 of the "The Design and Construction Guidelines for Tenant Construction and Modifications" referred to in Subsection 5.01(C) above (2) realty or building improvements to be reimbursed by the City must have prior written approval by the Aviation General Manager All other tenant improvements shall be accomplished without cost or expense to the City (3) no installations whether permanent or temporary may be attached to or installed on the roof without prior approval (4) no telecom or internet provider will be given access to the City's main board without advance notice and approval of the City's Aviation Department of Information Technology and (5) realty or building improvements should consider energy reduction, water reduction, emission reduction, or other adopted sustainability goals of the Department of Aviation details of which can be found on the City's website, (<http://intranet/PnD/AssetManagementandSustainability/AMS%20Team%20Page/default.aspx>).

Ownership and maintenance of all trade fixtures and any associated structural, electrical or other support infrastructure are the responsibility of the Lessee. Upon termination of the Lease, all trade fixtures must be removed and premises returned to a working condition, unless written approval is given by the Aviation General Manager for a defined grace period to attempt to sell any trade fixtures to a subsequent lessee of Leased Premises.

The plans and specifications for such improvements and alterations shall be prepared by a licensed professional and mailed to the following official (or such other official as may be designated in writing by the Aviation General Manager from time to time) for approval on behalf of the City:



## LEASE AGREEMENT

City of Atlanta  
Department of Aviation - Facilities Division  
ATTN: Assistant General Manager - Facilities  
P.O. Box 20509  
Atlanta, GA 30320

Phone (404) 530-6600 for instructions regarding delivery by hand or by courier or express service.

Subsection 5.03 - Removal and Demolition. Lessee shall not remove or demolish, in whole or in part, any improvements upon the Leased Premises without the prior written consent of the Aviation General Manager who may, in his discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

### **SECTION 6 - RESPONSIBILITY FOR MAINTENANCE OF THE PREMISES**

Section 6.01: General - The Lessee is responsible for all maintenance for the Premises and structure to include the roof, exterior walls and utilities up to the meter. Any changes as a result of Tenant Modifications will become Tenant's responsibility.

The City, acting through its Aviation General Manager or his designated representative, may enter upon the Leased Premises, with the prior consent of Lessee, at such times as might be necessary to carry out its maintenance, if any, responsibilities hereunder. City shall have no maintenance responsibilities for said Leased Premises.

Section 6.02 - Lessee's Trade Fixtures. Lessee is responsible for the maintenance of all existing trade fixtures, as well as any fixtures added by Lessee to the Leased Premises during the Term. Upon termination of the Lease, all existing trade fixtures that were accepted as working at the commencement of the Lease must be returned in working condition, unless otherwise approved in writing by the City. The City reserves the right not to replace any existing trade fixtures in the event they are disabled, destroyed or otherwise rendered unusable during the Lease.

Subsection 6.03 - Lessee's Responsibility. Lessee shall, throughout the Term and without cost or expense to the City, keep and maintain Lessee's Leased Premises in addition to its Exclusive Leased Premises and all improvements, landscaping, fixtures, and equipment, which may now or hereafter exist thereon, in good and sanitary order and repair and in good, safe, and presentable condition, consistent with the highest forms of business practices. If, after thirty (30) calendar days written notice from the City, during which period Lessee may cure, Lessee fails to maintain or repair or otherwise restore to good, safe, secure and sanitary condition Lessee's Exclusive Leased Premises or any areas adjacent thereto, then the City may, but shall not be obligated to, enter upon the Leased Premises and perform such maintenance or repair, and Lessee shall pay the cost thereof to the City upon demand; provided, however, that if such repairs cannot be completed within said thirty-day period, then Lessee shall not be in default and the City may not exercise its option herein if Lessee has commenced repairs within said thirty-day

## LEASE AGREEMENT

period and diligently pursues same to completion. Any unpaid amounts under this Section 6 shall bear interest at the rate of one and a half percent (1.5%) per month until paid in full.

For all maintenance that is deemed to be the responsibility of the Lessee, Lessee must adhere to industry standard preventive maintenance schedules and provide written documentation via reports or receipts to the City's Facilities Department on a regular basis. If preventive maintenance schedules are not adhered to properly, the City reserves the right to provide the necessary service at a charge of 150% of cost at Lessee's expense. In addition, the City has the right at any time to inspect all tenant improvements that will ultimately revert back to the City at end of this Lease.

Subsection 6.04 - City's Responsibility The City shall not have responsibility of any maintenance requirements on the Leased Premises<sup>[A5]</sup>.

### SECTION 7 - COMPLIANCE WITH LAWS AND REGULATIONS:

Subject to all applicable notice and cure periods provided herein, Lessee shall not at any time during the term hereof:

- (A) Omit or fail to procure at the appropriate time any permit or license required by Applicable Law for any activities or operations on the Leased Premises, and shall not omit or fail to pay, before delinquent, any cost, charge or expense of any kind or nature required to be paid by Lessee hereunder; or
- (B) Omit or fail to do anything or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises or in any improvement or facility erected thereon, which will in any way conflict with Applicable Law; or
- (C) Create or suffer to be created a nuisance, or commit or suffer to be committed any waste in or upon the Leased Premises; or
- (D) Use or allow the Leased Premises to be used for any immoral or unlawful purposes; or
- (E) Commit or suffer to be committed in or on the Leased Premises any other act or thing which may unreasonably disturb the quiet enjoyment of any other tenant at the Airport.
- (F) Fail to comply with Applicable Law.
- (G) "Applicable Law" shall mean any law, ordinance, rule or regulation required to be kept and observed by the Lessee which is now in force or which may hereinafter be enacted or promulgated by any public authority

## **LEASE AGREEMENT**

or government entity having jurisdiction over the Leased Premises, including, without limitation, all state, federal, municipal and local governments, departments, commissions and boards.

Subsection 7.01 - Airport Rules and Regulations. The occupancy and use by the Lessee of the Leased Premises and the rights herein conferred upon Lessee shall be subject to such Airport rules and regulations as are now or may hereafter be prescribed by the City through the lawful exercise of its powers.

### **SECTION 8 - ABANDONMENT:**

Lessee shall not vacate nor abandon the Leased Premises at any time during the Term, and if the Lessee shall abandon, vacate, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, any personal property belonging to Lessee and left upon the Leased Premises and any or all of Lessee's improvements and facilities thereon shall, at the option of the City, be deemed to be abandoned by Lessee and shall, at the option of the City, become the property of the City.

### **SECTION 9 - LIENS:**

Lessee shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred (except as provided in Section 28 hereof) by Lessee, Lessee's employees, agents, or contractors.

However, if any mechanic's or material man's lien shall at any time be filed against the Leased Premises or any part hereof, Lessee shall be entitled to contest such lien provided that, within sixty (60) days after notice of the filing hereof, Lessee shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, or shall deposit with the City such security as the City may find satisfactory to cover said lien. Lessee shall save the City harmless from any such liens (including any lien created pursuant to Section 24 hereof) and shall pay to the City, upon demand, the cost of discharging such liens (other than those which may have been created pursuant to Section 24 hereof) with interest at the rate of seven (7%) percent per annum to the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that Lessee may pay any such liens under protest and, without liability, cost or expense to the City, may in good faith, contest the validity or amount thereof.

Further, Lessee shall not encumber in any way, Lessee's interest in the Leased Premises or in improvements thereon, without prior written consent of the Aviation General Manager. (See also, Section 24).

### **SECTION 10 - TAXES:**

## **LEASE AGREEMENT**

Lessee shall pay or cause to be paid, prior to delinquency, any lawful taxes, and any assessments levied or assessed during the Term hereof on: (a) the Exclusive Leased Premises; (b) all property interests hereunder or in the Exclusive Leased Premises; (c) any improvements, fixtures and equipment now or hereafter existing on the Exclusive Leased Premises; and (d) any personal property on, in or about any buildings or improvements on the Exclusive Leased Premises. It is understood, however, that Lessee may pay any such taxes and assessments under protest, and, without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

### **SECTION 11 - UTILITIES:**

Subsection 11.01 - Utility Services. The City or others have brought, or will cause to be brought, electrical, gas, telephone, sewer and water lines to the centralized utility distribution point. Subject to applicable ordinances and regulations, Lessee may, at its expense, connect to said utilities at the points where same have been brought to the centralized utility distribution point and Lessee shall thereafter pay for, maintain, repair, and replace all such utilities to and including the points of such connection.

Subsection 11.02 - Waiver of Damages. Lessee hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services furnished by the City or others, including but not limited to electricity, gas, water, plumbing, sewage, telephone, or communications, provided that such failures or interruptions were not occasioned by the City's fault or neglect. In any event, the City shall restore promptly any of such services which are provided by the City when the cause of the interruption has been removed.

Subsection 11.03 - Utility Charges. Lessee shall pay utility charges for the Building as part of the allocated M&O Charge in accord with Section 6, including, but not limited to storm water fees and general maintenance and contract for and pay all allocated charges for utility services separately metered to the Leased Premises.

### **SECTION 12 - TRASH AND REFUSE:**

Subsection 12.01 - Removal and Disposal. It is hereby expressly stipulated that the quick and efficient removal and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and Lessee shall arrange for such removal and disposal of same at Lessee's cost and at no cost or expense to the City and in accordance with Applicable Law. The City shall provide common use receptacles for the collection and storage of office trash only, associated with the normal use of the premises. The Lessee will be responsible for the removal of office trash from the premises to the common use receptacle. The City shall arrange for the removal and disposal of same from the common use dumpsters and receptacles.

Subsection 12.02 - Storage Containers. Trash, clippings, refuse, garbage, and other debris shall be stored in closed containers suitably screened and protected from public view, pending their removal and disposal, and such storage shall not generate odors,

## LEASE AGREEMENT

attract rodents or insects, or become offensive in any manner. If Lessee decides to obtain its own receptacle for non-office trash, the receptacle must be kept within the Lessee's Premises and within the area of Lessee's exclusive use unless Lessee obtains advanced written approval from the Aviation General Manager or his/her duly authorized designee in the City's Department of Aviation. In the event that such approval is obtained by Lessee, only secure waste receptacles or dumpsters with lids and doors that will prevent any material from escaping will be utilized. While such dumpsters or receptacles are in place, Lessee will observe good-housekeeping procedures at all times to prevent debris or objects from being deposited outside or above dumpsters or receptacles. Failure to meet said procedures shall result in such approval being revoked and the dumpsters or receptacles will be required to be removed immediately by Lessee at Lessee's sole cost and expense.

Subsection 12.03 – Foreign Object Debris. The storage area must be kept neat and clean at all times and free of Foreign Object Debris (FOD). Lessee shall promptly and properly remove and dispose of all FOD on Airside Ramp Aprons.

Subsection 12.04 - Deleterious Wastes. Lessee shall obey any and all Applicable Law, procedures, standards, and regulations of Federal, State, County, and City authorities regarding petroleum products and other deleterious wastes, including but not limited to regulations regarding entrance of those products into the sewage and storm water drainage systems serving the Airport and the required treatment of those products. In the event that Lessee violates this provision and/or the City is required by any federal or state agency having jurisdiction in such matters to pay a fine or other penalty or incur other costs due to the failure of Lessee to comply with this Subsection, then, in such event, Lessee shall reimburse the City the full amount of such fine or penalty and/or costs promptly upon receipt of invoice therefore from the City and, in addition, the provisions set forth in Subsection 4.03 above regarding Lessee's obligations to the City, shall apply. For purposes of this Subsection 12.04, deleterious wastes shall not include materials which are deemed Hazardous Materials, as set forth in Subsection 4.03 above.

Subsection 12.05 – City's Right to Perform. In addition to the remedies reserved by City above, if after thirty (30) calendar days written notice from the City, during which period Lessee may cure, Lessee fails to perform, or fails to cause its employees, agents, contractors or subcontractors to perform in accordance with any of the restrictions or requirements set forth in Subsections 12.01 through 12.04 above, then the City may, but shall not be obligated to perform such act, take corrective measures for the removal as City deems necessary under the circumstances, and Lessee shall pay a charge of 150% of the cost thereof to the City upon demand. Any unpaid amounts under this Section 12 shall bear interest at the rate of one and a half percent (1.5%) per month until paid in full.

## SECTION 13 - INSURANCE

**City Not Responsible for Acts of Others.** City shall not be liable to Lessee, nor to those claiming by, through or under Lessee, for any loss, theft, injury, liability or damage of, for or to Lessee's business and/or property which may result from: (a) any act, omission,

## LEASE AGREEMENT

fault or negligence of other lessees or licensees, their agents, employees or contractors, or any other persons (including occupants of adjoining or contiguous buildings, owners of adjacent or contiguous property, or the public), (b) the breaking, bursting, backup, stoppage or leaking of electrical or phone/internet cables and wires, or water, gas, sewer, HVAC or steam pipes or ducts serving the Leased Premises, and/or (c) water, snow or ice being upon or coming into the Leased Premises. Lessee acknowledges that its use of the Leased Premises is at its own risk.

(A) Any and all insurance required pursuant to this Lease shall be maintained by Lessee during the Term, including any extension thereto, and Lessee shall provide to City Certificates of Insurance with respect to all required coverages contained herein. City shall have the right to inquire into the adequacy of the insurance coverages set forth in this Lease and to require reasonable adjustments if the City deems such coverages inadequate. Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this Lease shall warrant when signing the Certificate of Insurance that specific authorization has been granted by companies for the agent to bind coverage as required and to execute the Certificate of Insurance as evidence of such coverage. Any and all companies providing insurance required pursuant to this Agreement must meet certain minimum financial security requirements as set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key rating Guide-Property-Casualty or other internationally recognized ratings acceptable to the City, in City's reasonable judgment. Each of the companies providing insurance pursuant to this Agreement must have current, the following:

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

(B) Upon failure of Lessee to furnish, deliver and maintain such insurance as herein provided, Lessee shall be in default and, in addition to City's other remedies, this Lease, at the election of City, may be terminated. Failure of Lessee to obtain and/or to maintain any required insurance shall not relieve Lessee from any liability pursuant to this Lease, nor shall these requirements be construed to conflict with Lessee's indemnification obligations.

Except as set forth below, City shall be covered as an additional insured, as its interest may appear, under any and all insurance required of Lessee pursuant to this Lease

## **LEASE AGREEMENT**

(including without limitation with respect to General Liability, Excess Liability/Umbrella, Pollution Legal Liability and all other liability coverages required by this Agreement except as provided below), and such insurance shall be primary and non-contributory with respect to the additional insured, and also include a waiver of subrogation in favor of the additional insured. Confirmation of this shall unconditionally appear on the Certificate of Insurance. However, the requirement of additional insured status does not apply to workers' compensation or professional liability insurance. Lessee must also submit to City an Additional Insured Endorsement attached to the Certificate of Insurance evidencing City's rights as an additional insured for each policy of insurance: General Liability, Excess Liability/Umbrella, Pollution Legal Liability and any other policy under which City is required to be an additional insured pursuant to this Lease and all such insurance shall be primary and non-contributory.

**LEASE AGREEMENT**

(D) Lessee must, within 2 business days of receipt, forward to the City, at the address listed below, by e-mail mail, hand-delivery or facsimile transmission, all notices received from all insurance carriers providing insurance coverages under this Lease that concern the proposed cancellation, or termination of coverage of any insurance policies. Thirty (30) days prior written notice of cancellation must be provided to the City. All notices pursuant to this provision shall be sent to:

Director of Enterprise Risk Management  
68 Mitchell St., Suite 9100  
Atlanta, GA 30303  
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Lessee shall provide the City with evidence of required insurance in the form of Certificates of Insurance prior to the commencement of this Lease, and, thereafter, with Certificates of Insurance evidencing renewals or changes to required policies of insurance at least thirty (30) days written notice prior to the expiration of previously provided certificates.

**Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Lessee.**

(E) Worker’s Compensation and Employer’s Liability.  
Lessee shall maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each employee who is or may be engaged in work under the Lease:

Worker’s Compensation	Statutory
<u>Employer’s Liability</u>	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 each policy

Waiver of subrogation in favor of the City of Atlanta.

(F) General Liability.  
Lessee shall maintain coverage for Bodily Injury and Property Damage in an amount not less than \$25,000,000 combined single limit except as set forth below for Terrorism. The following specific extensions of coverage shall be provided by Lessee and indicated on the Certificate of Insurance:

- (1) Commercial General Liability (CGL)



## LEASE AGREEMENT

- (2) Personal Bodily Injury
- (3) Broad form Property Damage
- (4) Premises-Operations
- (5) Lessee shall carry Independent Contractors Contractual Liability on a blanket basis or Contractual Liabilities specifically covering this Lease.
- (6) Terrorism Coverage for Certified and Non-Certified Acts (\$1 million per occurrence)

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

### (G) Auto Liability.

Lessee shall carry Auto Liability coverage as follows: \

- (1) Auto Liability Limits: Bodily Injury and Property Damage - \$10,000,000 combined single limit.

The following specific extensions of coverage shall be provided by Lessee and indicated on the Certificate of Insurance:

- (1) Owned, hired, leased and non-owned vehicles to be covered
- (2) Specific liability for vehicles operated on the Airfield
- (3) Commercial Auto Broadened Pollution Liability coverage, endorsement (CA9948) and the MCS-90 endorsement.

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

### (H) Aircraft Liability.

Lessee shall carry Aircraft Liability coverage as follows:

- (1) Aircraft Liability Limits: Bodily Injury and Property Damages - \$100,000,000 combined single limit.

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

### (I) Pollution Legal Liability.

Lessee shall maintain Pollution Legal Liability coverage for Bodily Injury and Property Damage in an amount not less than \$10,000,000 Each Incident and \$10,000,000 Aggregate.

The following specific extensions of coverage shall be provided and indicated on the Certificate of Insurance. –

- (1) Policy Form to be written on Claims Made Form for the term of the lease. Lease is not renewed, must obtain a 5 Year Extended Reporting Provision Endorsement.
- (2) On & off site clean-up coverage for new conditions, i.e., underground storage tanks (standard coverage in PLL policy).

## LEASE AGREEMENT

Third Party claims for on and off site Bodily Injury and Property Damage. Natural Resources Damage" included in the definition of Property Damage. Provides coverage for damage to water, land and wildlife. Waste Broker Disposal Site Endorsement

(J) Property Insurance.

(1) **Property Insurance by City.** City shall obtain a Special Perils policy of property insurance covering reasonably foreseeable risks insuring the building in an amount equal to 100% of the full replacement value. City shall maintain such policies in effect, with responsible insurance companies at all times throughout the Term.

(2) **Property Insurance by Lessee.** Lessee shall obtain and provide, at Lessee's expense, during the Term a Special Perils policy of property insurance covering Lessee's interest in the Leased Premises and reasonably foreseeable risks, insuring the systems, fixtures, equipment, improvements and personal property owned, used or installed by or on behalf of Lessee on the Leased Premises or by any previous tenants thereon, in an amount equal to 100% of the full replacement value thereof. No goods, merchandise, or materials shall be kept, stored, or sold in or on the Leased Premises which would have the effect of suspending the insurance upon said Leased Premises or other property of City, or of increasing the rates therefor. Lessee shall also maintain business interruption, loss of income and extra expense insurance in amounts sufficient to pay for Lessee's expenses and loss of income.

(3) **Waiver of Subrogation.** Each party waives and releases, to the extent of the proceeds that are or would be payable to it in respect of the policies of property insurance that it maintains in force, all rights of recovery, claim, action or cause of action that it may now or later have against the other or the other's agents, officers and employees, by virtue of (1) any loss or damage that may occur to the building, improvements to the building or other structures or personal property within the building or associated therewith or (2) any diminution in the rent derived from the operation of the building or in the revenue derived from the conduct of business within the Leased Premises or elsewhere on the Airport, regardless of cause or origin, including, without limitation, the negligence of the City or Lessee or any of their respective representatives, agents, employees, contractors and invitees. Because this Subsection will preclude the assignment of any claim described above by way of subrogation or otherwise, each party must give each insurance company that has issued to it policies of insurance covering all risks of direct physical loss or revenue loss written notice of the terms of the mutual waivers set forth in this Subsection and to have those policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers set forth in this Subsection.

(K) Rental Value Insurance.

## **LEASE AGREEMENT**

Lessee shall maintain Rental Value Insurance at a coverage amount not less than one (1) year's fair rental value of the Exclusive Leased Premises.

### **SECTION 14 - DAMAGE OR DESTRUCTION OF THE LEASED PREMISES:**

Damage to the Exclusive Leased Premises. In the event that any part of the Exclusive Leased Premises hereunder is partially or completely damaged or destroyed as to make such part un-tenantable or practically unusable for the purposes provided for hereunder, or if any part of the Exclusive Leased Premises hereunder are rendered practically unusable for the purpose for which it was formerly used because of damage to other portions of the Exclusive Leased Premises, then the Lessee shall provide written notice to the City within five (5) days of the date of damage or destruction. The City shall review the cause and extent of damage to the Exclusive Leased Premises and respond within thirty (45) days of Lessee's written notice on whether the City intends to repair the Exclusive Leased Premises with City's and Lessee's insurance proceeds or if the City will require the Lessee to repair the Exclusive Leased Premises with same insurance proceeds. In either case, the repair of the Exclusive Leased Premises shall be completed as expeditiously as possible, and both the City and the Lessee shall make every temporary provision as reasonably practical for Lessee to continue to operate in any such part of the Exclusive Leased Premises or other available cargo area during the period of reconstruction

### **SECTION 15 - BONDS:**

Lessee shall, at no expense to the City, cause to be made, executed, and delivered to the City, bonds as follows:

- (a) Prior to commencement of any construction or alterations upon the Leased Premises involving an expenditure of more than \$20,000.00, a corporate surety bond in a sum of not less than 100% of the estimated cost of construction, guaranteeing the faithful performance and the completion of such construction, all in accord with final plans and detailed specifications to be approved in advance by the Aviation General Manager. Said bond shall guarantee the City against any losses and liability, damages, and expenses (including reasonable attorneys' fees), claims, and judgments caused by or resulting from any failure of Lessee or Lessee's contractors to perform fully and faithfully the work in question within the time period herein provided for completion.
- (b) Prior to the commencement of any construction work upon the Leased Premises involving an expenditure of more than \$20,000.00, a corporate surety bond, with Lessee's contractor(s) as principal, in a sum equal to not less than 100% of the amount of the contract for the completion of such work, guaranteeing the payment of wages for services engaged and of bills for materials supplied and equipment used in the performance of the work, and protecting the City from any liability (including reasonable attorney's

## **LEASE AGREEMENT**

fees), and loss or damage arising therefrom. In the event that Lessee initially furnishes such bonds and hereafter obtains from its contractor(s) such bonds in like amount which are satisfactory to the City, and which provide the same protection as aforesaid, the City, upon application by Lessee's principal and surety under such bonds, shall release Lessee from and consent to the cancellation of the bond(s) originally furnished by Lessee under this Section 15; it being expressly stipulated that nothing herein contained shall prevent Lessee's compliance with the provisions of this Section 15 by initially obtaining such bond(s) from its contractor(s) prior to the commencement of any construction hereunder.

### **SECTION 16 - INSPECTION OF THE LEASED PREMISES:**

The City or its duly authorized representative may enter upon the Leased Premises, upon reasonable notice, and at all reasonable times during the Term hereof for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. No prior notice shall be required in the event of an emergency threatening the public safety or welfare, provided the appropriate governmental agency or agencies are responding to such threat.

### **SECTION 17 – STATISTICAL REPORTING OF CARGO DATA:**

Lessee shall provide a monthly report of export and import cargo activity to the City, in a format provided by the City, for the previous month expressed in metric tons of cargo. Said report shall be provided no later than the tenth (10<sup>th</sup>) of the following month.

### **SECTION 18 - TITLE:**

During the Term, upon completion of any improvements placed on the Leased Premises by Lessee, title shall remain with the Lessee until the expiration or early termination of the Lease when City shall have the option of: **(i)** taking title to such improvements in which case title shall pass to and be vested in the City or **(ii)** causing Lessee to remove such improvements and restore Leased Premises to the same condition as existed prior to the installation thereof. In the event the City elects (i), then Lessee agrees to take any and all steps necessary to transfer title of any such improvements as may be required to effectuate such subsection. In the event the City elects (ii), and Lessee does not comply with the City's direction (to remove improvements and restore the Premises) Lessee shall be responsible for refunding all expenses incurred by the City as is necessary to remove such improvements and restore Leased Premises to the same condition as existed prior to the installation thereof.

### **SECTION 19 - EVENTS OF DEFAULT BY THE LESSEE:**

## **LEASE AGREEMENT**

Each of the following events shall constitute an "event of default" by Lessee; provided, however, that Lessee shall have not less than thirty (30) days except in the case of subparagraph (d), sixty (60) days or in the case of subparagraph (e), immediately. after receipt of written notice from the City of any such event of default by Lessee to cure or obviate same. Any Lessee deemed to be in default is subject to the immediate revocation of their security badge privileges

- (a) Lessee's failure to pay the rent, additional rent and/or ancillary charges including but not limited to landing fees, gate use fees, ramp use fees, security fees and fuel, if any, herein provided at the time herein fixed for the payment thereof.
- (b) Lessee's failure to pay any lawful tax or assessments agreed to be paid by the Lessee in Section 10 of this Lease in accordance with the terms of said Section.
- (c) Lessee's failure to keep, perform, or observe any term, covenant, or condition of this Lease agreed to be kept, performed, or observed by Lessee; provided, however that if such failure cannot reasonably be cured within thirty (30) days, Lessee shall not be deemed to be in default hereunder if Lessee has commenced its cure within the initial thirty (30) day notice period and is diligently completing same immediately thereafter.
- (d) Lessee's filing of a voluntary petition in bankruptcy or the assignment of all or substantially all of the Lessee's assets for the benefit of Lessee's creditors or the institution of proceedings in bankruptcy against Lessee or the appointment of a receiver of the assets of Lessee; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered an event of default by Lessee unless Lessee fails to procure a dismissal thereof within sixty (60) days after institution of such involuntary bankruptcy proceedings or appointment of such receiver.
- (e) Lessee's violations related to Insurance, Security or Safety. If failure cannot be cured immediately upon notice from the City, Lessee shall be deemed to be in default and subject to rescinding of security badge privileges.

Notwithstanding the provisions of Subsections 19(a) and 19(b) above, for any failure to perform of a monetary nature on the part of Lessee, Lessee shall be entitled to no more than a total of three (3) such notices during any twelve (12) month period of this Lease, whether any of such notices shall have been for failure to perform under either of Subsections 19(a) or 19(b) above, and the fourth occasion of Lessee's failure to perform a monetary obligation hereunder shall be deemed to be an event of default hereunder without further notice.

### **SECTION 20 - RESULTS OF THE LESSEE'S DEFAULT:**

## LEASE AGREEMENT

### Subsection 20.01 – Rescission of Security Badge Privileges

Authorization to possess identification badges and entry may be terminated under any of the following conditions:

- A. When Lessee ceases operations at the Premises; or
- B. If any of the terms, conditions or other requirements contained herein are violated in whole or in part.

Subsection 20.02 - Termination by the City. Upon the event of a default, (subject to the provisions of Section 19 above) the City shall have the right to terminate this Lease.

Subsection 20.03 - Other Rights and Remedies of the City. Upon the failure of Lessee to cure or obviate an event of default by Lessee within the time periods specified hereinabove, the City shall have, in addition to the rights or remedies set forth hereinabove, the immediate right of re-entry and may remove all persons and property from the Leased Premises and store the property in a public warehouse or elsewhere at the cost of and for the account of Lessee. Should City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Lease or re-let the Leased Premises or any part thereof and any improvements thereon, without terminating this Lease, for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as the City, in its sole discretion, may deem advisable, with the right to make alterations or repairs to the improvements or to the Leased Premises. Upon such re-letting, the City shall have the following options:

(a) Lessee may be required to pay the City, in addition to any indebtedness other than rent due hereunder, the cost and expense of such re-letting and of such alterations or repairs due to Lessee's fault or negligence incurred by the City, and the amounts (if any) by which the rent reserved in this Lease for the period of such re-letting (up to but not beyond the term of this Lease) exceeds the amount agreed to be paid as rent for the Leased Premises during the period of such re-letting. Lessee agrees to pay/reimburse the City for all costs of collection, including but not limited to reasonable attorney's fees, in the event of default occurring by Lessee's non-payment of rents, fees, and charges as stated herein; or

(b) The rent received by the City from such re-letting may be applied, first, to the payment of any indebtedness other than rent due hereunder from Lessee to the City, second, to the payment of any costs and expenses of such re-letting and of such alterations and repairs, third, to the payment of rent due and unpaid hereunder, and the residue (if any) shall be held by the City and applied to the payment of future rent as the same may become due and payable hereunder. If Lessee is ever credited with any rent in excess of the rent received by the City from such re-letting under option (a), then Lessee shall promptly refund such excess to the City. If the rental due the City under such re-

## **LEASE AGREEMENT**

letting under option (b) is ever less than that due the City from Lessee hereunder, then Lessee shall promptly pay any such deficiency to the City. Such deficiency shall be calculated and paid monthly.

No such re-entry or taking possession of the Leased Premises and any improvements thereon by the City shall be construed as an election on its part to terminate this Lease unless a written notice of such intention shall have been given to Lessee. Notwithstanding any such re-letting without termination, the City may elect at any time thereafter to terminate this Lease for any breach, in addition to any other remedy it may have, and in such event, Lessee's interest in any and all buildings and improvements on the Leased Premises shall, at the option of the City, automatically pass to the City and the City may recover from Lessee all damages it may incur by reason of such breach, including the excess, if any, of rent (and charges equivalent to rent) at the time of such termination that is reserved to the City in this Lease for the remainder of the term, all of which amount shall be immediately due and payable from Lessee to the City.

### **SECTION 21 - TERMINATION BY LESSEE:**

Lessee may cancel this Lease at any time if:

- (a) The Federal Aviation Administration (the "FAA") or other proper Federal Agency shall restrict r the use of the Airport in such a manner as to bar the use of same by Lessee for its business operations.
- (b) An order is issued by any Court of competent jurisdiction restricting the use of the Airport in such a manner as to interfere with the use of same by Lessee for its business operations.
- (c) The airfield shall be closed by lawful authority restricting the use of the Airport in such a manner as to interfere with the use of the same by Lessee for its business operations.

### **SECTION 22 - RIGHTS UPON TERMINATION:**

If Lessee is not in default hereunder, Lessee shall have the right to remove during the Term hereof all trade fixtures which Lessee may have placed upon the Leased Premises; provided, however, that upon said removal, Lessee shall repair, at Lessee's own expense, any damage resulting therefrom and leave the Leased Premises in a clean and neat condition.

### **SECTION 23 - NON-WAIVER OF DEFAULTS:**

The waiver by either party of any breach by the other party hereto of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Lease. No term, covenant, or condition hereof can be waived except by written consent of the City or Lessee and forbearance or

## **LEASE AGREEMENT**

indulgence by the City or Lessee, in any regard whatsoever, shall not constitute a waiver of the term, covenant, condition to be performed by the City or Lessee to which the same may apply. Until complete performance by the City or Lessee of the term, covenant, or condition, the City or Lessee shall be entitled to invoke any remedy available to it hereunder by law, despite such forbearance or indulgence.

### **SECTION 24 - LESSEE'S ENCUMBRANCES:**

Lessee shall not encumber Lessee's interest in the Leased Premises or in any improvements Lessee places thereon by mortgage, deed of trust, or other instrument without prior written consent of the Aviation General Manager.

### **SECTION 25 – USUFRUCT:**

It is the purpose and intent of the City and Lessee to create under the terms of this Lease a landlord-tenant relationship and no estate for years or other estate shall pass to Lessee. Lessee possesses under this Lease a usufruct to use the Lease Premises, subject to the terms and conditions contained in this Lease.

### **SECTION 26 - HOLDING OVER:**

Should Lessee with permission of the City's Aviation General Manager hold over said Leased Premises after this Lease has terminated in any manner, during such holding over Lessee shall be deemed merely a tenant at sufferance and at a reasonable rental to be fixed by City, payable in advance, but otherwise on the same terms and conditions as herein provided.

### **SECTION 27 - REDELIVERY OF PREMISES:**

Lessee shall, upon expiration or termination of this Lease in any manner, quit and deliver up the Leased Premises to the City peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by Lessee or the City, reasonable wear and tear thereof excepted.

### **SECTION 28 - CITY'S LIEN:**

If Lessee is in default under any covenant, term, or provision of this Lease or has abandoned the Leased Premises, in addition to the rights granted to the City under Section 9 hereof, Lessee hereby grants to the City a lien upon any improvements, personal property, and trade fixtures of Lessee upon the Leased Premises, which lien the City may satisfy by selling said improvements, personal property, or trade fixtures at public sale without notice to the Lessee and from the proceeds of sale satisfy first any



## **LEASE AGREEMENT**

costs of removal, storage, and sale, and any other debts due from Lessee to the City, and second satisfy the total amount of unpaid rent due hereunder and hold any remaining balance for the account of Lessee.

### **SECTION 29 - QUIET ENJOYMENT:**

Lessee, upon payment of the Rental to be paid by Lessee under the terms of this Lease and upon observing and keeping all of the covenants, terms, and provisions of this Lease shall lawfully and quietly hold, occupy, and enjoy the use of the Leased Premises during the term of this Lease.

### **SECTION 30 - LIMITATIONS ON ASSIGNMENT, TRANSFER, AND SUBLETTING:**

Lessee shall not sell, assign, transfer or encumber its interest in this Lease or any other right, privilege or license conferred by this Lease either in whole or in part, without the prior written consent of the City. No assignee, for the benefit of the Lessee's creditors, and no trustee, receiver, or referees in bankruptcy shall acquire any rights under this Lease by virtue of this paragraph. The Lessee shall not sublet the Lease Premises or any portion thereof, nor shall the Lessee license, or otherwise alienate any rights or privileges granted with respect to the operation of said Lease premises or any portion thereof, without the prior written consent of the Aviation General Manager. The City shall have the right to determine any rental, fees or charge rate at the time of any assignment or sublease. However, this Agreement may be assigned by Lessee without such consent to any successors-in-interest of Lessee with or into which Airline may merge or consolidate or which may succeed to the assets of Lessee or a major portion thereof related to its air transportation business with prior written notice to City.

### **SECTION 31 - WAIVERS:**

No waiver by either party hereto at any time of any of the terms, conditions, covenants, or provisions of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or provision herein contained, nor of the strict and prompt performance thereof by either party. No delay, failure, or omission of the City to re-enter the Leased Premises or to exercise any right, power, privilege, option, or remedy arising from any default, and no subsequent acceptance of rentals then or thereafter accrued, shall impair any such right, power, privilege, option, or remedy, or be construed to be a waiver of any default or acquiescence therein. No right, power, privilege, option, or remedy of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is expressly stipulated that each and all of the rights, powers, privileges, options, or remedies given to the City or Lessee by this Lease are cumulative and no one of them shall be exclusive of the others or exclusive of any remedies provided bylaw, and that the exercise of one right, power, privilege, option, or remedy by the City or Lessee shall not impair the right to any other right, power, privilege, option, or remedy.

**LEASE AGREEMENT**

**SECTION 32 - AGENT FOR SERVICE OF PROCESS:**

If Lessee is not a resident of the State of Georgia, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Lessee shall register with the Secretary of State of the State of Georgia, as a foreign corporation, and Lessee hereby designates

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: Atlanta State: GA Zip: \_\_\_\_\_

as its agent for the purpose of accepting service of process issued by any court in the State of Georgia for any breach or default of the terms, conditions, covenants, or provisions of this Lease, and service shall be made as provided by the laws of the State of Georgia for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason such service of process is not possible, and as an alternative method of service of process, then Lessee may be personally served with such process out of the State of Georgia by the registered mailing of such Complaint and process to the Lessee at the address set out hereafter in this Lease, and that such service shall constitute valid service upon Lessee as of the date of mailing, and Lessee shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that Lessee is amenable to the process so served, submits to the jurisdiction, and waives any and all obligations and protest, any laws to the contrary notwithstanding.

**SECTION 33 - WAIVER OF CLAIMS:**

Lessee hereby waives any claims against the City and its elected officials, officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings, directly or indirectly, attacking the validity of this Lease or any part hereof, or by any judgment or award in any suit or proceedings declaring this Lease null, void, voidable, or delaying the same, or any part hereof, from being carried out.

**SECTION 34 - SAFETY AND SECURITY ARRANGEMENTS:**

City shall provide, or cause to be provided, during the Term, all proper and appropriate public fire and police protection similar to that afforded to other tenants at the Airport, and it will issue and enforce rules and regulations with respect thereto for portions of the Airport. Lessee shall have the right, but not the obligation, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Lessee, shall not in any way be construed to limit or reduce the obligation of the City hereunder with respect to safety and security on the Airport.

**Licensee must meet Life Safety Code requirements and obtain premises approval from the governing Fire Department prior to occupancy.** Licensee shall be responsible for meeting any and all requirements required by said Fire Department prior to occupancy.

## **LEASE AGREEMENT**

Lessee shall comply, at its own expense, with all safety and security requirements applicable to its use of the Leased Premises, including but not limited to with requirements imposed by the Transportation Security Administration (“TSA”), U.S. Department of Homeland Security (“DHS”), and the City’s security requirements for the Airport including, but not limited to its Airport Security Plan and its employee security training and badging program. The Lessee shall cooperate with the TSA, DHS, any local law enforcement personnel and the City on all security matters and shall promptly comply with any project security arrangements established by the City. Compliance with such security requirements shall not relieve the Lessee of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner the Lessee’s obligations with respect to all applicable federal, state and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at and around the Leased Premises and Airport. To comply with current TSA requirements, Lessee hereby agrees to execute an Exclusive Area Agreement with the City. Lessee accepts security responsibility to prevent unauthorized access to the premises and to the secured area. Lessee shall provide barriers, warning signs, designated walkways and other safeguards where pedestrians are exposed to the risk of collision.

### **SECTION 35 - PUBLIC USE AND FEDERAL GRANTS:**

Subsection 35.01 - Grant Agreements. The Leased Premises and the Airport are subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between the City and the United States of America, as amended

Subsection 35.02 - Non-exclusive Rights. Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

Subsection 35.03 - Right to Develop the Airport. The City hereby reserves the right to further develop and improve the Airport and all roadways, parking areas, terminal facilities, landing areas, aircraft parking, taxi lanes and taxiways, as it may deem necessary and desirable in order to serve the best interests of the City and the traveling public, regardless of the desires or views of Lessee and without interference or hindrance by the Lessee. If development or improvement of the Airport, roadways, parking areas, terminal facilities, landing areas, aircraft parking, taxi lanes or taxiways causes the requirement for use and mandates that Lessee vacate the Leased premises, the City shall have the right to terminate the Lease pursuant to Section 2.03 and Section 21 of this Lease.

Immediately upon such termination, all land and facilities rentals accruing to the City by virtue of this Lease shall cease. The City shall use reasonable efforts to identify a replacement site for the development anticipated herein as it may exist at the time of vacating. However, nothing contained herein shall require the City to make any identifiable site so available or to make extensive preparations to any identified site. The

## LEASE AGREEMENT

appropriateness and availability of any site on the Airport shall be at the sole determination of the City.

Subsection 35.04 - Subordination of Lease. This Lease shall be subordinate to the provisions of any existing or future agreements between Airport and the United States of America, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to Airport of Federal funds for the development of the airport ("Grant Assurances"). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates such Grant Assurances, Airport has the right to amend, alter or otherwise modify the terms of this Agreement in order to resolve such conflict or violation.

Subsection 35.05 - Federal Non-Discrimination Covenant.

**A. General.** In the use and occupation of the Airport, Lessee shall not unlawfully discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

**B. Civil/Human Rights Laws.** In its operations at the Airport and in its use of the Airport, Lessee shall not, on the grounds of race, color, religion, sex, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Federal Aviation Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and Section 15-17 of the City's Code of Ordinances. Without limiting the generality of the foregoing, Lessee agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, or age. Lessee agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Lessee agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

**C. USDOT Requirements.** Lessee, for itself, its successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that, in the event improvements are constructed, maintained, or otherwise operated on the Airport for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 CFR, Part 21 (Non-discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

## LEASE AGREEMENT

Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said improvements; (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, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to unlawful discrimination; (3) that Lessee shall use the Airport facilities in compliance with all other requirements imposed by, or pursuant to, 49 CFR, Part 21 (Non-discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended; and (4) Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, Non-discrimination Airport in Aid Program, to ensure that no person shall on the grounds of race, color, religion, national origin or ancestry, sex, age, or physical or mental handicap be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E, or such employment activities covered in Section 15-17 of the City's Code of Ordinances. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Section 14.03. Lessee assures that it will require that any covered sub-organization similarly will undertake affirmative action programs and that the sub-organization will require assurance from the sub-organization's sub-organization, as required by 14 CFR, Part 152, Subpart E, to the same affect.

In the event of breach of any of the above discrimination covenants, the City shall have the right to terminate this Lease and to re-enter and repossess said land, the facilities thereon, and hold the same as if this Lease had never been made or issued.

### Subsection 35.06 - Reserved

## **SECTION 36 - CITY'S EEO ORDINANCE AND CERTIFICATION OF NON-DISCRIMINATION COVENANT:**

### Subsection 36.01. City's EEO Ordinance.

#### Statement of Non-Discrimination

During the performance of this Lease, Lessee agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1414 of the Code of Ordinances of the City of Atlanta, Georgia, as amended.

### Subsection 36.02. Equal Business Opportunity and Disadvantaged Business Enterprises

During the performance of this Lease, Lessee agrees to comply with Part 2, Chapter 2, Article X, Division 12, including Sections 2-1441 through 2-1480 of the Code of

## **LEASE AGREEMENT**

Ordinances of the City of Atlanta, Georgia, as amended and/or with the USDOT regulations related to disadvantaged business enterprises located at 49 C.F.R. Part 23, as appropriate, and with all implementing laws, regulations, rules, guidelines and policies in regard thereto and all standards and requirements.

### **SECTION 37 – CONSENT NOT TO BE UNREASONABLY WITHHELD:**

During the term of this Lease, whenever the City shall be obligated or requested to provide consent or approval such consent or approval shall be provided by the City’s Aviation General Manager. Whenever any consent or approval is required hereunder by either party from the other such consent shall not be unreasonably withheld, nor shall it be delayed for an unreasonable period of time.

### **SECTION 38 - PREVENTION OF TRESPASS; PAYMENT OF FINES FOR VIOLATION OF FEDERAL REGULATIONS:**

Lessee shall be responsible for preventing unauthorized persons from gaining access to the restricted areas of the Airport through the Leased Premises, and in the event that the FAA, the Transportation Security Administration (the “TSA”), their respective successors, or other government entity with jurisdiction over or at the Airport imposes a fine on the City as a result of the violation of security regulations, including but not limited to unauthorized runway crossings by employees, agents, guests, or invitees of Lessee or by any other person who gains access to the restricted areas of the Airport by means of the Leased Premises, then in such event Lessee shall promptly reimburse the City the amount of such fines immediately upon receipt of invoice therefor from the City.

### **SECTION 39 - NOTICES:**

All notices to be given hereunder shall be in writing and shall be deemed to have been given when deposited in the United States mail, postage prepaid, certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party):

(A) City: City of Atlanta - Department of Aviation  
P.O. Box 20509  
Atlanta, GA 30320-2509  
ATTN: Properties & Airline Affairs

(B) Lessee: Delta Air Lines, Inc.

### **SECTION 40 - RELATIONSHIP BETWEEN THE PARTIES:**

The City is neither a joint venturer with nor a partner or associate of Lessee with respect to any matter provided for in this Lease. Nothing herein contained shall be construed to

## **LEASE AGREEMENT**

create any such relationship between the parties or to subject the City to any obligation of Lessee whatsoever.

### **SECTION 41 - TIME OF THE ESSENCE:**

Time is expressed to be of the essence of this Lease.

### **SECTION 42 - LEASE MADE IN GEORGIA:**

This Lease has been made in and shall be construed in accordance with the laws of the State of Georgia. All duties, obligations, and liability of the City and Lessee are expressly set forth herein, and this Lease can be amended only in writing and agreed to by both parties.

### **SECTION 43 - SURRENDER AND MERGER:**

The voluntary or other surrender or termination of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the City, terminate all or any existing subleases or subtenancies applicable to the Leased Premises or may, at the option of the City, operate as an assignment to the City of all such subleases or subtenancies.

### **SECTION 44 - SUCCESSORS AND ASSIGNS:**

Subject to the terms and conditions of Section 30 hereof, the provisions of this Lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

### **SECTION 45 - HEADINGS:**

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

### **SECTION 46 – SEVERABILITY:**

If any provision of this Lease or the application thereof to any person or circumstances shall become invalid or unenforceable to any extent, such provision shall be struck and severed and the remainder of this Lease shall not be affected and shall continue to be enforceable to the greatest extent of the law. Each covenant and agreement contained in this Lease shall be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by the City shall not discharge or relieve Lessee from Lessee's obligation to perform each and every covenant and agreement of this Lease to be performed by Lessee.

## **LEASE AGREEMENT**

### **SECTION 47 – ENTIRE AGREEMENT:**

It is expressly agreed by the City and Lessee that this Lease is the entire agreement of the City and Lessee. All written or oral representations, warranties, understandings, stipulations, agreements, promises or discussions prior to or simultaneous to this Lease are merged and incorporated into this Lease and cannot be relied upon by either party, except to the extent of any rights or obligations which have accrued as of the effective date of this Lease.

### **SECTION 48 – CUMULATIVE RIGHTS:**

Each right and remedy of the City provided for in this Lease, now or hereafter existing at law, in equity or by statute or otherwise, shall be cumulative and concurrent, and the exercise or beginning of the exercise of any one or more of such rights or remedies shall not preclude the exercise of that right or remedy in the future or the exercise of any other right or remedy at any time.

### **SECTION 49 – FORCE MAJEURE:**

Neither party shall be deemed to be in breach of this Lease by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by strike or labor troubles, unavailability of materials or utilities, riots, rebellion, terrorist attack, insurrection, invasion, war, action or interference of governmental authorities, acts of God, or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties (collectively “Force Majeure Event”). If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and extent thereof, the obligation hereunder affected thereby and the actions to be taken to abate or terminate such event.

### **SECTION 50 – REAL ESTATE BROKERAGE COMMISSION:**

Each of the City and Lessee represent and warrant to and indemnify the other that it has dealt with no real estate broker who would be entitled to be paid a commission or other fee in connection with the transaction which is the subject of this Lease.

### **SECTION 51 – PROHIBITION ON KICKBACKS AND GRATUITIES:**

As required by Section 2-1484(d) of Chapter 2, Code of Ordinances of the City of Atlanta, Lessee hereby acknowledges the following prohibitions on kickbacks and gratuities: It is unethical for any person, including Lessee, to offer, give or agree to give any employee or former employee of City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase or leasing request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or



## **LEASE AGREEMENT**

in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a lease, contract, sublease or subcontract or to any solicitation or proposal therefor. It is unethical for any employee or former employee of City to solicit, demand, accept or agree to accept from another person, including Lessee, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a lease, contract, sublease or subcontract or to any solicitation or proposal therefor. It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract or to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

### **SECTION 52 – INDEMNIFICATION**

LESSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES (THE “INDEMNITEES”) FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER, NAME, OR DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF LESSEE'S FAILURE TO COMPLY WITH APPLICABLE LAW OR ON ACCOUNT OF ANY INJURY OR DAMAGE RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY AS A RESULT OF THE LESSEE'S CONDUCT OF ANY ACTIVITY OR OPERATION ON OR IN CONNECTION WITH THE LEASED PREMISES. LESSEE SHALL PAY ANY JUDGMENT, TOGETHER WITH COSTS, WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES AS THE RESULT OF SUCH INJURY OR DAMAGE, OR FAILURE TO COMPLY WITH APPLICABLE REGULATIONS. IT IS AGREED THAT THIS INDEMNITY PROVISION SHALL NOT APPLY TO (AND LESSEE SHALL NOT BE REQUIRED TO RELEASE, INDEMNIFY, HOLD HARMLESS OR DEFEND ANY INDEMNITEE WITH RESPECT TO) ANY SUITS, ACTIONS, CLAIMS, OR DAMAGES OF ANY CHARACTER ARISING FROM THE SOLE NEGLIGENCE, FAULT OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OF LESSEE AND ANY INDEMNITEE, RESPONSIBILITY AND LIABILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER GEORGIA LAW.

### **SECTION 53 – COUNTERPART PROVISIONS**

The parties may execute this document in counterparts, each of which constitutes an original, and all of which taken together, constitute only one agreement. The signatures of

**LEASE AGREEMENT**

all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile, electronic mail or portable document format (i.e., .pdf) is as effective as executing and delivering this document in the presence of the other parties hereto. Any party delivering an executed counterpart of this document by facsimile, electronic mail or portable document format (i.e., .pdf) shall also deliver a manually executed original counterpart of this document, but the failure to do so does not affect the validity, enforceability, or binding effect of this document.

**SECTION 54 – ADDENDUM**

Any Addendum annexed hereto is hereby incorporated herein by this reference. If there is any conflict between the terms and conditions of the Lease and the terms and conditions of the Addendum, the terms and conditions of the Addendum shall control.

\_\_\_\_\_  
**Tenant Initials                      Date**

INTENTIONALLY LEFT BLANK

**LEASE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, as of the day and year first above written.

WITNESS:

**CITY OF ATLANTA**

(Seal)

\_\_\_\_\_  
Municipal Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO INTENT:

\_\_\_\_\_  
Aviation General Manager

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Chief Procurement Officer

ATTEST:

**DELTA AIR LINES, INC.**

(Seal)

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Contracts Manager