

**NOTICE OF AVAILABILITY**  
**Leasing Opportunity at the**  
**Louis Armstrong New Orleans International Airport - MSY**  
**Kenner, Louisiana**

In accordance with La. R.S. 2:135.1(A)(4), the New Orleans Aviation Board (NOAB) is issuing this Notice of Availability (NOA) seeking qualified parties to undertake the leasing of an available NOAB facility/property located at Louis Armstrong New Orleans International Airport.

**SCOPE OF OPPORTUNITY**

All available facilities/properties along with descriptions of premises may be viewed on the Airport's website at <https://flymsy.com/business/doing-business/commercial-development-2/>. The preferred use of available sites is for aeronautical activity; however, non-aeronautical activity may be considered if no aeronautical use or potential use is identified and if the use is approved by the NOAB and the Federal Aviation Administration (FAA). Sites shall be delivered in "as is, where is" condition, including, without limitation, any existing utility and/or aviation easements, subsurface conditions, existing structures, and laws, ordinances and regulations affecting the same. NOAB makes no representation or warranties of any kind, expressed or implied, in fact or in law, with respect to the condition of the facility/property or any existing improvements.

**LEASING REQUIREMENTS**

In accordance with grant assurance requirements of the FAA, the NOAB is required to receive Fair Market Value compensation for the lease of airport property. Facilities/properties are leased on a triple net basis, limited to a 5-year lease term. Applicants will be required to execute a lease agreement in form and substance as provided by NOAB (Appendix C). Compensation structure and levels to NOAB will be dependent upon the proposed use of the property, length of term, and capital improvements, with said lease amounts to be negotiated between applicants and NOAB, provided however that said amounts are equal to Fair Market Value Rent at a minimum as determined by a certified appraiser.

Leasing of NOAB property must comply with the terms of the lease agreement between the Applicant and NOAB, the Rules and Regulations of NOAB (including, without limitation, the safety and security requirements of the Airport), and the requirements of applicable laws and regulations of other governmental authorities, such as the Federal Aviation Administration (FAA), the Louisiana Department of Transportation and Development, and the City of Kenner. A copy of the NOAB Rules and Regulations can be obtained from NOAB's website at <https://www.flymsy.com/wp-content/uploads/2019/11/RulesRegs-Final3.22.19.pdf>.

Until the execution of a binding agreement between NOAB and a proposed tenant, NOAB reserves the right to negotiate and enter into a binding agreement with other parties with respect to the subject property. The submission of an Application for Lease, completed forms or other documentation by an interested party with respect to the subject property shall not, under any circumstances, create or

establish any contractual or other relationship or obligation on the part of NOAB. NOAB shall be bound only by the terms of any documents or agreements executed by NOAB.

### **APPLICATION PROCESS**

The following procedures are to be followed when submitting an application to lease NOAB property:

- Obtain an **Application for Lease** form (Appendix A) from the NOAB's website at <https://flymsy.com/business/doing-business/commercial-development-2/>.
- Submit the completed **Application for Lease** via email to the Commercial Development Department at [MSY.Property@flymsy.com](mailto:MSY.Property@flymsy.com), with "NOAB – Application for Lease" in the subject line.
  - If the application includes construction modifications to the facility/property, a separate **Tenant Project Application** form (see Appendix B) must be submitted at the time of application. Submissions should be no longer than 20 pages in length. All design and construction improvements on NOAB property must conform to all NOAB, local, state, and federal codes, statutes, rules and regulations. No improvements shall be made to the facility/property until approved by NOAB staff.
- All communications during this process shall be in written form and directed to the Commercial Development Department at [MSY.Property@flymsy.com](mailto:MSY.Property@flymsy.com). The proposer, its agents or employees, shall not contact or communicate with NOAB's Board Members, Chairman, Staff, Consultant, or Legal Counsel, nor shall the Applicant have other parties make such contact or communication on their behalf. Such unauthorized contact may constitute grounds to reject submission. Any questions or requests concerning this project shall be directed to the Commercial Development Department at [MSY.Property@flymsy.com](mailto:MSY.Property@flymsy.com).
- Following submission of the application and review by staff for completeness, NOAB reserves the right to set up a meeting with the applicant to discuss the details of the Application for Lease.
- Once all parties have agreed on the details of the lease, a recommendation for lease will be presented to the NOAB for approval at the next monthly meeting.
- The DRAFT lease agreement must be approved by the New Orleans City Council through introduction and adoption of an ordinance. The NOAB will work closely with the City to gain this approval, after which time the lease agreement will be routed to obtain all required signatures.
- Submittal of required documentation/permits for facility or site improvements must be made within the time period noted in the lease.

- Transfer of utilities must be made within ten (10) days of a signed lease - with proof of transfer documents provided to NOAB.

### **EVALUATION OF SUBMISSIONS**

Evaluation of submissions received in response to this Notice of Availability will consist of a review of the scope of services proposed, the highest and best use of the available facility/property, compatibility with NOAB's Airport Layout Plan and Master Plan, the potential financial benefit to NOAB, and other information that may be requested, the intent of which will be to identify submissions that would contribute most positively to the Airport. Review of all submissions will be evaluated by NOAB staff. **Applications will be considered on a "first come, first served" basis.** Should NOAB, in its sole discretion, determine that sufficient interest in the development of the facility/property warrants a formal Request for Proposals (RFP) document being issued, NOAB will issue an RFP.

NOAB accepts no financial responsibility for any costs incurred by a firm or individual in responding to this Notice of Availability. The information and material submitted in response to this Notice becomes the property of NOAB. By submitting an Application, the firm certifies that it has fully read and understands the Notice of Availability and has full knowledge of its requirements, terms, and conditions.

NOAB will respond to Applications within five business days of receipt. NOAB reserves the right to reject any or all Applications, and to request and consider additional information from interested parties. NOAB reserves the right to waive any irregularities and technical defects. NOAB reserves the right to modify, amend, or waive any provisions of this Notice of Availability.

**NOTE:** Interested parties may be required to subsequently provide additional information (such as evidence of financial positions and capability, financial references, the ability to acquire all necessary permits, licenses, approvals, etc.) to assist NOAB in evaluating Applications.

### **PUBLIC RECORD**

The **Application for Lease** form and all associated documentation that is submitted by an interested party will be considered public records under the Louisiana Public Records Act, La. R.S. 44:1-41, and Article XII, Section 3 of the Louisiana Constitution, and, therefore, such materials may be subject to inspection and copying upon request. All records containing proprietary or trade secret information submitted by a developer, owner, or manufacturer should contain a cover sheet that provides in bold type "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION". The developer, owner, or manufacturer shall clearly mark each instance of information which is, in his opinion, proprietary or trade secret information. NOAB cannot guarantee the confidentiality of any proprietary or otherwise sensitive information submitted by any interested parties.

**APPLICATION FOR LEASE**

**TO: Commercial Development Department  
New Orleans Aviation Board  
[MSY.Property@flymsy.com](mailto:MSY.Property@flymsy.com)**

1. Applicant Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Applicant Address: \_\_\_\_\_

Applicant Phone #: \_\_\_\_\_

Applicant Email Address: \_\_\_\_\_

2. Applicant desires to lease from the New Orleans Aviation Board, in accordance with La. R.S. 2:135.1(A)(4), the following described facility/property: \_\_\_\_\_

3. The purpose for which applicant desires to lease the above-described facility/property is to \_\_\_\_\_.

4. The term of the proposed lease shall be \_\_\_\_\_ years (not to exceed 5 years). If interested in a lease term longer than 5 years, please contact NOAB directly.

5. Applicant proposes to construct/improve \_\_\_\_\_ of \_\_\_\_\_ square feet on the above-described facility at a construction cost of not less than \$ \_\_\_\_\_ and not to exceed \$ \_\_\_\_\_ (if applicable).

6. Applicant requests that the above-described facility be leased to it in accordance with La. R.S. 2:135.1, and that an inquiry be made as to whether said facility may be leased for the above-described purpose.

Respectfully submitted, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name



If Applicable:

Estimated Construction Time: \_\_\_\_\_ days

Estimated Construction Cost: \$ \_\_\_\_\_

Special Requirements: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Utility Requirements: Do the proposed improvements require new or existing utility connections?

- |  |                                      |
|--|--------------------------------------|
| <input type="checkbox"/> Electrical Required               | <input type="checkbox"/> Water       |
| <input type="checkbox"/> Wastewater Application Required   | <input type="checkbox"/> Gas         |
| <input type="checkbox"/> Telecommunication/Security/Alarms | <input type="checkbox"/> Other _____ |

Note: Provide electrical load diagram/analysis, identify and show location of panel being located on your submittal.

Are there any special construction requirements: \_\_\_\_\_

\_\_\_\_\_

Tenant: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Sub-Tenant: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Name of  architect or  engineer: \_\_\_\_\_ Principal Contact: \_\_\_\_\_

Email: \_\_\_\_\_

Attachments:

- Drawing(s) that explain the location and intent of improvements (required for all physical improvements)
- Supporting documentation as needed

Note: Please reference the Tenant Project (TP) No. in all future correspondence pertaining to this project

Application Received: \_\_\_\_\_ Application Accepted On: \_\_\_\_\_ TP # \_\_\_\_\_

1<sup>st</sup> Meeting Date: \_\_\_\_\_ LANOIA distribution \_\_\_\_\_



CONCEPT PROPOSAL INFORMATION SHEET

Please answer the following questions as completely as possible. Use additional pages if necessary to completely describe the project. Complete answers to these questions now will help avoid delay in the review and approval process. If a question does not apply, note "N/A".

GENERAL

Tenant: \_\_\_\_\_

Tenant Contact and Phone No.: \_\_\_\_\_

Name and use of proposed improvements: \_\_\_\_\_

Brief description of the proposed work and location: \_\_\_\_\_

Estimated dates of work: Start: \_\_\_\_\_

Finish: \_\_\_\_\_

Name(s), address and phone numbers of architect or engineer: \_\_\_\_\_

Number of persons occupying the facility: \_\_\_\_\_

Estimated total cost of proposed work: \_\_\_\_\_

Are the proposed improvements within the area and terms of an existing lease agreement? \_\_\_\_\_

Are improvements within an area currently under a sub-lease to another Tenant? \_\_\_\_\_

Are there future plans for additional improvements or expansion beyond this proposal? \_\_\_\_\_

Will the proposed improvements be incorporated with other construction contracts? \_\_\_\_\_

Does the proposal assume the Airport will furnish certain items or make accommodations peculiar to this proposal? \_\_\_\_\_

If so, what are they? \_\_\_\_\_

OPERATIONS

Does the proposed improvements or the construction process occur within or penetrate the security fence of the airfield? \_\_\_\_\_

If so, is aircraft movement affected: \_\_\_\_\_

Is aircraft pavement modified or constructed? \_\_\_\_\_

If so, describe: \_\_\_\_\_

Will the contractor require storage of materials outside the lease area? \_\_\_\_\_

If so, describe area and location requirements: \_\_\_\_\_

Will hazardous materials be transported or stored in the proposed facility during or after construction? \_\_\_\_

If so, describe: \_\_\_\_\_

Are there any special construction requirements? \_\_\_\_\_

Will the proposed improvements affect the flow of traffic, baggage, or passengers during or after construction? \_\_\_\_\_

ENVIRONMENTAL, HEALTH, SAFETY

Will the proposed improvements produce: Noise? \_\_\_\_\_

Odors? \_\_\_\_\_

Hazards or detriments to health? \_\_\_\_\_

Changes in the delivery of goods? \_\_\_\_\_

ENGINEERING

Do the proposed improvements require new connections to a building site or an interior site in an existing building?

Water: \_\_\_\_\_

Sewer: \_\_\_\_\_

Gas: \_\_\_\_\_

Power: \_\_\_\_\_

Telephone: \_\_\_\_\_

Communications/Alarms/Security: \_\_\_\_\_

Are there special requirements for any of the above? \_\_\_\_\_

What is the HVAC system type? \_\_\_\_\_

What are the approximate heating and cooling loads? \_\_\_\_\_

What is the estimated flow of water and sanitary flow? \_\_\_\_\_

Electrical demand? \_\_\_\_\_

How will solid waste be disposed? \_\_\_\_\_

Will the proposed improvements alter, weaken, or otherwise affect a building structure? \_\_\_\_\_

Will the proposed improvements result in changes in water absorption rates, drainage patterns, or the rate and amount of surface water run-off? \_\_\_\_\_

PLANNING AND AESTHETICS

Will the proposed improvements be visible to the public? \_\_\_\_\_

Will the proposed improvements result in the obstruction of any vista open to the public? \_\_\_\_\_

Do the proposed improvements include: Exterior lighting: \_\_\_\_\_

Exterior landscaping: \_\_\_\_\_

Identification, direction, or construction signs? \_\_\_\_\_



INFORMATION TECHNOLOGY

Provide a brief description of the IT components of the proposed project:

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What will the capacity of the project be? Provide a justification for capacity needed:

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What are the types, quantities, dimensions, maximum power consumption rating, and number of rack units, or the type of equipment that will be installed?

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**VERSION CONTROL**

v1	4/22/2022	Includes FAA required contract provisions from 6/19/2018 FAA publication

**LEASE AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
BY AND THROUGH  
THE NEW ORLEANS AVIATION BOARD  
AND**

[Redacted]

This **Lease Agreement** (hereinafter referred to as “Lease”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”), by and through the New Orleans Aviation Board, represented by the Hon. Michael G. Bagneris, Chairman, (the “Board”) (the City and the Board are collectively referred to as “Airport”), and [Redacted], represented by [Redacted], **its authorized representative** (the “Lessee”). The Airport and the Lessee are sometimes collectively referred to as the “Parties”. The Agreement is effective [Redacted] (the “Effective Date”).

**WITNESSETH**

**WHEREAS**, the City owns certain immovable property located in Jefferson Parish, Louisiana and more particularly described as the Louis Armstrong New Orleans International Airport and certain immovable property surrounding the Louis Armstrong New Orleans International Airport (the “Airport Property”); and

**WHEREAS**, the Board is charged with the custody, administration and operation of the Louis Armstrong New Orleans International Airport (the “Airport”) and all property owned on connection therewith; and

**WHEREAS**, Lessee desires to lease certain property and to exercise certain rights, licenses, services and privileges in connection with Airport Property; and

**WHEREAS**, Lessor, in accordance with LA Rev. Stat. 2:135.1(A)(4) which authorizes the governing authority of any airport located in this state which is eligible to receive funding from the Federal Aviation Administration to lease to any person, land, areas for operations space, improvements, including industrial development, and equipment on airports at a fair and reasonable price as determined by appraisals and fair market value comparisons in accordance with Federal Aviation Administration guidelines, is willing to lease the land and grant such rights, licenses, services and privileges to Lessee upon the terms and subject to the conditions set forth in this Lease; and

**WHEREAS**, Lessor does receive funding from the Federal Aviation Administration; and

WHEREAS, Lessor has completed, paid for and obtained an appraisal of the property at fair market value;  
and

WHEREAS, the Board approved the Lease at its [REDACTED], 20 [REDACTED] meeting.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Lease, and other valuable consideration, Lessor does hereby lease and let unto Lessee certain land and facilities, and does hereby grant to Lessee certain rights and privileges, and Lessee does hereby take from Lessor such facilities and rights and privileges in connection with and on the Airport Property as described in this Lease.

### **SECTION 1: LEASED PREMISES**

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the following immovable property located in the City of Kenner, Jefferson Parish, State of Louisiana:

**(INSERT LEGAL DESCRIPTION OF PROPERTY)**; as more fully shown on the map attached hereto as Exhibit A together with all improvements of and appurtenances in said space that exist as of the Effective Date (all of said property leased to Lessee and described in this being hereinafter referred to as the "Premises").

There will be no airside access to the Airport operations area granted pursuant to this Lease. Lessee acknowledges that all of said improvements and appurtenances that exist as of the Effective Date are owned exclusively by Lessor.

### **SECTION 2: TERM**

The term ("Term") of this Lease shall commence on the Effective Date ([REDACTED]) and terminate on the day prior to the fifth (5<sup>th</sup>) year anniversary of the Effective Date ([REDACTED]) (Expiration Date) unless earlier terminated pursuant to the provisions of this Lease. This lease may be terminated without cause prior to the expiration date by either party upon thirty (30) days' prior written notice in accordance with Section 32.3 of this Lease.

This Lease is what is commonly referred to as a "Modified Net Lease", it being the intention of the parties that the Lessee and Lessor shall have specific maintenance and repair responsibilities. Refer to Section 14: Maintenance and Repair of this Lease for responsibility details.

Except as specified in Addendum 1, which is attached herein and incorporated in this Agreement, Lessee and Lessor agree that the premises shall be leased, and that the Lessee shall accept possession of the premises, "as is, where is, with all faults", with no right of setoff or reduction in the base rent.

### **SECTION 3: RENT**

#### 3.1. Base Rent.

In consideration of Lessee's right to occupy the Premises, Lessee agrees to pay to Lessor base rent ("Base Rent") in an amount equal to \$ [REDACTED] for year one. This base rental rate is based upon the Fair Market Value of the Premises as determined by appraisal.

The amount of the annual payment for the remaining years shall be adjusted on the date of the First Anniversary of the commencement of the first Agreement Year (the "Index Date") and annually every anniversary date thereafter by a percentage equal to the percentage change, if any, of the CPI Index from the first day of the First Agreement Year or the preceding anniversary date, not to exceed 3% year to year. For the purposes of this Agreement, CPI Index shall mean the most recent Consumer Price Index presently designated as the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers, U.S. City Average, All Items (1982-1984 equals 100). In the event that the statistics are not available or in the event that

publication of the Consumer Price Index is modified or discontinued in its entirety, the successor or substitute index to the CPI shall be used as appropriately adjusted. The term "Base Date" as used herein shall mean the date, on which the Index is published, which is closest in time but prior to the Index Date. In no event shall the rent be less than the prior year's rent.

### 3.2. Payment of Base Rent.

The Base Rent for the premises is payable in twelve equal monthly installments in advance. The monthly installment amount for the Base Rent in year one is \$ [REDACTED] per month. The first installment of the Base Rent is due and payable on the Effective Date. All subsequent monthly Base Rent installments shall be due and payable on the first calendar day of each calendar month. On the first day of the calendar month in which the Expiration Date is to occur, the monthly Base Rent installment shall be calculated and prorated through the Expiration Date on the basis of a thirty-day (30) month.

### 3.3. Prorating of Rent.

If this Lease is terminated prior to the Expiration Date for reasons other than Lessee's default and if the effective date of termination is other than the first day of a calendar month, Base Rent shall be prorated to the date of termination based on a thirty-day (30) month, and Lessor shall refund to Lessee any rent paid but unearned for that calendar month as of that effective date of termination.

### 3.4. Unpaid Installment of Rent.

Unpaid installment of Base Rent or other sums due to the Lessor shall bear interest from the date due at the rate of 1.5% per month or at the highest lawful interest rate in Louisiana ("Interest"), whichever is greater and Lessee shall be obligated to pay all Base Rent and Interest when due.

### 3.5 Aeronautical Use.

If the current rental rate of the Premises is based on Lessee using the Premises for an aeronautical use, then in the event that the use ceases to be aeronautical and becomes a non-aeronautical use, Lessor has the right to increase the rental rate to the Fair Market Value as determined by an appraisal from a licensed Appraiser.

### 3.6 Security Deposit.

Lessee shall provide to the Director prior to the Effective Date and maintain during the term of this Lease, a sum equal to three (3) month's rent in the form of cash, or an irrevocable letter of credit or a performance bond. The letter of credit or performance bond must be in a form, drawn on a domestic bank, and acceptable to the Director. The letter of credit or performance bond must remain in effect throughout the term of this Lease and for a period of ninety (90) days thereafter. The Director shall periodically review the amount of the Security Deposit and may, by written notice to the Lessee, update such amount which will increase the amount of the Security Deposit which such increase shall be deposited with the Director by cash, or supplemental letter of credit or performance bond.

## **SECTION 4: USE**

### 4.1. Permitted Use.

Lessee hereby agrees to use the Premises for the below stated purposes only and strictly in accordance with the terms and conditions of this Lease. Lessee is prohibited from installing any permanent or temporary building structures on the Premises without permission of the NOAB. Lessee's use of the Premises shall be limited to the following purposes:

- a) The Premises shall be used by Lessee only for the purpose of (INSERT use of property here.)
- b) It is an express condition of this Lease that Lessee remains in compliance with all applicable Federal, state and local laws, rules and regulations, including land use restrictions including, but not limited to Advisory Circular 150/5300-13A.

### 4.2. Non-Exclusive.

Lessee's rights and privileges in this Lease are non-exclusive, and nothing herein shall preclude the Lessor from entering into an agreement with any other parties during the term of this Lease for the sale/service in any part of the Airport of the same or similar merchandise or service which Lessee is permitted to sell or offer hereunder, whether such agreements are awarded competitively or through negotiations and regardless of whether the terms of such agreements are more or less favorable than the terms of this Lease.

## **SECTION 5: GOVERNMENTAL APPROVALS AND PERMITS.**

Responsibility for securing all required governmental approvals and permits shall rest solely with the Lessee, and shall be at the sole expense of the Lessee. The Board and the City shall not be liable for any expense or claim of the Lessee should the Lessee fail to timely obtain, or be unsuccessful in obtaining, any required governmental approvals and permits necessary for the construction and/or operation of the Premises. Notwithstanding the foregoing, Lessor agrees to cooperate with Lessee to obtain such permits.

## **SECTION 6: ACCEPTANCE AND CONDITION OF PREMISES**

### 6.1. Condition of Premises.

Lessee hereby acknowledges that the Premises are in useable condition. Lessee shall return the Premises to as good a condition as they were on the Effective Date, with the exception of ordinary wear and tear, or other fully insured casualty to the extent insurance proceeds from or on behalf of Lessee are remitted to Lessor.

### 6.2. Surveys & Inspections.

Lessee, at Lessee's sole cost and expense, may, prior to the Effective Date, conduct surveys, tests and inspections as Lessee considers reasonably necessary or desirable in connection with the intended use of the Premises.

### 6.3. Warranty or Representation of Premises.

Lessor makes no warranties or representations, either express or implied, whatsoever regarding the Premises. Without limiting the declaration contained in the immediately preceding sentence, Lessor, makes no warranties or representations, either express or implied, as to the Premises' fitness or suitability for a particular purpose, as to the environmental condition of the Premises, as to redhibitory defects, or as to vices or defects of whatever kind or nature, and whether known, unknown, latent or hidden, as to the Premises, and disclaims all responsibilities, liabilities, and obligations that are or may be imposed on the Lessor by Louisiana Civil Code Articles 2696 through 2702, inclusive, or otherwise. Lessee affirms that Lessee has had full opportunity to examine and to inspect the Premises. Lessee accepts the Premises in an "as is, where is" condition. On behalf of Lessee and Lessee's officers, managers, members, directors, stockholders, employees, successors, assigns, and representatives:

- a) Lessee hereby waives, to the fullest extent allowed under Louisiana Civil Code Article 2699 and otherwise under Louisiana law, any and all of Lessee's rights and remedies against the City and the Board relating to the Premises (including without limitation all of Lessee's rights and remedies under Louisiana Civil Code Articles 2696 through 2702, inclusive); and
- b) Lessee hereby relieves and releases:
  - i. The Lessor and all prior owners of the Premises;
  - ii. All entities controlled in whole or in part by Lessor; and
  - iii. The Lessor's, and said prior owners' respective officials, officers, directors, commissioners, members, employees, contractors, subcontractors, representatives, attorneys, agents, affiliates,

agencies, successors, and assigns; from any and all claims, losses, causes of action, rights of action, damages, expenses (including without limitation reasonable attorney's fees) and costs (collectively "Claims") for vices or defects (whether known, unknown, latent, or hidden) of, for peaceful possession of, or otherwise relating to, the Premises, including without limitation any and all Claims based on environmental conditions; any and all Claims based on any one or more of Louisiana Civil Code Articles 2696 through 2702, inclusive; any and all Claims (if any) for redhibition pursuant to Louisiana Civil Code Articles 2520 *et seq.*; and any and all Claims based on Lessee's inability to obtain any and all applicable permits, approvals or other authorizations from any governmental entities, units or agencies.

#### 6.4. Aviation Hazard.

Lessor reserves the right to take any action it considers necessary to protect the airspace and approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected or located, any light fixture, building, object, structure, or growth of natural object on the Premises or adjacent to the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft or obstruction to air navigation or communication facilities.

#### 6.5. Avigation Servitude.

The Lessor reserves an avigation servitude for the unobstructed use and passage of all types of aircraft in and through the airspace above the Premises at and above 40 feet in height above ground level. The avigation servitude shall include all incidental rights related to aviation within this airspace, including without limitation the right to cause such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to normal aircraft operation), fear, interference with sleep and communication and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft within the airspace over 40 feet in height above ground level or in the vicinity of the Premises or in landing at or taking off from the Airport.

#### 6.6. Compliance with ADA.

Lessee, at its sole cost and expense, agrees to keep and maintain the Premises in full compliance at all times with the Americans with Disabilities Act of 1990, as amended ("ADA"). In addition, Lessee agrees that all alterations and improvements to the Premises, if permitted, shall comply with all ADA requirements.

### **SECTION 7: ALTERATIONS**

Lessee is prohibited from installing any permanent or temporary building structures on the Premises unless authorized by Lessor. Lessee is also prohibited from making any other permanent or temporary alterations to the Premises (said alterations other than the leasehold improvements or alterations being hereinafter referred to as the "Alterations") without Lessor's prior written consent. Before making any Alterations, Lessee shall:

- a) Submit a request and a copy of the Alterations plans to the Lessor in the form of a Tenant Project Application Form at least thirty (30) days prior to planned commencement of the Alterations;
- b) Comply with all applicable local, state or federal laws, regulations, codes or ordinances affecting such Alterations and the Premises; and
- c) Perform the Alterations so as not to unreasonably interfere with or create a nuisance for aircraft, the operation of the Airport and/or the tenancy of others.
- d) Provide all required insurance and performance and payment bonds as may be requested by Lessor in its sole discretion prior to the start of any construction.

All Alterations made by Lessee to the Premises shall remain Lessor's property at the end of the Lease term, regardless of how or when the Lease term ends. Lessor shall not have to pay or to reimburse Lessee for any cost of such improvements unless the Lease term ends solely and exclusively due to Lessor's fault, in which case the cost amount shall be calculated in the manner set forth in the written agreement entered into between Lessor and Lessee at the time of the giving of Lessor's written consent to the Alterations pursuant to this Section.

The cost of any renovation, construction, alteration or improvement authorized according to the provisions of this Lease shall be borne and paid for solely by Lessee. Lessor and Lessee agree that Lessor has no financial or other obligation of any kind under this Lease other than the lease to Lessee of the Premises which are the subject of this Lease for the term and considerations herein set forth. It is expressly understood and agreed that Lessee shall be responsible at Lessee's sole expense for any improvements made to the Premises.

### **SECTION 8: EQUIPMENT/MATERIAL**

All equipment, and all items of personal or movable property that do not become fixtures or component parts, including any proprietary items owned by Lessee, that are located or placed by Lessee upon the Premises (collectively "Lessee's Personal Property") shall remain the property of Lessee. All said equipment and materials shall be removed from the Premises by Lessee upon the expiration of the lease. All equipment and materials left on the Premises after the expiration of the lease maybe removed by Lessor which cost of removal shall be the sole obligation of Lessee.

Lessee shall remove all Personal Property prior to the termination of the Lease, with the failure to do so constituting a waiver of Lessee's ownership of Lessee's Personal Property. In the event Lessee fails to remove Lessee's Personal Property within ten (10) days after termination of the Lease and Lessor elects to remove same, Lessee shall be required to reimburse the Lessor the entire cost of removing Lessee's Personal Property from the Premises.

### **SECTION 9: NO WASTE, NUISANCE, OR UNLAWFUL USE**

Lessee shall not commit or allow to be committed any waste on the Premises, create or allow any nuisance to exist on the Premises, or use or allow the Premises to be used for any unlawful purpose.

### **SECTION 10: ENVIRONMENTAL OBLIGATIONS**

Lessee hereby expressly covenants, warrants, and represents to Lessor, in connection with Lessee's operation at the Premises and Airport, the following:

- a) Lessee is knowledgeable of all applicable federal, state, and local environmental laws, ordinances, rules, regulations, and orders ("Environmental Laws"), which apply to Lessee operations at the Premises and acknowledges that such Environmental Laws change from time-to-time and Lessee agrees to keep informed of any such future changes.
- b) Lessee agrees to comply with all applicable Environmental Laws which apply to Lessee's operations at the Premises. As a supplement to the indemnification by Lessee in Section 17, below, Lessee agrees to hold harmless, defend, and indemnify the Lessor for any violation by Lessee or any one or more of Lessee's employees, agents, and contractors of such applicable Environmental Laws and for any non-compliance by Lessee or any one or more of Lessee's employees, agents, and contractors with any permits issued to Lessee pursuant to such Environmental Laws, which hold harmless, defense, and indemnity shall include, but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures or monitor environmental conditions and for any monetary penalties, costs, expenses (including without limitation reasonable attorney fees and costs), and damages, imposed against Lessee, its employees, invitees, suppliers, or service providers or any one or more of Lessor's respective officers, agents, employees, representatives and attorneys by reason of Lessee's violation or non-compliance. The foregoing hold harmless, defense, and indemnity shall not apply to the extent any claim arises out of the negligence or willful misconduct on the part of any of the

Lessor's respective officers, agents, employees, representatives and attorneys provided in Section 17 below. Lessee has an immediate and independent obligation to, at the Airport's option: (1) defend the Airport from or (2) reimburse the Airport for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if the allegations are or may be groundless, false, or fraudulent or Lessee is ultimately absolved from liability.

- c) Subject to the allowance provisions of Section 11, Lessee shall not use, store or house any petroleum fuels, highly flammable or Hazardous Materials on the Premises. For purpose of this Section, the term "Hazardous Materials" means and includes the following: Any hazardous substance as defined in any Environmental Law, including any "Hazardous Waste" or "Hazardous Substance" as defined by CERCLA and the Louisiana Hazardous Waste Control Law, La R.S. 30-2171 et seq. and chemicals subject to the OSHA Hazard Communication Standard. 29 CFR Section 1910.1200 et seq.

## **SECTION 11: HAZARDOUS MATERIALS**

### 11.1. Hazardous Waste Generation.

In any calendar month during the lease term, if the Lessee generates (a) an excess of 100 kilograms (approx. 220 pounds) of Hazardous Materials (as defined in Section 10(c)), (b) any residue, contaminated soil, waste, or other debris resulting from the clean-up of a spill, or (c) more than one kilogram of "acutely hazardous waste", then Lessee shall obtain and maintain a Hazardous Waste Generator Permit (hereinafter referred to as "HW Permit") from the Louisiana Department of Environmental Quality. If Lessee is obligated to obtain an HW Permit pursuant to this section, then the Lessee shall procure an authorized collection and disposal company to properly remove and dispose of environmentally regulated materials on at least a quarterly basis. If Lessee is not obligated to obtain an HW Permit pursuant to this section, then the Lessee shall provide documentation, upon request, that an authorized outside service provider has been contracted to service their equipment (i.e. forklifts) and legally dispose of waste products. Service and disposal records shall be made available for inspection by the Airport Environmental Engineer at all times.

"Acute hazardous waste" is any hazardous waste with a waste code beginning with the letter "P" or any state-only hazardous waste with a waste code beginning with the letters "P", "ORP" or any of the following "F" codes: F020, F021, F022, F023, F026, and F027; refer to the MSDS Sheet for applicable waste codes.

### 11.2. Hazardous Material Storage and Transport Election

Upon written request for approval to the Director of Aviation, Lessee shall have the option to store and transport certain Approved Hazardous Materials subject to the terms and conditions contained in this Section. Said approval shall be granted upon verification that Lessee has met the requirements contained in Section 11.2.B.

#### **A. Approved Hazardous Materials.**

Subject to the requirements of subsection B and C below, the following classes of Hazardous Materials as defined by the U.S. Department of Transportation are Approved Hazardous Materials under this Lease Agreement:

- a) Class 2 Flammable Gases;
- b) Class 3 Flammable Liquids;
- c) Class 5 Oxidizers;
- d) Class 6 Poisonous Liquids; and
- e) Class 8 Corrosives.

#### **B. Requirements for storage and transportation of Approved Hazardous Materials.**

Lessee agrees to the following obligations in order to be granted the right to store and transport of Approved Hazardous Materials.

- a) Lessee must obtain, and maintain in good standing, a Hazardous Waste Storage and Transportation Permit from the Louisiana Department of Environmental Quality (DEQ) before any Approved Hazardous Materials can be used or stored on the Premises.



- b) Lessee must develop an internal Best Management Practices for the handling, use, storage and disposal of any and all regulated materials and Approved Hazardous Materials and submit same to the BOARD's Environmental Engineer for approval before any Approved Hazardous Materials can be used or stored on the Premises.
- c) Lessee must file Quarterly Environmental Reports with NOAB's Environmental Engineer. Quarterly Facility Inspection Log attached as Exhibit C.
- d) Lessee must ensure all employees that are located at the leased premises attend annual EPA-mandated Storm Water Pollution Prevention training, and document same through a signed attendance roster. The training material shall be provided by the BOARD Airport Environmental Engineer. The first EPA-mandated Storm Water Pollution Prevention training for all employees that are located at the leased Premises must take place before any Approved Hazardous Materials can be used or stored on the Premises.

**C. Inspection.**

Prior to the initial storage and use of Approved Hazardous Materials, the leased Premises must be inspected and approved by the BOARD Fire Chief. Thereafter, the BOARD Fire Chief shall have the right to enter the leased premises and inspect the conditions thereof at any time and without notice.

**D. Termination of Allowance.**

Lessor reserves the right to both amend the definition of Approved Hazardous Materials to remove or add classes of hazardous materials or to terminate the allowance of hazard materials completely as it deems appropriate and as may be required to comply with Federal Aviation Administration (FAA) rules, instructions, regulations and guidance, Transportation Security Agency (TSA) rules, instructions, and regulations and/or to further any Airport development or improvement as it sees fit. Furthermore, Lessee may elect to terminate the allowance as well.

**SECTION 12: UTILITIES**

Lessee shall be responsible for paying for all utilities, including without limitation water, sewer, telephone, electricity and refuse collection used in and at the Premises. In no event shall the City or the Board be liable for damages, loss of business, and loss of profits or otherwise for any interruption, reduction, failure in the supply, quality or character of any utility service at the Airport.

**SECTION 13: TAXES AND ASSESSMENTS**

Lessee agrees to pay Lessor within thirty (30) days of receipt, and all other utility providers before delinquency, all uncontested lawful taxes, assessments, fees or charges which at any time may be levied by the state, parish, city or any tax or assessment levying body upon the immovable property or any activity carried on under this Lease, any interest in this Lease or any possessory right which Lessee may have in or to any property covered under this Lease or by reason of Lessee's use or occupancy thereof or otherwise, as well as all lawful taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances, equipment and property owned by Lessee in or about the Premises.

**SECTION 14: MAINTENANCE AND REPAIR**

**14.1 General Maintenance and Repair**

Under the terms of this Modified Net Lease, the Lessee, at Lessee's sole cost and expense at all times during the term of this Lease, agrees to keep and maintain, or cause to be kept and maintained, the Premises, including the building, in a good state of appearance and repair, reasonable wear and tear excepted. Lessee shall be responsible for all interior maintenance, repairs, and inspections including but not limited to, interior ceilings, walls, windows, office entries, floors, HVAC systems, electrical systems, sprinkler systems, dock covers, dock bumpers, and plumbing and plumbing fixtures, to the Premises. Where applicable, Lessee shall provide and use suitable covered metal receptacles for all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets, or similar items, in an unsightly, unsafe manner, on or about the Premises, is prohibited. Lessee shall provide complete and

proper arrangements for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage, and other refuse caused as a result of the Lessee's occupancy and use of the Premises.

Lessor, at the Lessor's sole cost and expense at all times during the term of this Lease, is responsible for maintenance and repair to exterior walls, exterior doors, the roof and roof membrane, and foundation of the facility, unless the need for such repair is caused by the act or omission of Lessee or Lessee's employees, agents, invitees, licensees, suppliers of materials, or furnishers of services. All landscaping of the Premises shall be the responsibility of the lessor.

#### 14.2 Non-Responsibility of Lessor

Except as expressly set forth herein, there shall be no abatement from or reduction of the Rent due hereunder regardless of the reason or cause. Lessee shall not be entitled to damages, costs, losses or disbursements from Lessor regardless of the cause or reason therefore. Lessee shall have no claim of any nature whatsoever against Lessor, no abatement or reduction of rent, and no recovery by Lessee from Lessor on account of partial or total failure of, or damage caused by (a) lessening of supply of, or stoppage of, heat, air-conditioning, electric light, power, water, plumbing, sewerage, or any other service, (b) any damage or annoyance occasioned by water, snow, or ice being upon or coming through the roof, skylight, windows, or otherwise, (c) any defect or break in any pipes, tanks, fixtures, or otherwise whereby steam, water, snow, smoke or gas, leak, issue or flow into the Premises, (d) any damage or annoyance occasioned by the condition or arrangements of any electric or other wiring, (e) any damage or annoyance arising from any acts, omissions, or negligence of co-Lessees or other occupants of the Property, or of owners or occupants of adjacent or contiguous property, or (f) the making of major repairs, alterations, repairs, improvements, or structural changes to the Property, or anything or service therein or thereon or contiguous thereto provided the same shall be made with reasonable expedition.

#### 14.3 Lessee Personal Property Damages

Loss and Damage. Notwithstanding any contrary provisions of this Lease, Lessor shall not be responsible for any loss of or damage to property of Lessee or of others located on the Leased Premises, except where caused by the willful act or omission or negligence of Lessor, or Lessor's agents, employees or contractors, provided, however, that if Lessee shall notify Lessor in writing of repairs which are the responsibility of Lessor under Section 14.1 hereof, and Lessor shall fail to commence with the reasonable due diligence of regulated governmental entity prosecuted to completion said repairs promptly after such notice, and if after the giving of such notice and the occurrence of such failure, loss of or damage to Lessee's property shall result from the condition as to which Lessor has been notified, Lessor shall indemnify and hold harmless Lessee from any loss, cost or expense arising therefrom.

Lessor shall maintain and keep in good repair the foundations and structure of the Property. Lessee shall give notice of the need for any repair after which Lessor shall have a reasonable opportunity to correct the same. Lessee acknowledges that the Lessor is a regulated governmental entity and that, as a governmental entity, the procurement of contractors and repairs is a longer process than non-regulated private persons or entities. **Lessor's liability with respect to any repair or replacement shall be limited to the cost of such repair or replacement.**

### **SECTION 15: SIGNS**

Lessee shall have the right to place signs on the Premises subject to any applicable laws, code and ordinances, subject to any reasonable rules and regulations of the Lessor subject to the prior approval of the Lessor. Lessee shall be solely responsible for maintaining its signs in good condition and shall remove them and repair any damage caused by such removal on or before the Expiration Date. Lessee is not allowed to place or to erect any signs or advertising material on the Premises without the prior approval of the Lessor. Up to nine (9) months before the expiration of the Lease term, Lessor shall be entitled to place signs on the leased Premises indicating that the leasehold is available for lease.

### **SECTION 16: ACCESS**

Lessor and Lessor's authorized representatives shall have the right to enter the Leased Premises following 24 hours' notice to Lessee for the purpose of:

- a) Performing any maintenance or repairs that Lessee has failed to undertake, and
- b) Inspecting the Premises to verify that fire, safety, sanitation regulations, and other provisions contained in this Lease are being adhered to by Lessee.
- c) Up to nine (9) months before the expiration of the Lease term and with reasonable notice to Lessee, Lessor shall be entitled to show the Premises during business hours to prospective tenants.

Lessor shall use its best efforts to conduct Lessor's activities in the Premises in a reasonable manner that will seek to minimize interference with Lessee's business operations. Lessor shall be permitted access to the Premises for emergencies without prior notice to Lessee, so long as Lessee is notified as soon thereafter as is reasonably possible.

### **SECTION 17: INDEMNIFICATION**

To the fullest extent permitted by law, the Lessee shall fully indemnify, defend, and hold harmless and defend the City, Board, and all their respective officers, agents, contractors, employees, representatives and attorneys ("Indemnified Parties") from and against all suits, actions, claims, damages, losses and expenses, direct, indirect or consequential, including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs, of any character, name, and description brought for or on account of any injuries or damages, including but not restricted to death, received or sustained by any persons or property on account of, arising out of, or in connection with:

- a) The operations of the Lessee, its contractors, sub-contractors, vendors, visitors, and suppliers; and
- b) Any negligent act or intentional omission, misconduct, or fault of the Lessee, its contractors, sub-contractors, vendors, visitors and suppliers or their agents or employees in the execution of the lease or performance of the services required thereunder; and
- c) Any violation of law, ordinance, regulation, or order of any public authority having jurisdiction over the services required hereunder.

Limitation. Lessee's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Lessee nor any of its agents or employees contributed to such gross negligence or willful misconduct.

Independent Duty. Lessee has an immediate and independent obligation to, at the Airport's option: (1) defend the Airport from or (2) reimburse the Airport for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if the allegations are or may be groundless, false, or fraudulent or Lessee is ultimately absolved from liability.

Expenses. Notwithstanding any provision to the contrary, Lessee shall bear the expenses including, but not limited to, the Board's and City's reasonable attorney fees and expenses, incurred by the Board and the City in enforcing this indemnity.

The Lessor shall fully indemnify, save harmless and defend Lessee and all its officers, agents, employees, representatives and attorneys from and against all suits, actions, claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) of any character, name, and description brought for or on account of any injuries or damages (including but not restricted to death) received or sustained by any persons or property on account of, arising out of, or in connection with:

- a) The operations of the Lessor or Lessor's contractors, sub-contractors, vendors, visitors and suppliers; and

- b) Any negligent act or intentional omission, misconduct, or fault of the Lessor or Lessor’s contractors, sub-contractors, vendors, visitors, suppliers and their agents and employees in the execution of this Lease Agreement or performance of the services required thereunder.

**SECTION 18: INSURANCE**

18.1. Minimum Coverage.

Lessee shall, at its own cost and expense, maintain the following insurance coverages throughout the Term. Prior to the Execution Date, Lessee shall produce to the Board certificates of insurance evidencing the coverages required herein and listing the Board and the City as additional insureds. Lessee shall require any sub-contractors, sub-Lessees and sub-tenants doing business with or for the Lessee to comply with the provisions of this Section or the liability for said sub-contractors, sub-Lessees and sub-tenants shall be covered by the Lessee:

- (a) Commercial General Liability Insurance: The Lessee agrees to maintain CGL coverage covering all operations pursuant to this Lease performed by Lessee, or on its behalf, in the following amounts (inclusive of any amounts provided by an umbrella or excess policy):
- Per Occurrence: \$5,000,000
- This insurance shall include coverage for premises-operations, broad-form contractual liability, products and completed operations, use of contractors and subcontractors, personal injury, and broad-form property damage. A "Claims made" form shall not be acceptable. The "occurrence form" shall not have a "sunset clause".
- (b) Business Automobile Liability Insurance: Lessee shall maintain Business Auto Liability coverage for all owned, hired and non-owned vehicles with the following policy limits (inclusive of any amounts provided by an umbrella or excess policy):
- Combined Single Limit per Occurrence (both bodily injury and property damage): \$1,000,000
- In the event Lessee operates vehicles on the AOA used or intended to be used for aircraft landings, the minimum limits of Business Automobile Liability insurance (inclusive of any amounts provided by an umbrella or excess policy) covering all owned, hired, and non-owned vehicles are:
- Combined Single Limit per Occurrence (both bodily injury and property damage): \$10,000,000
- (c) Workers’ Compensation and Employer’s Liability Insurance: Lessee agrees to maintain Workers’ Compensation and Employer’s Liability Insurance with the following policy limits (inclusive of any amount provided by umbrella or excess):
- Workers’ Compensation: Statutory Limits
  - Employer’s Liability:
    - Each Accident: \$1,000,000
    - Disease (policy limit): \$1,000,000
    - Disease (each employee): \$1,000,000
- (d) Property Insurance: Lessee shall maintain Property Insurance covering all forms of risk on all Alterations or Improvements and any other interests of Lessee, including inventory, supplies, and other property of Lessee located on the Premises, insuring against perils typically covered by property insurance including, but not limited to, fire, lightning, extended coverage, vandalism, malicious mischief, glass breakage, sprinkler, Named Storm and terrorism in an amount equal to the full replacement value of Lessee improvements and any other interests of Lessee in or about said Premises. The policy shall name or be endorsed to name City and Board as “Loss Payee” as their interests may appear.

- (e) Business Interruption Insurance: Lessee shall maintain Business Interruption insurance in an amount sufficient to compensate Lessee for the direct or indirect loss of earnings under this Lease and attributable to the perils commonly covered by the Lessee's property insurance, which shall include losses arising from mechanical or utility failures on or interruption of services to the Premises.
- (f) Commercial Crime Insurance: If Lessee's use of the Airport involves handling money, then Lessee shall maintain Commercial Crime insurance covering including, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositors forgery; computer fraud, on- and in-transit:
  - Each Occurrence: \$1,000,000
- (g) Liquor Legal Liability: If Lessee's use of the Airport involves the provisioning or selling of liquor, Lessee shall maintain Liquor Legal Liability coverage covering the selling, serving, or furnishing of any alcoholic beverage pursuant to this Lease performed by Lessee, or on its behalf, in the following amounts (inclusive of any amounts provided by an umbrella or excess policy):
  - General Aggregate: \$2,000,000
  - Each Occurrence: \$1,000,000

The insurance policies herein required shall contain or be endorsed to contain the following provisions:

- A. Workers' Compensation coverage shall contain an express waiver of all rights against the City and NOAB, its elected and appointed officials, officers, agents, directors, volunteers, and employees, for losses arising from the services performed by the Lessee for the City and the Board.
- B. The City and Board and their respective officers, officials, and employees are to be added as additional insured to the Commercial General Liability and the Automobile Liability insurance policies with respect to (i) liability arising out of activities performed by or on behalf of the Lessee; (ii) products and completed operations of the Lessee, and (iii) the insurance obtained by Lessee insuring the Premises against casualty losses. The coverage shall contain no special limitations on the scope of protection afforded the additional insured. The Certificate Holder shall be in the name of:

The City of New Orleans by and through the New Orleans Aviation Board  
 PO Box 20007  
 New Orleans, LA 70141

Within the Certificate of Insurance "Description of Operations/Locations/Vehicles/Remarks" field, please include the following language:

"Where required by written contract, The City of New Orleans, The New Orleans Aviation Board, and their respective members, officers, employees, agents, and assigns are included as Additional Insured and Loss Payee as their interest may appear."

- C. Certificates of insurance acceptable to the Board and the City shall be provided prior to commencement of the Lease. The Lessee shall be responsible for providing 30 days prior written notice of cancellation/non-renewal except 10 days for non-payment. Company endorsements shall be provided with the certificate of insurance.

18.2. All insurance required by this Section shall be placed with insurers that are licensed and authorized to do business in the State of Louisiana and have a rating of no less than A-VI in the most current edition of the A.M. Best Insurance Report, AAA in Moody's, and AAA in Standard and Poor's. The providing of any insurance required herein does not relieve the Lessee of any of the responsibilities or obligations for which the Lessee may be liable by law, lease or otherwise. The Lessee's failure to provide and maintain such insurance in force as required above shall materially breach the Lease and, at the City and /or Board's option, occasion an immediate cancellation for cause

thereof. The Lessee and any subcontractors shall comply with all laws relating to immigration and naturalization; failure to comply shall constitute an event of default under the Lease.

In the event Lessee does not have the required certificate(s) of insurance evidencing the proper insurance coverage, or the required insurance coverage lapses, this Lease shall be immediately terminated at the discretion of the Director. Any policy endorsement should be attached to the certificate(s). Lessee must require Lessee's contractors or sub-contractors and other persons doing business with or for the Lessee maintain at least the insurance as required above or the liability for said contractors or sub-contractors and other persons doing business with or for the Lessee shall be covered by the Lessee.

### 18.3. Additional Insurance.

The Board reserves the right to require Lessee to provide such additional amounts of insurance coverage, or such additional types of insurance coverage, as the Board deems necessary during the term of this Lease upon receipt of prior reasonable written notice from the Board. Lessee will use its commercially reasonable best efforts to furnish the Board, within sixty (60) days of said request, a certificate of insurance evidencing such insurance with increased limits in full force and effect.

### 18.4. Insurance Not a Limitation on Liability.

Compliance with the foregoing requirements shall not relieve Lessee of its liability under any other provision of this Lease, or by law.

## **SECTION 19: CASUALTY**

If, due to fire or other casualty which is not the fault of Lessee in whole or in part, the Premises is totally destroyed or rendered incapable of being occupied and operated by Lessee for the purposes set forth herein, within one hundred eighty (180) days of the date of the fire or other casualty, in Lessee's sole discretion, Lessee shall have a right to terminate this Lease. In such a case, all insurance proceeds covering the improvements on the Premises shall be the property of Lessor.

If, due to fire or other casualty which is not the fault of Lessee in whole or in part, the Premises are partially damaged or rendered partially incapable of being occupied and operated by Lessee for the purposes set forth herein, in Lessee's sole discretion, this Lease shall continue in effect except that the damages to the Premises for which Lessor is responsible to repair under Section 14 Maintenance and Repair shall be repaired within a reasonable time by Lessor. Until full use of the Premises is restored, Base Rent shall partially abate in the proportion that the subject area incapable of the aforesaid occupancy and operation bears to the entire area of the Premises. If full tenancy is not restored within One Hundred Eighty (180) calendar days from the date of the casualty, either Lessee or Lessor may terminate this Lease upon ten days' written notice, without liability to either party, and any pre-paid Base Rent shall be pro-rated and refunded to Lessee. Repair of the Premises by Lessor shall be limited to rebuilding those structures which existed as of the Effective Date and insurance proceeds received.

In the event of a Casualty, parties may enter into a Restoration Agreement or similar agreement that allows the Lessee to perform the restoration of those portions of the building for which Lessor may be responsible under Section 14 of the Lease Agreement. Lessor will reimburse Lessee for the cost of that restoration as long as the restoration was approved in advance by NOAB's Planning, Development & Construction Department and Lessee performs the restoration in accordance with all applicable, laws, rules, regulations and building codes of all government authorities having jurisdiction over the premises. In the event that Lessee and Lessor agree to permit the Lessee to perform repairs or restoration of the Premises for which the Lessor is responsible under Section 14 of this Lease Agreement, Lessee acknowledges and accepts that the Lessor is a governmental entity subject to administrative and regulatory requirements to which private persons and entities are not subject and that as a governmental entity reimbursement to Lessee for repairs/restoration may take up to 60 days after the execution of a Restoration Agreement or similar agreement and the presentation to Lessor of a final invoice for such repairs/restoration.

## **SECTION 20: CONDEMNATION**

In the event that any federal, state or local government or agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, the Lessor may, at its option, terminate this Lease as of the date of such taking, and if Lessee is not in default under any of the provisions of this Lease on said date, any rent or concession fees prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee. In addition, Lessee shall be entitled to participate in any compensation paid in the event of a taking, not to exceed the leasehold improvements or alterations.

During any war or national emergency, Lessor shall have the right to lease any part of the Airport, including its landing area, to the United States Government. In this event, any provisions of this Lease which are inconsistent with the provisions of the lease to the Government shall be suspended. Lessor shall not be liable for any loss or damages alleged by Lessee as a result of this action. However, nothing in this Lease shall prevent Lessee from pursuing any rights it may have for reimbursement from the United States Government.

This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States government be to take all or any of the Premises or substantially alter or destroy the commercial value of the leasehold interest granted herein, Lessor shall not be held liable therefore, but in such event Lessee may cancel this Lease upon ten (10) days written notice to Lessee.

## **SECTION 21: ASSIGNMENT AND SUBLETTING**

### 21.1. Mortgage.

Lessee shall not be allowed to mortgage, to grant a security interest in, to assign for security or collateral purposes, or otherwise to encumber Lessee's interest in and to the Premises or this Lease.

### 21.2. Transfer/Sublet.

Lessee shall not transfer, assign, sublet, or otherwise alienate Lessee's interest in and to the Premises without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld. Any transfer, assignment, subletting, or alienation of this Lease or of Lessee's leasehold interest in the Premises without the prior written consent of Lessor shall be null and void.

### 21.3. Permission to Sublease.

In the event Lessee requests permission to sublease, the request shall be submitted to the Director of Aviation and must be approved by the Board prior to the effective date of the sublease requested and shall be accompanied by a copy of the proposed sublease agreements and all agreements collateral thereto. The area or space to be subleased, the rental to be charged, the type of business to be conducted, and the identity and financial history of the sub-tenant shall be specified. Each transfer, assignment or subletting to which there has been consent shall be by instrument, in writing, and shall be executed by transferee, assignee or sub-lessee who shall agree in writing, for the benefit of Lessor, to be bound by and to perform the terms, covenants and conditions of this Lease. Five (5) executed copies of such written instrument shall be delivered to Lessor. Failure to first obtain written consent from the Lessor, or failure to comply with the provisions herein contained, shall operate to prevent any such transfer, assignment or subletting from becoming effective. At Lessee's option, Lessee shall record a memorandum of this Lease with the recorder of mortgages for Jefferson Parish within 15 days of all parties signing this Lease.

### 21.4. Lessor Consent.

Should the assignment of this Lease be consented by Lessor and to the extent that such assignee assumes Lessee's obligations hereunder, Lessee shall not, by virtue of such assignment, be released from Lessee's obligations under the Lease unless at the time of the giving of Lessor's written consent Lessor expressly agrees in writing to the contrary. Should the subletting of the Premises be consented to by Lessor, Lessee agrees and acknowledges that Lessee shall remain fully and primarily liable under this Lease, notwithstanding any such sublease and that any such sub-lessee shall be required to attorn to Lessor under the terms of this Lease.

The receipt by the Lessor of rent from any assignee, subtenant or occupant of the Premises shall not be deemed a waiver of the requirements in this Section 20 or an acceptance by Lessor of the assignee, subtenant or occupant as a tenant or a release of the Lessee from further observance or performance by the Lessee of the covenants and obligations contained in this Lease. No provisions of this Lease shall be deemed to have been waived by the Lessor unless such waiver is in writing, signed by the Lessor's Director of Aviation. Lessor reserves the right to transfer Lessor's interest in the Lease.

## **SECTION 22: DEFAULT**

### 22.1. Lessee Conditions of Default.

The occurrence of any one or more of the following events ("Lessee Event of Default") shall constitute an event of default and breach of this Lease by Lessee:

- a) Vacating or abandonment of the Premises by Lessee for more than sixty (60) days;
- b) Failure by Lessee to make any payment of Base Rent or any other payment required to be made by Lessee under this Lease when due where such failure continues for a period of ten (10) days after written notice by Lessor to Lessee;
- c) Breach of any Lessee covenant or obligation under Section 10 and 11 in this Lease which is not cured immediately after written notice by Lessor to Lessee; or
- d) Breach of any Lessee covenant or obligation in the Lease other than under Section 10 and 11 of the Lease where such failure continues for a period of thirty (30) days after written notice by Lessor to Lessee.

### 22.2. Lessor Conditions of Default.

The occurrence of any one or more of the following events ("Lessor Event of Default") shall constitute an event of default and breach of this Lease by Lessor:

- a) Breach of any Lessor covenant contained herein where such failure continues for a period of thirty (30) days after written notice by Lessee to Lessor.

### 22.3. Remedies for Lessee Event of Default.

Except as specifically provided to the contrary in this Lease, if a Lessee Event of Default occurs, Lessor shall be entitled to exercise any one or more of the following rights, which shall be deemed cumulative:

- a) Terminate the Lease and evict Lessee if Lessee does not vacate the Lease Premises within 30 days' notice. Lessee hereby waives all rights to notice of termination of lease and/or notice to vacate pursuant to Louisiana Civil Code article 4701;
- b) Pursue claims for damages against Lessee if they exceed the accelerated rent due;
- c) Charge interest (at the then applicable highest annual rate of legal interest under Louisiana law) on all due and unpaid Base Rent and other payments owed by Lessee under this Lease, on and after the occurrence of an Event of Default;
- d) Charge Lessee an amount equal to Lessor's reasonable legal fees and costs incurred on and after a default by Lessee under the Lease;
- e) Accelerate all rents due for the unexpired term of the Lease; or



- f) Exercise any and all rights and remedies available at law.

#### 22.4. Remedies for Lessor Event of Default.

Except as specifically provided to the contrary in this Lease, if a Lessor Event of Default occurs, Lessee shall be entitled to exercise any one or more of the following rights, which shall be deemed cumulative:

- a) Terminate the Lease;
- b) Pursue claims for damages against Lessor;
- c) Charge Lessor an amount equal to Lessee's reasonable legal fees and costs incurred on and after a default by Lessor under the Lease; or
- d) Pursue any and all other remedy available at law or equity.

Other than the notices of default provided in Section 21.1 and Section 21.2, respectively, neither party shall be required to give thirty (30) days' notice to the other, in order to exercise any one or more of the foregoing remedies. Likewise, neither party shall be liable to the other if said party exercises any one or more of the foregoing remedies.

### **SECTION 23: BROKERS**

Lessor represents and warrants that Lessor is solely responsible for any real estate broker retained or otherwise utilized by Lessor in connection with the Lease of the Premises described herein and that no real estate or broker commissions are due by Lessee to anyone retained or used by Lessor.

### **SECTION 24: TITLE AND QUIET POSSESSION**

Lessor represents and warrants that:

- a) The Lessor is the owner of the Premises;
- b) The Lessor has the right to enter into this Lease; and
- c) The person signing this Lease on behalf of Lessor has the authority to sign this Lease on behalf of Lessor.

Lessor and anyone claiming by and through Lessor hereby covenants that Lessee is entitled to access to the Premises at all times and to the quiet possession of the Premises during the term of the Lease, subject to the access and occupancy limitations set forth elsewhere in this Lease, provided that Lessee is not in default of any Lessee's obligations under this Lease.

### **SECTION 25: RELOCATION RIGHTS**

Lessor reserves the right to develop and improve the Airport as it sees fit, regardless of the desires or views of the Lessee, and without interference or hindrance by or on behalf of Lessee. Accordingly, nothing contained in this Lease shall be construed to obligate Lessor to relocate Lessee as a result of any such Airport developments or improvements.

### **SECTION 26: RULES AND REGULATIONS**

Lessee shall observe the rules and regulations which Lessor shall from time to time promulgate with respect to the Premises. Lessor reserves the right from time to time to make reasonable modifications to such rules and regulations which shall be binding on Lessee and all other tenants and subtenants upon delivery of a copy of the

modified rules and regulations to Lessee. Lessee shall also observe all federal, state, and local rules and regulations which may affect Lessee's operations under this Lease.

In the event the Federal Aviation Administration (FAA), or its successors, or the Transportation Security Agency (TSA) requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required to obtain such fund; provided, however, that in no event will Lessee be required, pursuant to this subsection, to agree to an increase in the rent or other charges.

#### **SECTION 27: SUCCESSORS**

This Lease and the terms and conditions contained herein shall run with the Premises and inure to the benefit of and be binding upon the parties hereto and each of their respective heirs, executors, administrators, successors and permitted assigns.

#### **SECTION 28: JURISDICTION & GOVERNING LAW**

The Lessee consents and yields to the exclusive jurisdiction of the State Civil Courts of the Parish of Orleans, and does hereby formally waive any pleas of jurisdiction on account of the residence elsewhere of the Lessee, as to all disputes arising from or related to the Lease. The Lease shall be construed and enforced according to the laws of the state of Louisiana, excepting its conflict of laws provisions.

#### **SECTION 29: AMENDMENT**

This Lease shall not be modified except by written agreement signed by Lessor and Lessee through their respective duly authorized representatives.

#### **SECTION 30: NO WAIVER**

The failure of Lessee or Lessor hereto at any time to require performance by the other of any provision of this Lease shall in no way affect the party's right to enforce such provision, nor shall the waiver by either party of any breach of any provision of this Lease be taken or held to be a waiver of any further breach of the same provision or any other provision.

#### **SECTION 31: FORCE MAJEURE**

Except as herein provided, neither Lessor nor Lessee shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than the payment of rentals, fees, and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, epidemics, natural disasters, floods, tornado, hurricane, riots, rebellion, sabotage, war, or any other circumstances for which it is not responsible or which are not within its control.

#### **SECTION 32: MISCELLANEOUS PROVISIONS**

##### 32.1. Legal Construction.

In the event any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

##### 32.2. Prior Agreements Superseded.

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

### 32.3. Notices.

All notices provided to be given under this Lease shall be deemed properly served if such notice is given by certified mail, return receipt requested, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

Lessor: Director of Aviation  
New Orleans Aviation Board  
P. O. Box 20007  
New Orleans, Louisiana 70141

With a copy to: Deputy Director of Aviation – Commercial Development  
New Orleans Aviation Board  
P. O. Box 20007  
New Orleans, Louisiana 70141

Lessee: **INSERT: Point of contact, Company name, address, email, and phone number**

Notices mailed in accordance with the provisions hereof shall be deemed to have been given as of the date of receipt or the third business day following the date of such mailing, whichever is earlier.

### 32.4. Successors and Assigns.

The covenants and agreements contained in this lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

### 32.5. Severability.

If any provision in this Lease is held to be unenforceable for any reason whatsoever, the remaining provisions of this Lease shall remain in full force and effect.

### 32.6. Electronic Signature and Delivery.

The Parties agree that a manually signed copy of this Lease and any other document(s) attached to this Lease delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Lease. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Lease.

### 32.7. Conflict of Interest.

In the interest of ensuring that efforts of Lessee do not conflict with the interests of the Board, and in recognition of Lessee's responsibility to the Board, Lessee agrees to decline any offer of employment if its independent work on behalf of the Board is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with Lessee. It is incumbent upon Lessee to notify the Board and provide full disclosure of the possible effects of such employment on Lessee's independent work on behalf of the Board. Final decision on any disputed offers of other employment for Lessee shall rest with the Board.

### 32.8. Counterparts.

This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Lease, but all of which, when taken together, shall constitute one and the same Lease.

32.9. Incorporation into Subcontracts.

Lessee will incorporate Lease Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

32.10. Limitations of the City's Obligations.

The Board and the City have no obligations not explicitly set forth in this Lease or any incorporated documents or expressly imposed by law.

32.11. No Third Party Beneficiaries.

This Lease is entered into for the exclusive benefit of the Board, City and Lessee, and the Board, City and Lessee expressly disclaim any intent to benefit anyone not a party to this Lease.

32.12. Choice of Laws.

This Lease shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

32.13. Entire Lease.

This Lease, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Lease and are without effect to vary or alter any terms or conditions of this Lease.

32.14. Exclusive Jurisdiction and Venue.

For all claims arising out of or related to this Lease, Lessee hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Lessee's residence and (B) right of removal to federal court based upon diversity of citizenship.

**SECTION 33: EQUAL EMPLOYMENT OPPORTUNITY**

In all hiring or employment made possible by, or resulting from the Lease, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that the Lessee/developer/operator's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. The Lessee shall include the provisions of this paragraph in all subleases, if permitted.

Lessee, for itself, its personal representatives, successors in interest and assigns, as part of the consideration herein, agrees as a covenant running with the land that no person shall be excluded from participation in or denied the benefits of Lessee's use of the Premises on the basis of race, color, national origin, religion, handicap, sex, sexual orientation or familial status. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any services on or in the construction of

any improvements or alterations to the Premises on grounds of race, color, national origin, religion, handicap, sex, sexual orientation or familial status.

Lessee agrees to furnish its accommodations and to price its goods and services on a fair and equal basis to all persons. In addition, Lessee covenants and agrees that it will at all times comply with any requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation and with any amendments to this regulation which may hereafter be enacted.

In the event of a breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to reenter and repossess the Premises and hold the same as of the Lease had never been made or issued; provided however, that the Lessee allegedly in breach shall have the right to contest said alleged breach under applicable Federal Aviation Administration procedures, and any sanctions under or termination of the Lease shall be withheld pending completion of such procedures.

If any claim arises from an alleged violation of this non-discrimination covenant by Lessee, its personal representatives, successors in interest or assigns, Lessee agrees to indemnify Lessor and hold Lessor harmless pursuant to Section 17.

#### **SECTION 34: CONFLICT OF INTEREST**

Lessee covenants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the services and obligations required to be performed under this Lease.

#### **SECTION 35: INDEPENDENT CONTRACTOR**

35.1 Acknowledgment of Exclusion of Worker's Compensation and Unemployment Compensation Coverage.

The Lessee hereby and in this Lease expressly agrees and acknowledges that it is an independent contractor and as such, it is expressly agreed and understood that the Lessor shall not be liable for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana or applicable unemployment compensation law, and further, anyone employed by the Lessee shall not be considered an employee of the Lessor for the purpose of workers compensation or unemployment compensation coverage, or for any other purpose.

35.2 Waiver of Sick and Annual Leave Benefits.

It is expressly agreed and understood that the Lessee, acting as an independent entity, shall not receive any sick or annual leave benefits from the Lessor.

#### **SECTION 36: DELINQUENT TAXES**

Lessee swears that it complies with City Code §2-8 (a). Lessee is not delinquent in any taxes owed to the City.

#### **SECTION 37: CONVICTED FELON**

Lessee swears that it complies with City Code §2-8 (c). No Lessee principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

#### **SECTION 38: NON-SOLICITATION**

Lessee swears that it has not employed or retained any company or person to solicit or secure this Lease other than a 1) bona fide employee working solely for Lessee; 2) consultant representing the Lessee; or 3) an attorney representing the Lessee. The Lessee has not paid or agreed to pay any person any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Lease other than a 1) bona fide employee working solely for Lessee; 2) consultant representing the Lessee; or 3) an attorney representing the Lessee.

**SECTION 39: INSPECTOR GENERAL COOPERATION**

It is agreed that the Lessee or applicant will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires the Lessee to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. In signing this contract, Lessee agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**SECTION 40: OWNERSHIP INTEREST PROVISION**

The Lessee shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Lessee and stating that no other person holds an ownership interest in the Lessee via a counter letter. For the purposes hereof, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. Lessee agrees to provide to the Lessor a sworn affidavit attesting to the above provisions if requested by the Lessor to do so; failure to provide such affidavit upon request shall give Lessor the option to cancel this Lease.

**SECTION 41: SUBCONTRACTING**

The Lessor did not set an ACDBE participation goal for this lease agreement but continues to encourage the use of ACDBE firms. The Lessor desires to achieve, to the greatest extent possible, quality participation by certified ACDBE firms in order to reach its annual overall goal of 23.35%. Although there is no ACDBE participation requirement, Lessee is encouraged to present a creative and responsive plan that provides for participation that is commercially meaningful and useful in the areas of construction build-out and procurement of goods and services.

**SECTION 42: SUBORDINATION**

This Lease is subordinate to the Lessor’s obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the airport.

**SECTION 43: REQUIRED FEDERAL CONTRACT PROVISIONS**

The Lessee agrees to comply with the Required Federal Contract Provisions attached hereto as Exhibit B.

**SECTION 44: COST RECOVERY**

In accordance with Section 2-8.1 of the New Orleans Municipal Code entitled “Cost recovery in contracts, cooperative endeavor agreements, and grants,” to the maximum extent permitted by law, the Lessee shall reimburse the Lessor or disgorge anything of value or economic benefit received from the Lessor if the Lessee fails to meet its contractual obligations.

**INTENTIONALLY LEFT BLANK BELOW THIS LINE**

**IN WITNESS WHEREOF** the parties hereto through their duly authorized representatives, have executed this contract to be effective as of the Effective Date as set forth above.

**CITY OF NEW ORLEANS**

By: \_\_\_\_\_  
LaToya Cantrell, Mayor

Date: \_\_\_\_\_

**Form and Legality Approved:**  
Law Department  
City of New Orleans

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Date: \_\_\_\_\_

**[BOARD SIGNATURES CONTAINED ON NEXT PAGE]**

Approved by resolution of the New Orleans Aviation Board dated [REDACTED], 20 [REDACTED] and directing the Chair and Director of Aviation to execute the same:

**NEW ORLEANS AVIATION BOARD**

By: \_\_\_\_\_  
The Hon. Michael G. Bagneris, Chair Date  
New Orleans Aviation Board

By: \_\_\_\_\_  
Kevin Dolliole, Director of Aviation Date  
New Orleans Aviation Board

**Reviewed as to form and legality:**

By: \_\_\_\_\_  
Michele Allen-Hart Date  
General Counsel and Deputy Director of Legal Affairs  
New Orleans Aviation Board

**[LESSEE SIGNATURE CONTAINED ON NEXT PAGE]**



**COMPANY NAME:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Taxpayer Identification Number:** \_\_\_\_\_

**Date:** \_\_\_\_\_

SAMPLE

**Exhibit A**

Map of Location of Premises

SAMPLE

## **EXHIBIT B: REQUIRED FEDERAL PROVISIONS**

### **PROVISION 1. ACCESS TO RECORDS AND REPORTS**

The Lessee must maintain an acceptable cost accounting system. The Lessee agrees to provide the Lessor (also referred to as the "Airport" or "Sponsor" in this Exhibit B), the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Lessee which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Lessee agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

### **PROVISION 2. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this Lease on the part of the Lessee or its sub- lessee may result in the suspension or termination of this Lease or such other action that may be necessary to enforce the rights of the parties of this agreement.

Sponsor Airport will provide Lessee written notice that describes the nature of the breach and corrective actions the Lessee must undertake in order to avoid termination of the Lease. The Sponsor Airport's notice will identify a specific date by which Lessee must correct the breach. Sponsor Airport may proceed with termination of the Lease if Lessee fails to correct the breach by deadline indicated in the Sponsor Airport's notice.

The duties and obligations imposed by the Lease Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### **PROVISION 3. CIVIL RIGHTS PROVISIONS-GENERAL**

The Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### **PROVISION 4. CIVIL RIGHTS-TITLE VI NONDISCRIMINATION REQUIREMENTS COMPLIANCE**

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee") agrees as follows:

- A. **Compliance with Regulations:** The Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. **Non-discrimination:** The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination

Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. **Information and Reports:** The Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor/Airport or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the Sponsor/Airport or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of a Lessee's noncompliance with the Non-discrimination provisions of this Lease, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- 1) Withholding payments to the Lessee under the Lease until the Lessee complies; and/or
  - 2) Cancelling, terminating, or suspending the Lease, in whole or in part.
- F. **Incorporation of Provisions:** The Lessee will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

**PROVISION 5. CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the City of New Orleans, through the New Orleans Aviation Board, pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a servitude running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of Discrimination Acts And Authorities.
- B. With respect to leases, in the event of breach of any of the above nondiscrimination covenants, City of New Orleans and the New Orleans Aviation Board will have the right to terminate the

Lease and to enter or re-enter and repossess said land and facilities thereon, and hold the same as if the Lease had never been made or issued.

**PROVISION 6. CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by City of New Orleans, through the New Orleans Aviation Board, pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a servitude running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of Discrimination Acts and Authorities.
- B. With respect to Leases, in the event of breach of any of the above nondiscrimination covenants, City of New Orleans, through the New Orleans Aviation Board, will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lessee had never been made or issued.

**PROVISION 7. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this Lease, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”) agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Lessees, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**PROVISION 8. CLEAN AIR AND WATER POLLUTION CONTROL**

Lessee agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Lessee agrees to report any violation to the Sponsor Airport immediately upon discovery. The Sponsor Airport assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Lessee must include this requirement in all subcontracts that exceeds \$150,000.

**PROVISION 9. RACE/GENDER NEUTRAL LANGUAGE**

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the City of New Orleans, through the New Orleans Aviation Board, to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Sponsor Airport encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**PROVISION 10. TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 “Text Messaging While Driving” (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Sponsor Airport encourages the Lessee to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Lessee must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

**PROVISION 11. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Lessee has full responsibility to monitor compliance to the referenced statute or regulation. The Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**PROVISION 12. CERTIFICATION REGARDING LOBBYING**

The Lessee certifies by signing and submitting this Lease, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Lessee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**PROVISION 13. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this Lease incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Lessee must provide a work

environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Lessee retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### **PROVISION 14. TRADE RESTRICTION CERTIFICATION**

The Lessee certifies that with respect to this Lease, the Lessee -

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- 3) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Lessee must provide immediate written notice to the Sponsor Airport if Lessee learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Lessee must require subcontractors provide immediate written notice to the Lessee if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Lessee or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- 3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Lessee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Lessee agrees that it will incorporate this provision for certification without modification in in all subcontracts. The Lessee may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Lessee has knowledge that the certification is erroneous.



This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Lessee or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor Airport cancellation of the contract or subcontract for default at no cost to the Sponsor Airport or the FAA.

SAMPLE

## EXHIBIT C - QUARTERLY FACILITY INSPECTION LOG

Date: \_\_\_\_\_

Weather Conditions: \_\_\_\_\_

Facility: \_\_\_\_\_

Inspector: \_\_\_\_\_

Inspection Items	Yes	No
Does the facility store or use deicing materials?		
If yes, are the deicing chemicals stored in enclosed containers indoors, or a sheltered area?		
Is the MSDS information easily accessible, and the deicing chemicals properly labeled?		
Approximately how many pounds or gallons of deicing materials were used by this facility operator last year?		
Are inlet control mats stored onsite and have they been used when handling or transferring hazardous materials?		
Does the facility fix or fuel or clean aircraft, ground vehicles or other equipment?		
If yes, are these activities done indoors, or in a sheltered area?		
If yes, is the floor sloped to allow spills to drain into a sump?		
If not a sump, is all drainage indoors properly connected to the City of Kenner sanitary sewer system?		
Are dry clean-up methods encouraged, and are those materials located onsite?		
Does the facility have a plan to dispose of used oil, filters, and other hazardous materials?		
Are all chemicals stored indoors, labeled and kept in an organized manner?		
Is the MSDS information for all chemicals stored or used at the facility readily available?		
Are chemicals stored in a manner to reduce the risk of spillage?		
If there is fuel stored onsite, is secondary containment provided?		
If there are other chemicals stored outside, is there secondary containment provided?		
For material storage outside, are there control measures to limit "run-on" stormwater?		
If yes, what measures are in place?		
Is the facility maintained in a fairly clean, swept and orderly fashion?		
Is there observable debris, litter, or other wastes outside where stormwater may come into contact?		
Are ditches and culverts free of debris and trash?		

Inspection Items	Yes	No
Any signs of leaks or spills in areas where maintenance, fueling or cleaning activities occur?		
Is the dumpster (if one onsite) covered during rain or when not in use?		
Are all storage containers (e.g. used oils, hydraulic fluids, spent solvents, waste aircraft fuel) maintained with good integrity?		
Any signs of leaks or spills anywhere on the property?		
Is the property clean from debris and garbage?		
Do the fuel containment structures have drains, valves on the drains, are maintained in the "closed" position?		
Are the used oil drums in good condition, sealed, labeled, and stored within a containment pan?		
Are all waste materials centrally stored?		
Are all chemical containers clearly labeled?		
Are all tanks and containers in good condition, not bulging or leaking?		
Is there an inventory of all chemicals and materials stored onsite?		
On liquid storage: Are there fluid level indicators?		
Does the facility have a Spill Response Plan, and is it clearly posted or available onsite?		
Does the facility store fuel or other liquid chemical in tanks with a capacity of 10,000 gallons or greater?		
If yes, does the facility have a Spill Prevention, Containment and Countermeasure Plan (SPCC) and has that plan been provided to the NOAB's Environmental Engineer?		
Are there any apparent leaks at storage tanks or piping systems such as pipes, pumps, flanges, couplings, or valves?		
Are fueling operations conducted on impervious surfaces, contained pad, or under a roof or canopy?		
Are drip pans used during fueling operations?		
Do all fueling hoses have check valves to reduce the risk of spills?		
Are spill kits made available on all fuel trucks, at fueling stations and at hanger locations (if applicable)?		
Are bollards installed at fuel pumps to prevent collisions from vehicles?		
Does the facility have an oil/ water separator?		
If yes, does the effluent discharge into the City of Kenner's sanitary sewer system?		
Are all portable drums or containers stored either indoors, or within an area which provides secondary containment?		

Inspection Items	Yes	No
Comments:		
Signature:	Date:	

Deficiencies Noted:

Corrective Actions:

Signature:	Date:
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## ADDENDUM 1 TO LEASE AGREEMENT

This is an **Addendum** to a Lease Agreement dated [REDACTED], [REDACTED], between The City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”), by and through the New Orleans Aviation Board, represented by the Hon. Michael G. Bagneris, Chairman, (the “Board”) (the City and the Board are collectively referred to as the “Airport”), and [REDACTED], represented by [REDACTED], its authorized representative (the “Lessee”). add tenant name and representative.

### RECITALS

This Addendum relates to the premises leased by the Tenant (the “Premises”), which is located at [REDACTED]

#### 1. STORM DAMAGE EXCEPTION

As indicated in paragraph (2) of the referenced Lease, the Lessee and Lessor agree that the Lessee shall accept the possession of the premises, “as is, where is, with all faults”, with no right of setoff or reduction in the base rent. However, if the Lessee is moving into, and/or entering into a Lease for a building that has been damaged as a result of a storm, the “as is, where is Clause, outlined in Paragraph (2) shall not apply. Instead, the Airport will be responsible for the following repairs which are referenced in paragraph (14) of the Lease Agreement:

- i. Any repairs to the exterior walls, exterior doors, the roof and roof membrane, and foundation of the facility along with any and all landscaping of the premises.