



# City of Chicago



SO2018-3040

Office of the City Clerk

## Document Tracking Sheet

**Meeting Date:** 3/28/2018

**Sponsor(s):** Emanuel (Mayor)

**Type:** Ordinance

**Title:** Agreement with Chicago Airlines Terminal Consortium (CATCo) for work related to City-owned aeronautical operations, equipment and systems, and facilities lease at Chicago O'Hare International Airport

**Committee(s) Assignment:** Committee on Aviation

## SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City owns and operates an airport commonly known as Chicago O'Hare International Airport ("O'Hare"), and possesses the power and authority to lease premises and facilities and to grant other rights and privileges with respect thereto; and

WHEREAS, O'Hare provides vital services to the traveling public, to the air carriers operating at O'Hare, and to the economy of the City; and

WHEREAS, successful operation of O'Hare requires proper and timely maintenance of aeronautical equipment and systems at O'Hare, as well as the provision of services relating to airport operations; and

WHEREAS, the City, as owner and operator of O'Hare and as owner of certain aeronautical equipment and systems ("City Equipment") at O'Hare, has the right to contract with another entity to provide for the maintenance of City Equipment at O'Hare and the provision of certain services relating to airport operations; and

WHEREAS, the City heretofore entered into an agreement ("Existing CICA-TEC Agreement") with CICA Terminal Equipment Corporation ("CICA TEC"), a consortium comprised of certain airlines operating at O'Hare Terminal 5, and

WHEREAS, pursuant to the Existing CICA-TEC Agreement, CICA-TEC operates and maintains certain City Equipment and provides certain services at O'Hare Terminal 5; and

WHEREAS, the Existing CICA-TEC Agreement will expire on May 11, 2018; and

WHEREAS, in connection with a new Chicago O'Hare International Airport Airline Use and Lease Agreement ("New Airline Use and Lease Agreement"), it is necessary and desirable for CICA-TEC to operate and maintain certain City Equipment in and around Terminals 1, 2 and 3 in addition to in and around Terminal 5 (collectively, the "Terminal Area"), and to perform services relating to airport operations in the Terminal Area, including the management of scheduling and ramp operations; and

WHEREAS, CICA-TEC intends to change its name to Chicago Airline Terminal Consortium ("CATCo") and to amend and restate its Members Agreement, and

WHEREAS, it is therefore necessary and desirable for the City to enter into a new agreement with CATCo ("New Consortium Agreement"), in substantially the form attached hereto as Exhibit A; and

WHEREAS, in connection with the New Airline Use and Lease Agreement, airlines who operate outside of Terminal 5 also may wish to join CATCo; and

WHEREAS, CATCo will require office, storage and operations space at O'Hare to carry out its responsibilities under the New Consortium Agreement; and

WHEREAS, it is therefore necessary and desirable for the City to enter into a lease agreement with CATCo ("Facilities Lease Agreement"), in substantially the form attached hereto as Exhibit B; and

WHEREAS, pursuant to the New Consortium Agreement, the City is requesting CATCo to manage a the vehicular parking lot on the east side of the Airport ("East Airport Employee Parking Lot") for certain non-City employees working at the Airport; and

WHEREAS, it is therefore necessary and desirable for the City to enter into a lease agreement with CATCo ("East Airport Employee Parking Lot Lease") with respect to the East Airport Employee Parking Lot, in substantially the form attached hereto as Exhibit C; now, therefore

*Be It Ordained by the City Council of the City of Chicago:*

**SECTION 1.** The above recitals are hereby incorporated by reference as if fully set forth herein.

**SECTION 2.** The Mayor of the City of Chicago is authorized to execute the New Consortium Agreement with CATCo, in substantially the form attached hereto as **Exhibit A**, upon the recommendation of the Commissioner of the Chicago Department of Aviation ("Commissioner") and the approval of the Corporation Counsel as to form and legality and upon the delivery to the City of an Economic Disclosure Statement and Affidavit ("EDS") from CATCo and from each member of CATCo, which EDSs shall be satisfactory in form and substance to the Corporation Counsel.

**SECTION 3.** The Mayor of the City of Chicago is authorized to execute a Facilities Lease Agreement with CATCo, in substantially the form attached hereto as **Exhibit B**, upon the recommendation of the Commissioner, the attestation of the City Clerk, and the approval of the Corporation Counsel as to form and legality and upon delivery to the City of an EDS from CATCo and from each member of CATCo, which EDSs shall be satisfactory in form and substance to the Corporation Counsel.

**SECTION 4.** The Mayor of the City of Chicago is authorized to execute an East Airport Employee Parking Lot Lease with CATCo, in substantially the form attached hereto as **Exhibit C**, upon the recommendation of the Commissioner, the attestation of the City Clerk, and the approval of the Corporation Counsel as to form and legality and upon delivery to the City of an EDS from CATCo and from each member of CATCo, which EDSs shall be satisfactory in form and substance to the Corporation Counsel.

**SECTION 5.** The Commissioner is authorized to adopt such rules as the Commissioner may deem necessary or appropriate to implement or administer this ordinance and the agreements contemplated herein.

**SECTION 6.** The Commissioner and such other City officials and employees as may be required are authorized to take such actions and execute such other documents as may be necessary or desirable to implement the objectives of this ordinance.

**SECTION 7.** This ordinance shall be in full force and effect from and after its passage and approval.

## Exhibit A

# New Consortium Agreement

**CHICAGO O'HARE INTERNATIONAL AIRPORT**

**AGREEMENT BY AND BETWEEN THE CITY OF CHICAGO AND  
CHICAGO AIRLINES TERMINAL CONSORTIUM**

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**AGREEMENT BY AND BETWEEN THE  
CITY OF CHICAGO AND CHICAGO AIRLINES TERMINAL CONSORTIUM**

THIS AGREEMENT (“Agreement”), dated as of May 12, 2018, is made by and between the City of Chicago, a municipal corporation and home rule unit of government existing under the Constitution of the State of Illinois (the “City”), and Chicago Airlines Terminal Consortium, a not-for-profit corporation existing under the laws of the State of Illinois (“Consortium” or “CATCo”) and previously known as CICA Terminal Equipment Corporation.

**RECITALS**

WHEREAS, the City owns and operates Chicago O’Hare International Airport (the “Airport”) and has the power to grant rights and privileges with respect thereto; and

WHEREAS, Consortium desires to perform Services (as hereinafter defined) with respect to certain aeronautical operations and aeronautical equipment and systems owned by the City at the Airport, in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, the City agrees that Consortium will perform Services (as hereinafter defined) at the Airport on behalf of the City in accordance with this Agreement; and

WHEREAS, the City also acknowledges that Consortium may perform work for airlines and other third-parties with respect to non-City owned equipment and systems and provide other aeronautical services to such third-parties in accordance with the Consortium’s Amended and Restated Member Agreement (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consortium agree as follows:

**ARTICLE 1 - DEFINITIONS; INTERPRETATION**

**1.1 Definitions**

- (a) Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Airline Use and Lease Agreements (as hereinafter defined).
- (b) The following terms and phrases shall have the following meanings solely for purposes of this Agreement:

“**Airline Use and Lease Agreements**” means the O’Hare Airline Use and Lease Agreements entered into on or after May 12, 2018 between the City and various Signatory Airlines relating to the Airport.

**“Amended and Restated Member Agreement”** means the Amended and Restated Member Agreement entered into by and between Consortium and Members and effective as of May 12, 2018, substantially in the form attached hereto as Exhibit D.

**“Associated Party(ies)”** means employees, contractors, subcontractors, agents, licensees, sublessees, vendors, invitees, and other parties under Consortium’s direction or control that come onto the Airport arising out of or relating to Consortium’s use or occupancy of the Airport.

**“Certified Service Provider”** means any entity providing commercial aeronautical or other services to Consortium, one or more Air Carriers, or other clients at the Airport, and who has obtained all necessary licenses and approvals as required by the City.

**“City Covered Persons”** means the City, its elected and appointed officials, officers, agents, employees, contractors except for Consortium, consultants and representatives.

**“Consortium Contractor”** means a person or firm hired by Consortium to act as an agent or independent contractor, as well as subcontractors of any such agent or independent contractor, in connection with or pursuant to the performance of any acts or obligations under this Agreement, including the Key Consortium Contractors, Maintenance Operators, and other contractors performing Consortium-Provided-to-City Services.

**“Consortium Contracts”** means all contracts entered into by Consortium or any Key Consortium Contractor with any supplier of materials, furnisher of services, or other Consortium Contractor, or any labor organization which furnishes skilled, unskilled and craft union skilled labor in connection with or pursuant to the performance of this Agreement.

**“Consortium-Maintained City Equipment”** means moveable or permanent fixtures, furniture, millwork, technology systems, and equipment located on or affixed to the Airport that are (i) purchased, constructed or rented by the City or otherwise provided at the cost or expense of the City and (ii) made available and expressly designated by the City to Consortium for the purposes described within this Agreement, including, without limitation, the types of equipment set forth in Exhibit A.

**“Consortium-Maintained City Equipment Refurbishment and Replacement Plan”** has the meaning ascribed thereto in Section 2.8 of this Agreement.

**“Consortium Management and Administrative Costs”** shall have the meaning ascribed thereto in the Amended and Restated Member Agreement.

**“Consortium Manager”** means an independent contractor selected by Consortium to perform services and manage the Maintenance and Operating Agreements, Scheduling Manager Agreement, Ramp Management Agreement and all other Contracts.

**“Consortium Manager Agreement”** means the professional services agreement as in effect between Consortium and Consortium Manager for the management of Maintenance and Operating Agreements, Scheduling Manager Agreement, Ramp Management Agreement and

other Consortium Contracts, and other duties as specified and agreed to as provided in such agreement.

**“Consortium O&M Expenses”** means the costs incurred by the Consortium in operating and maintaining the Consortium-Maintained City Equipment and performing Consortium-Provided-to-City Services.

**“Consortium O&M Fund”** means the fund established by the City for the deposit of funds as provided in Section 3.4 and in accordance with the Financial Accounting Protocols.

**“Consortium Property”** shall have the meaning ascribed thereto in the Amended and Restated Member Agreement.

**“Consortium-Provided-to-City Services”** means those services, agreed upon by the City and Consortium, in the categories set forth in Exhibit B, to be performed pursuant to the terms and conditions of this Agreement (including the Minimum Service Levels set forth in Exhibit C) and the Terminal Space Use Protocols.

**“East Airport Employee Parking Lot Lease”** means the Ground Lease, with a term commencement date of July 1, 2018, entered into between the City and Consortium, for space used for vehicular parking for non-City employees working at the Airport, and for other supportive uses reasonably necessary and/or associated with Consortium’s operation of the Premises (as such term is defined in the Ground Lease) for such vehicular parking, as such space is required by Consortium to perform its duties under this Agreement, in substantially the form approved by the City Council on \_\_\_\_\_, 2018.

**“Effective Date”** means May 12, 2018.

**“Facilities Lease”** means the Facilities Lease Agreement, effective as of May 12, 2018, entered into between the City and Consortium for storage, office and operations space at the Airport required by Consortium to perform its duties under this Agreement, in substantially the form approved by the City Council on \_\_\_\_\_, 2018.

**“Fees”** means charges, fees, and amounts charged by Consortium to the Members and Non-Members and other Users.

**“Key Consortium Contractors”** means the Scheduling Manager and the Consortium Manager.

**“Maintenance and Operating Agreements”** means any operating agreement as in effect from time to time between Consortium and the Maintenance Operators for, as the context indicates, the maintenance, operation, and/or management of the Consortium-Maintained City Equipment as specified and agreed from time to time and, in each case, consistent with the terms of this Agreement.

**“Maintenance Operator(s)”** means one or more qualified and duly licensed independent contractors hired by Consortium to maintain and manage the Consortium-Maintained City

Equipment, as specified and agreed from time to time and consistent with the terms of this Agreement and the Maintenance and Operating Agreement(s).

“**Member**” shall have the meaning ascribed thereto in the Amended and Restated Member Agreement.

“**Minimum Service Levels**” means the operation standards and service levels established for the Services, including Consortium Provided-to-City Services, to be performed by Consortium as set forth in Exhibit C.

“**Non-Member**” shall have the meaning ascribed thereto in the Amended and Restated Member Agreement.

“**Non-Signatory Airline**” means an Air Carrier that is not a Signatory Airline.

“**Project Cost**” means capitalized expenditures associated with capital components of Services including direct construction costs and allocated soft costs, including contingencies.

“**Ramp Management Agreement**” means the professional services agreement as in effect between Consortium and Ramp Manager for the performance of those duties as specified and agreed to as provided in such agreement and, to the extent such services are Consortium-Provided-to-City Services, as directed by the City.

“**Ramp Manager**” means the third party hired by Consortium pursuant to the Ramp Manager Agreement to perform the tasks specified for the Ramp Manager in this Agreement.

“**Reimbursement Agreement**” means a written agreement pursuant to which the City agrees to reimburse Consortium for certain Project Costs and other costs specified in such agreement, and Consortium agrees to certain covenants and terms including, without limitation, the requirements set forth in Exhibit E (City-Delineated Contract Requirements) and Exhibit F (Compliance with Other Laws).

“**Scheduling Manager**” means the third party hired by Consortium with the approval of the City to perform the tasks and duties specified in the Scheduling Manager Agreement who will communicate with the City in connection with the performance of its work thereunder and in accordance with the Terminal Space Use Protocols.

“**Scheduling Manager Agreement**” means the professional services agreement as in effect between Consortium and Scheduling Manager for the performance of those duties specified and agreed to therein, which shall include, without limitation, the duties of the Scheduling Manager in Section 5.5 of the Airline Use and Lease Agreements.

“**Services**” means all planning, design, fabrication, acquisition, installation, construction, improvements, start-up, testing, and maintenance and/or operation (as applicable) of the Consortium-Maintained City Equipment and the performance of any of the Consortium Provided-to-City Services.

“**Signatory Airline**” means any Air Carrier that has executed an Airline Use and Lease Agreement with the City.

“**Term**” means the term of this Agreement as further described in Section 5.1 of this Agreement.

“**Triple-Bid Contract**” has the meaning ascribed thereto in Section 2.9 of this Agreement.

“**Usage**” has the meaning ascribed thereto in the Amended and Restated Member Agreement.

## **1.2 Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement;
- (b) All Article and Section references, unless otherwise expressly indicated, are to Articles and Sections of this Agreement;
- (c) Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons;
- (d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect;
- (e) Words importing the singular shall include the plural and vice versa;
- (f) All the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof;
- (g) References to statutes, sections, or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the statute, section, or regulation referred to;
- (h) The words “including,” “includes,” and “include” shall be deemed to be followed by words “without limitation” or “but not limited to” or words of similar import;
- (i) In the event of conflicts between this Agreement and an Airline Use and Lease Agreement, the Airline Use and Lease Agreement shall control;
- (j) Use of the word “or” in a series such as a, b, or c means any one or more of the items in the series; and

(k) This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

### **1.3 Incorporation of Exhibits**

The following exhibits attached hereto are hereby made a part of this Agreement:

Exhibit A	Consortium-Maintained City Equipment
Exhibit B	Consortium-Provided-to-City Services
Exhibit C	Minimum Service Levels
Exhibit D	Amended and Restated Member Agreement
Exhibit E	City-Delineated Contract Requirements
Exhibit F	Compliance with Other Laws

Any changes to the Exhibits that occur from time to time consistent with the terms of this Agreement and the Exhibits shall be reflected in revised Exhibits provided by the City to Consortium. Such revised Exhibits shall be deemed to be effective without requiring a formal amendment to this Agreement.

## **ARTICLE 2 - MAINTENANCE OF CONSORTIUM-MAINTAINED CITY EQUIPMENT**

### **2.1 Grant of Privilege to Perform Services**

In consideration of the promises, terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby grants the non-exclusive privilege to Consortium to perform Services, including Consortium-Provided-to-City Services, at the Airport, all subject to the terms of this Agreement; provided that any performance of Services shall be carried on so as to not unreasonably interfere with the safe operation of the Airport. All Services performed shall comply with all applicable requirements of this Agreement, the Facilities Maintenance Protocols and the Terminal Space Use Protocols, and all applicable federal, state, and local laws, regulations, and executive orders.

### **2.2 Limitations On Use**

Consortium shall not do, or cause or permit anything to be done, in connection with the Consortium-Maintained City Equipment or the performance of Services, or bring or keep anything thereon, which will (i) increase the risk of fire or explosion on Airport property; (ii) create a nuisance; (iii) obstruct or interfere with the rights of others on Airport property; (iv) commit or allow to be committed any waste in relation to the Consortium-Maintained City Equipment; (v) use or allow the Consortium-Maintained City Equipment to be used for any unlawful purpose or to be operated in such a way as to interfere with Airport safety; or (vi) do or permit to be done anything tending to injure the reputation of the Airport.

### **2.3 "As Is" Condition**

Consortium accepts the right to operate and maintain the Consortium-Maintained City Equipment in its "as-is" condition with no representation or warranty by the City with respect to the physical condition of the Consortium-Maintained City Equipment. Consortium acknowledges that it is not a tenant of the Airport by virtue of this Agreement. THE CITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE CITY EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. CONSORTIUM ACKNOWLEDGES THAT THE CITY IS NOT A CONTRACTOR OR A MANUFACTURER OF THE CITY EQUIPMENT (OR ANY COMPONENT THEREOF) OR A DEALER THEREIN. CONSORTIUM ACCEPTS THE CITY EQUIPMENT AS IS.

#### **2.4 Leased Space**

Concurrent with this Agreement, Consortium and the City are entering into the Facilities Lease for the use of office space, operations space and storage space at the Airport in carrying out Consortium's responsibilities under this Agreement. Further, concurrent with this Agreement, Consortium and the City are entering into the East Airport Employee Parking Lot Lease for the management of vehicular parking for certain non-City employees working at the Airport in carrying out Consortium's responsibilities under this Agreement.

#### **2.5 Rights of Ingress and Egress**

The City hereby grants Consortium, subject to the Airport Rules, the right and privilege (i) of ingress to and egress from the public areas of the Airport and other areas in the Airport where the Consortium performs Services, for its Associated Parties (including Consortium Contractors) and its equipment, vehicles and machinery, and (ii) to provide transportation of its employees to, from, and within the Airport, all at Consortium's own risk. Consortium Contractors shall neither block nor otherwise obstruct the common use taxiways, taxilanes or service roads at any time, nor in any other manner impair or adversely affect the use and operation of taxiways, taxilanes, or service road areas by the City or other Airport users.

#### **2.6 Signs**

Consortium may place logos on equipment owned by the Consortium bearing names, trade names, trademarks, or logos of Consortium.

#### **2.7 Title to the Consortium-Maintained City Equipment**

The City shall have full title to the Consortium-Maintained City Equipment. Nothing herein contained empowers Consortium to commit or engage in any act which can, shall or may encumber the title of the City to the Consortium-Maintained City Equipment.

#### **2.8 Refurbishment of, Alterations to or Replacement of the Consortium-Maintained City Equipment**

(a) Except as provided in Section 10.1 (Taxes, Licenses, Permits) of this Agreement, the City and Consortium shall replace, refurbish or make alterations to Consortium-Maintained City Equipment in accordance with the following procedures:

(i) Within 90 days of the Effective Date, Consortium shall have the right to inspect and test all Consortium-Maintained City Equipment and shall submit to City, for the City's approval, a plan for Consortium-Maintained City Equipment that it expects will need refurbishment, alteration or replacement during the ensuing five (5) Fiscal Years. This plan (hereinafter referred to as the "**Consortium-Maintained City Equipment Refurbishment and Replacement Plan**"), shall include: a list of Consortium-Maintained City Equipment expected to be in need of refurbishment, alteration or replacement; the proposed scope of refurbishment or alteration; suggested replacement equipment; a refurbishment, alteration or replacement schedule; proposed budget, and stated reason(s) for refurbishment or replacement (e.g., obsolescence, end of useful life, no longer cost effective to repair, etc.). The City shall have the right to request an expansion or contraction of the list of Consortium-Maintained City Equipment that should receive an upgrade instead of a like-kind replacement. Consortium shall review the Consortium-Maintained City Equipment Refurbishment and Replacement Plan no less than annually, and, on or before May 1 of each year during the Term, Consortium shall submit to the City, for the City's approval and subject to Article 10 of the Airline Use and Lease Agreements, an updated Consortium-Maintained City Equipment Refurbishment and Replacement Plan, reflecting any changes in planned refurbishment, alteration or replacement items, schedule and/or budget, and extending the Consortium-Maintained City Equipment Refurbishment and Replacement Plan as necessary to cover the period that ends five (5) years subsequent to each such submittal.

(ii) During the initial 90-day testing period after the Effective Date, Consortium and CDA will consult to determine what exceptions, if any, may be required to the Minimum Service Levels. Consortium will identify any equipment repairs or replacements required to meet the specified Minimum Service Levels and agree with CDA on a timeframe for completing those repairs or replacements. Exhibit C will be updated to reflect such exceptions and repair/replacement schedule.

(iii) Subject to Article 10 of the Airline Use and Lease Agreements, the City will fund as a Project Cost all agreed to costs included in the final Consortium-Maintained City Equipment Refurbishment and Replacement Plan pursuant to a Reimbursement Agreement including the conditions set forth in Exhibit E and Exhibit F.

(iv) In the event that items to be replaced or refurbished pursuant to the Consortium-Maintained City Equipment Refurbishment and Replacement Plan do not meet the funding requirements in (iii) above, the City and Consortium shall meet and confer as it relates to such replacement equipment or refurbishments,

which may result in an agreement extending the period for the procurement or removing such replacement equipment from the Consortium-Maintained City Equipment Refurbishment and Replacement Plan, or any other resolution that the parties may agree upon.

(b) In the event additional Consortium-Maintained City Equipment is required to meet new customer service or technology requirements or to support changes in aviation security required as a result of the Transportation Security Act or similar national legislation, the City and Consortium shall meet and confer to determine whether:

(i) The City shall procure the additional Consortium-Maintained City Equipment subject to Article 10 of the Airline Use and Lease Agreements; or

(ii) Consortium shall procure the additional Consortium-Maintained City Equipment with reimbursement from the City for part or all of the cost of purchase and installation of the additional Consortium-Maintained City Equipment pursuant to a Reimbursement Agreement including the conditions set forth in Exhibit E and Exhibit F and subject to Article 10 of the Airline Use and Lease Agreements.

(c) Consortium shall, and, to the extent applicable, shall cause Consortium Contractors to, at all times:

(i) Keep all fixtures, equipment, and personal property in a clean and orderly condition and appearance;

(ii) Maintain the same in good condition (reasonable wear and tear excepted) and perform all ordinary repairs, replacements, and painting; such repairs, replacements, and painting by Consortium must be of a quality and class not inferior to the standards set forth in the Airport Rules. In addition, Consortium shall or, applicable, cause Consortium Contractors to repair, maintain, and replace Consortium-Maintained City Equipment as is necessary to assure that at the end of the term hereof, the fair market value of such equipment and its remaining useful life will be consistent with, and sufficient to establish for applicable tax and accounting purposes, ownership of such equipment by the City;

(iii) Require all Consortium employees and Consortium Contractors to control their vehicular traffic in the Airport, take all precautions reasonably necessary to promote the safety of all persons, and employ such means as may be necessary to direct movements of its vehicular traffic; and

(iv) Through a Consortium Contractor, dispose of its garbage, debris, and other waste materials.

## **2.9 Selection of Consortium Contractors; Procurement**

(a) Key Consortium Contractors shall be selected based on qualifications established by a selection committee with a representative from CDA serving as a member of the selection committee. Consortium also agrees that it will not appoint the Scheduling Manager without prior written consent from the Commissioner, which consent shall not be unreasonably withheld.

(b) Except with respect to any Key Consortium Contractor, Consortium Manager will solicit and endeavor to obtain at least three (3) competitive bids for any Services performed by Maintenance Operators and other Consortium Contractors supplying goods, services, and equipment with a contract value in excess of fifty thousand dollars (\$50,000) (“**Triple-Bid Contracts**”). Consortium Manager shall make all Consortium Contractor bid documents and bid analysis available to the City in a format designated by the Commissioner in his or her discretion. In such case that Consortium Manager is unable to Triple-Bid any Services, it shall document its good faith efforts and seek the City’s written approval to retain its recommended Consortium Contractor for such Services, which approval shall not be unreasonably withheld. Consortium Manager may select the Consortium Contractors they feel offer the best overall value, not necessarily lowest bid. In such circumstances, Consortium Manager must provide a written explanation to the City when the lowest bid is not selected.

(c) Consortium shall not retain or substitute any Consortium Contractor who has been debarred by the City from doing business with the City pursuant to any law, ordinance rule or regulation.

(d) Consortium shall include in its Consortium Contracts provisions including the Minimum Service Levels, as applicable for the Services being performed, set forth in Exhibit C, as well as those provisions set forth in Exhibit E (City-Delineated Contract Requirements) and Exhibit F (Compliance with Other Laws). Consortium agrees that all Maintenance and Operating Agreements shall contain provisions for assessment of liquidated damages in the event of failure to meet applicable Minimum Service Levels. Further, all Maintenance and Operating Agreements with a contract value in excess of fifty thousand dollars (\$50,000) shall include a performance guarantee, the value of which shall be reasonably related to the work contemplated therein, to guarantee the full, faithful and satisfactory performance by the Maintenance Operator of its obligations under such Maintenance and Operating Agreement, which will be used by Consortium to off-set costs incurred by Consortium as a result of Maintenance Operator’s failure to perform or unsatisfactory performance of any required work. Consortium shall not include in its Consortium Contracts any provisions which negate, conflict, or otherwise void those contract provisions required by the City. Notwithstanding the foregoing, subject to the review and approval of City and its legal counsel, such contract provisions may be modified to conform to the nature of the Services to be performed by Consortium Contractors.

(e) To the extent the City reimburses Consortium for any Project Costs Consortium incurs in connection with Consortium Contractors, Consortium shall enter into reimbursement agreements with the City including the conditions set forth in Exhibit E and Exhibit F.

(f) Consortium Manager shall be responsible for the management of the Consortium Contractors in the performance of their work. The City will communicate with Consortium Manager regarding the Consortium Contractors other than the Scheduling Manager to address

matters in connection with the performance of the Consortium Contractors' work. The Scheduling Manager will communicate with the City in connection with the performance of its work under the Scheduling Management Agreement and in accordance with the Terminal Space Use Protocols.

## **2.10 Assignment of Contracts**

All Consortium Contracts shall contain provisions making them assignable to the City upon the occurrence of an Event of Default. Upon the occurrence of an Event of Default under this Agreement, the City shall have the right to require that Consortium complete the assignment to the City of any and all Consortium Contracts. Such assignment shall be in writing and in a form and substance acceptable to the City. Consortium agrees that all such Consortium Contracts shall further contain a clause which provides that in the case of any Consortium Contract so assigned, the Consortium Contractor shall be deemed to have waived any and all claims, suits, and causes of action arising out of or relating to the performance of such Consortium Contract prior to the effective date of such assignment, unless such Consortium Contractor notifies the City in writing of such claim, suit, or cause of action prior to the effective date of such assignment. Subject to Section 9.2.7, the City shall not be responsible for any claims relating to such Consortium Contracts arising from or related to any fraud, misrepresentations, negligence, or willful or intentionally tortious conduct by Consortium and its Associated Parties.

## **2.11 Airport Security Program**

(a) TSA Program. In accordance with regulations issued by the FAA, the U.S. Department of Transportation, and the U.S. Department of Homeland Security, Transportation Security Administration ("TSA") and found at 49 Code of Federal Regulations ("CFR") Part 1542, airports are required to have TSA-approved security programs. These programs are designed to control access to certain areas of airports and to control the movement of people and vehicles within those areas.

(b) Consortium Compliance. The City has a TSA-approved security program for the Airport. Consortium must have a security program for its operations at the Airport at all times during the Term of this Agreement. At all times during the Term of this Agreement, Consortium's security program must be in compliance with all applicable laws and regulations from time to time enacted or promulgated, must be consistent and compatible in all respect with the City's overall security program for the Airport, and must be acceptable to the City and the TSA.

(c) Indemnification. Consortium shall be responsible for any breach of security which occurs as a result of the negligence and/or willful misconduct of Consortium or its Associated Parties, and Consortium further agrees to indemnify and hold harmless the City from and against any and all damages, penalties, fines, claims, and costs resulting directly or indirectly from the breach of Consortium's responsibilities, covenants, and agreements as set forth in this Section 2.11. The City shall provide Consortium and Consortium Manager notice of and consult with Consortium and Consortium Manager regarding any claims that the City has direct

knowledge of and are related to Consortium. The indemnification contained in this Section 2.11(c) applies to this Section 2.11 only.

(d) Confidentiality and Indemnity. In connection with its operations, Consortium Contractors may receive, gain access to, or otherwise obtain knowledge and information related to the City's overall Airport security program. Consortium acknowledges that all such knowledge and information is of a highly confidential nature. Consortium covenants and agrees that it will require all Consortium Contractors to covenant and agree that no person, whether an employee of such contractor or a third party, shall be permitted or gain access to such knowledge and information, unless such person has been approved by the City in advance in writing, which approval may be granted or withheld by the City in its sole discretion.

(e) Material Breach. Violation of any of the provisions of this Section 2.11 shall be a material breach of this Agreement. In order to cure a breach under this Section 2.11, Consortium shall cooperate with the City in all respects necessary to correct such violation to the City's satisfaction, such satisfaction to be determined by the City in its sole discretion.

### **ARTICLE 3: CONSORTIUM FEES & CHARGES**

#### **3.1 Payment for Operations and Maintenance of the Consortium-Maintained City Equipment**

The costs to Consortium of operating and maintaining Consortium-Maintained City Equipment, together with an allocation of the Consortium Management and Administrative Costs, shall constitute O&M Expenses, and be allocable to City Equipment in the terminal Cost Center as provided in the Airline Use and Lease Agreements and in accordance with the Financial Accounting Protocols.

#### **3.2 Payment for Scheduling Manager**

The costs to Consortium associated with the Scheduling Manager Agreement, together with an allocation of the Consortium Management and Administrative Costs, shall constitute O&M Expenses allocable to the terminal Cost Center as provided in the Airline Use and Lease Agreements and in accordance with the Financial Accounting Protocols.

#### **3.3 Payment for Other City Requested Services**

The costs to Consortium for other Consortium-Provided-to-City Services, together with an allocation of the Consortium Management and Administrative Costs, shall constitute O&M Expenses allocable to the applicable Cost Center as provided in the Airline Use and Lease Agreement and in accordance with the Financial Accounting Protocols.

#### **3.4 Budgeting and Payments**

Consortium shall submit, not later than 180 days prior to the end of each fiscal year, to the City a preliminary estimate of the Consortium O&M Expenses related to Services for the following fiscal year. Consortium shall submit, not later than 120 days prior to the end of each

fiscal year, to the City a final estimate of the Consortium O&M Expenses related to Services for the following fiscal year. On or before the fifteenth day of each month, Consortium shall submit its invoices to the Commissioner for the actual costs incurred by Consortium for the Consortium O&M Expenses related to Services for the immediately preceding month. Each invoice shall be acceptable in form and substance to the Commissioner and shall set forth an allocation of the cost of the invoice between the respective services or itemization of Consortium-Maintained City Equipment and Consortium-Provided-to-City Services as requested by the City. The City shall deposit sufficient funds in the Consortium O&M Fund for the Consortium Manager to pay invoices submitted by Consortium. The City shall have no obligation or liability under this Agreement to any third party whatsoever. Payment of Consortium invoices will be made within sixty (60) days of the Commissioner's acceptance of an invoice. The Commissioner may withhold processing of any invoice which, in his or her reasonable opinion, is not submitted with adequate supporting documentation for the charges and costs set forth on such invoice. The Commissioner shall provide reasonable notice of any inadequacies in the supporting documents.

### **3.5 Accounting and Reports**

Consortium shall maintain separate and accurate daily records of Consortium's operations hereunder for a period of five (5) years after such operation, or for the period required by law, whichever is longer. All such books and records shall be kept in accordance with generally accepted accounting principles, consistently applied, showing in detail all business done or transacted in, on, about, or from or pertaining to the Airport.

Consortium shall provide to the City on a monthly basis utilization reports for Consortium-Maintained City Equipment in the form request by the Commissioner.

## **ARTICLE 4: CONSORTIUM MEMBERSHIP AND MANAGEMENT**

### **4.1 Membership**

The City has the right to review and approve the Amended and Restated Member Agreement and all amendments thereto. The Amended and Restated Member Agreement is attached hereto as Exhibit D. As provided in the Amended and Restated Member Agreement, an Air Carrier is entitled to become a member of Consortium by entering into an Airline Use and Lease Agreement with the City and by becoming a party to the Amended and Restated Member Agreement. Consortium shall notify the City of all Existing Members, New Members, or Additional Members (as such terms are defined in the Amended and Restated Member Agreement).

### **4.2 Consortium Management**

(a) Subject to Section 2.9, the rights and obligations of Consortium under this Agreement may be delegated to and completed by a Consortium Manager, Maintenance Operators, a Scheduling Manager, a Ramp Manager and other Consortium Contractors selected by Consortium. In addition, the City shall have the right to approve the Scheduling Manager

Agreement, the scope and Minimum Services Levels relating to Services under the Consortium Manager Agreement, and any amendments thereto.

(b) The Consortium Manager Agreement, Maintenance and Operating Agreements, Scheduling Manager Agreement, the Ramp Manager Agreement and other applicable Consortium Contracts shall set forth the duties, responsibilities, obligations and compensation of Consortium Manager, Maintenance Operator(s), Scheduling Manager, Ramp Manager and other Consortium Contractors, as the case may be, with respect to the Consortium-Maintained City Equipment and other Services (including Consortium-Provided-to-City Services) as well as the rights and obligations of Consortium with respect to such contractors. Notwithstanding the foregoing, any such delegation shall not limit or reduce the obligations and responsibilities of Consortium under this Agreement. Consortium shall notify the Commissioner of any default under any Consortium Contract relating to Services. Consortium shall enforce the terms and conditions of Consortium Contracts.

#### **4.3 Quarterly Meeting**

CDA and the Consortium Manager shall meet at least quarterly to review matters of interest to the parties and to review Consortium's performance.

#### **4.4 CDA Representative on Consortium Board**

The Commissioner has the right to appoint one (1) director, who shall be a CDA employee, to Consortium's Board of Directors, who shall also serve on the Management Committee of such board and have voting rights as set forth in the Amended and Restated Member Agreement. The appointment of a director by the Commissioner shall be deemed to be a certification by the City of the authority of such director to act on behalf of the City as a director on Consortium's Board of Directors. The Commissioner also has the right to appoint a representative, who shall be a CDA employee, to the Operations Committee. The individuals appointed by the Commissioner may serve successive terms on Consortium's Board of Directors, Management Committee and/or Operations Committee, and the Commissioner may replace such director or representative at any time based solely upon his or her own discretion.

#### **4.5 City's Right to Require Removal of Consortium Contractors**

The City shall have the right to require Consortium to remove and replace any Key Consortium Contractor, Maintenance Operator and other Consortium Contractor providing Consortium-Provided-to-City Services for material cause, including failure to satisfy the Minimum Service Levels, thirty (30) days after written notice specifying such cause or failure and requesting that it be remedied is given to Consortium by the City; *provided, however*, that any such failure which can be remedied, but which cannot with due diligence be remedied within such thirty (30) day period, shall not give rise to the City's right to terminate this Agreement if corrective action is instituted by Consortium within such thirty (30) day period and diligently pursued until the failure is remedied. Furthermore, with reasonable notice and in its discretion, the Commissioner has the right to require Consortium to remove and replace the Scheduling Manager.

## **ARTICLE 5: TERM**

### **5.1 Term of Agreement**

Upon execution and delivery of this Agreement by the parties hereto, this Agreement shall be effective as of the Effective Date and terminate on December 31, 2033, unless terminated earlier in accordance with the terms hereof. If the Airline Use and Lease Agreement is terminated with all Signatory Airlines prior to December 31, 2033, this Agreement shall terminate, at the option of the City, with at least one (1) year's prior written notice to Consortium.

### **5.2 Surrender of Possession**

Consortium shall yield and deliver peaceably to the City possession of the Consortium-Maintained City Equipment and cease maintaining the Consortium-Maintained City Equipment and performing all Services on the date of the expiration or termination of this Agreement. The Consortium-Maintained City Equipment shall be in a condition similar to that which existed at the commencement of this Agreement or at the time of installation, if later, except for reasonable wear and tear and damage caused by casualty. All paper and electronic documents and records related to the operation, use, and maintenance of the Consortium-Maintained City Equipment and other Services existing on the Effective Date or thereafter obtained by the City or Consortium during the Term, including but not limited to all original equipment manufacturer's manuals, bulletins, and other documents and all records, reports and other documentation produced by City, Consortium and/or Consortium Contractors shall be delivered to the City at the time the Consortium-Maintained City Equipment is surrendered.

### **5.3 Reversion**

Upon termination or expiration of this Agreement, Consortium shall cease to have any rights with respect to the Consortium-Maintained City Equipment under this Agreement, which shall remain property of the City, or any other rights to perform Services; provided, however, that Consortium shall have the right, subject to the terms of this Agreement, to remove all equipment owned by Consortium, and further provided that the City shall have no rights to equipment owned by Consortium.

## **ARTICLE 6: REPAIR AND MAINTENANCE**

### **6.1 Inspection and Notification**

Consortium shall cause the Consortium Manager or any applicable Maintenance Operator to, inspect and test the Consortium-Maintained City Equipment, as specified in Exhibit A and corresponding attachments as they may be updated from time to time during the Term, and in accordance with applicable laws and consistent with industry standards and manufacturer guidelines. Consortium shall cause the Consortium Manager to maintain records relating to such Consortium-Maintained City Equipment and allow access to such records and equipment to the City for inspection and testing with prior reasonable notice.

## **6.2 Inspections by City; Performance by the City upon Failure of Consortium**

(a) Inspection. The City shall have the right, without any obligation to do so, at any time, and as often as it considers necessary, to inspect the Consortium-Maintained City Equipment. In the event the City identifies a maintenance or repair need, it shall give written notice thereof to Consortium Manager.

(b) Consortium to Promptly Repair. The City may, by written notice to Consortium Manager, direct Consortium to perform such maintenance and repair consistent with its obligations under this Agreement at Consortium's expense within a reasonable period of time determined by the City and Consortium, which could be immediate if the situation requires. If Consortium fails to perform such maintenance or repair within the stated repair period, the City may perform such maintenance and repair, at Consortium's cost plus an administrative fee of fifteen percent (15%).

(c) Urgent Remediation Situations. In the event the City reasonably believes that there is a Consortium-Maintained City Equipment problem that endangers the health or safety of persons or the safety of operations at the Airport and the City so states in its notice to Consortium, the City may, by written or verbal notice (followed up in writing) to Consortium Manager, direct Consortium to take immediate remedial action to protect such facilities and eliminate such endangerment. If Consortium fails to initiate remedial action immediately and diligently pursue such action until completed, then City may do so at Consortium's cost and charge an administrative fee of twenty-five percent (25%).

(d) Testing and Minimum Service Levels. The City shall have the right, without any obligation to do so, at any time after reasonable notice, and as it considers necessary, to perform tests, consistent with industry standards and manufacturers' guidelines, on the Consortium-Maintained City Equipment or otherwise perform assessments to determine whether the Minimum Service Levels have been satisfied under the terms of the this Agreement, including as required by Exhibit C.

(e) Application to Contractors. Consortium further agrees to implement such measures as may be necessary to ensure that its Consortium Contractors and their staff shall be bound by the provisions of this Section 6.2.

(f) Technical Representative. Without limiting the rights and obligations of the parties hereunder, including those relating to reporting, approvals, and maintenance, repair, or testing, each party will designate a technical representative to liaise with the other party on technical, operational and maintenance issues, as appropriate. Each party shall cooperate and permit the other party's representative to participate in technical and operational activities, including, for example, periodic inspections, testing, and Consortium-Maintained City Equipment problem-solving.

## **6.3 Warranties**

The City and Consortium agree to take, to the maximum extent legally permitted, all actions necessary to permit Consortium to enforce warranties with respect to Consortium's

obligations hereunder. At either party's request, except to the extent that the City already possesses the relevant warranties, the City or Consortium shall reasonably obtain on the City's behalf customary warranties for the Consortium-Maintained City Equipment and other Services in connection with Consortium's repair, maintenance, and replacement obligations hereunder. During the Term and upon either party's request, the other party shall assign to the requesting party all such warranties to the extent available and applicable and to the maximum extent legally permitted. The parties shall reasonably cooperate with each other to enforce all warranties on Consortium-Maintained City Equipment and all Services.

## **ARTICLE 7: ADDITIONAL COVENANTS**

### **7.1 Operations Reports**

(a) Consortium shall maintain all records relating to Consortium-Maintained City Equipment, Consortium Provided-to-City Services, and any other Services in accordance with the City's or CDA's standards of record management, including performance relating to Minimum Service Levels. Such records will be provided to the City upon request. The reporting calendar will be the same as the City's fiscal calendar. The Consortium will be required to submit reports monthly, quarterly, annually, and on an ad hoc basis as further provided in Exhibit C. The Consortium will also be responsible to provide the CDA with reports related to systems, equipment, and services.

(b) The City will be required to submit to Consortium, on a quarterly basis and upon Consortium's request, reports providing the proportionate Usage by each Member and Non-Member of Services. The reporting calendar will be the same as the City's fiscal calendar.

### **7.2 Computerized Maintenance Management System**

Consortium, Consortium Manager, and Maintenance Operators shall be required to provide, maintain and use a computerized maintenance management system (CMMS) in connection with the Services performed hereunder, and provide access to CDA terminal operations and facilities managers as directed by the Commissioner.

### **7.3 Material Adverse Events**

Promptly upon the occurrence of any event of which Consortium has knowledge (other than general economic conditions) which has, or could have, a material adverse impact on the Consortium-Maintained City Equipment or the operations of the Airport, Consortium shall notify the City of such event.

### **7.4 Records, Audits, and Confidentiality**

(a) All paper and electronic documents and records related to the operation, use, and maintenance of the Consortium-Maintained City Equipment and other Services existing on the Effective Date or thereafter obtained by the City or Consortium during the Term, including but not limited to all original equipment manufacturer's manuals, bulletins, and other documents and

all records, reports and other documentation produced by the City, Consortium and/or Consortium Contractors, shall made available to the other party on the Effective Date if in possession of either party on such date, or at such time during the Term as either party comes into possession of such documents or records.

(b) All documents, data, studies, reports, and instruments of service prepared under or in connection with Consortium-Maintained City Equipment and the Services are the property of the City. Consortium shall be responsible for any loss or damage to documents while in Consortium's possession or the possession of its Consortium Contractors and any such document so lost or damaged shall be restored at the expense of Consortium.

(c) Promptly upon reasonable demand by the City or upon the expiration or termination of this Agreement, Consortium shall, or shall cause Consortium Manager to, deliver, or cause to be delivered, to the City all documents prepared under, or in connection with, this Agreement, including but not limited to drawings, models, specifications, estimates, reports, studies, maps, and computations. In the event of the failure by Consortium to make such delivery upon demand or termination, then Consortium shall pay to the City and damages the City may sustain by reason thereof.

(d) All of the reports, information, or data prepared or assembled by or provided to Consortium under this Agreement are confidential. City acknowledges and agrees that Consortium may share such reports, information or data with its officials, employees, Consortium Contractors and Members; *provided that* Consortium shall not make available, and shall cause its officials, employees, and Consortium Contractors not to make available, except as specifically authorized herein or as may be necessary for the design, purchase, installation, operation and maintenance of the Consortium-Maintained City Equipment or as may be required by law, said reports, information, or data to any other individual or organization, except the City, without the prior written approval of the Commissioner.

(e) In the event that Consortium is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data, or documents which may be in Consortium's possession by reason of this Agreement, Consortium shall immediately give notice to the General Counsel of CDA and to the City's Corporation Counsel with the understanding that the City shall have the opportunity to contest such document request or subpoena duces tecum by any means available to it before such records or documents are submitted to a court or other third party; provided, however, that Consortium shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(f) Consortium further agrees to implement such measures as may be necessary to ensure that its Consortium Contractors shall be bound by the provisions of this Section 7.4.

## **7.5 Inconsistent Provisions**

Consortium shall not amend its organizational agreements, including the Amended and Restated Member Agreement, in such a manner that such agreements will contain a provision which is inconsistent with the terms of this Agreement.

## **ARTICLE 8: REPRESENTATIONS AND WARRANTIES**

### **8.1 Representations of Consortium**

Consortium hereby represents and warrant to the City that:

(a) This Agreement is duly authorized, valid, binding, and enforceable on Consortium;

(b) Consortium is duly organized and existing under the laws of the State of Illinois;

(c) Consortium is authorized to do business in the State of Illinois;

(d) All consents, approvals, and authorizations of governmental or regulatory authorities or by or on behalf of any creditors or any other third party for the valid execution and delivery of this Agreement by Consortium, and Consortium's performance of its obligations under and compliance with the terms thereof, have been obtained and are in full force and effect; and

(e) No other approvals of Consortium's Members or any governmental body are required in order for Consortium to enter into this Agreement and to perform its obligations and comply with the conditions imposed hereunder.

### **8.2 Representations of City**

The City hereby represents and warrants to Consortium that:

(a) This Agreement is duly authorized, valid, binding, and enforceable on the City;

(b) All consents, approvals, and authorizations of governmental or regulatory authorities or any other third party for the valid execution and delivery of this Agreement, and the City's performance of its obligations under and compliance with the terms thereof, have been obtained and are in full force and effect; and

(c) No other approvals of the City's governing body or any governmental body are required in order for the City to enter into this Agreement and to perform its obligations and comply with the conditions imposed hereunder.

## **ARTICLE 9: INSURANCE AND INDEMNIFICATION**

### **9.1 Insurance Requirements**

9.1.1 Insurance Coverage Required. Consortium shall procure and maintain at all times, at Consortium's own expense, the types of insurance specified below, with insurance companies having an AM Best rating of A- or better, financial size rating of IV or better; or for those insurance companies not subject to AM Best's rating (a) an equivalent financial strength rating from S&P or (b) a similar nationally or internationally recognized reputation and responsibility as reasonably approved by the City, covering all operations under this Agreement performed by Consortium. The kinds and amounts of insurance required are as follows:

(a) Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance, as prescribed by Applicable Law, covering all employees who are to provide a service under this Agreement with statutory limits. Such insurance shall include Employer's Liability Insurance coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; \$1,000,000 disease-each employee. Coverage shall include other states endorsement, alternate employer and voluntary compensation, when applicable.

(b) Commercial General Liability Insurance (Primary and Umbrella). Commercial General Liability Insurance or equivalent coverage with limits of not less than \$250,000,000 per occurrence for bodily injury (including death, personal injury and property damage liability) and in the aggregate with at least \$25,000,000 for personal injury and \$100,000,000 for war risks and allied peril liability. Such insurance shall include but not be limited to: all premises and operations, products/completed operations, war risk and allied peril liability (including terrorism), liability for any auto (owned, non-owned and hired) including liability for vehicles on the restricted access area of the Airport, mobile equipment, explosion, collapse, underground, separation of insureds, defense, independent contractors (if commercially available), and blanket contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City shall be named as an additional insured on the policy and coverage shall be at least as broad as that afforded the named insured. The additional insured coverage shall not have any limiting endorsement or language under the policy such as but not limited to, Consortium's sole negligence or the City's vicarious liability. Consortium's insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by the City.

To the extent Consortium relies on excess or umbrella insurance to satisfy the requirements of this subsection (b), any such policy shall follow form and be no less broad than the underlying policy, shall cover the term of underlying policy without interruption, and shall include a drop down provision with no gap in policy limits.

(c) Automobile Liability Insurance (Primary and Umbrella). When any motor vehicles are used in connection with work to be performed by or on behalf of Consortium, Consortium shall provide Automobile Liability Insurance with limits of not less than \$10,000,000 per occurrence combined single limit, for bodily injury and property damage for any auto including owned, non-owned or hired autos; *provided, however*, that Consortium may reduce the foregoing amount to \$1,000,000 per occurrence combined single limit so long as Consortium's Commercial General Liability Insurance or equivalent coverage includes excess auto liability. The City shall be named as an additional insured on a primary, non-contributory basis.

(d) All Risk Builders Risk Insurance. When Consortium undertakes any construction at the Airport, including improvements, betterments or repairs, Consortium shall provide or cause its Consortium Contractor to provide All Risk Blanket Builder's Risk Insurance to cover the materials, equipment, machinery and fixtures that are or will be part of the permanent facility or project. Coverage extensions shall include boiler and machinery, earthquake and flood.

(e) All Risk Property Insurance. All Risk Property Insurance shall be maintained at replacement cost valuation basis covering all loss, damage, or destruction for such premises including improvements and betterments of City property in Consortium's care, custody and control. Coverage shall include but not limited to boiler and machinery, earthquake, flood, sprinkler leakage, debris removal and business interruption and extra expense. The City shall be named as a loss payee, as their interests may appear. Consortium shall be responsible for all loss or damage to personal property owned, rented or used by Consortium.

(f) Professional Liability. When any architects, engineers, project managers, construction managers or other professional consultants perform work (including but not limited to Scheduling and Ramp Management) in connection with this Agreement, Professional Liability Insurance covering acts, errors or omissions shall be maintained by such architects, engineers, project managers, construction managers or other professional consultants with limits of not less than \$2,000,000; provided, however, that design and construction architects, engineers, project managers, construction managers or other professional consultants who perform work with respect to any construction project undertaken by Consortium pursuant to this Agreement the cost of which is in excess of \$50,000,000 shall be maintained with limits of not less than \$5,000,000. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work on the contract. A claims made policy that is not renewed or replaced shall have an extended reporting period of at least two (2) years.

(g) Pollution Liability Insurance. Pollution Liability Insurance shall be provided covering bodily injury, property damage, clean-up and other losses caused by pollution conditions or incidents including any Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material with limits of not less than \$10,000,000 per pollution condition or loss and \$10,000,000 annual aggregate. Coverage shall include but not be limited to: response to and remediation of new, preexisting, known and unknown on-site and off-site pollution conditions and incidents, emergency response costs, repairs, removals, abatement, corrective actions, transportation, contractual liability and defense. When policies are renewed, the policy retroactive date shall coincide with, or precede, start of work in connection with the Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two (2) years. The City is to be named in the policy as an additional insured.

Coverage shall also include but not be limited to (a) underground and above ground storage tank(s) owned or operated by Consortium or its Associated Parties including any on site integral piping or dispensing equipment at the Airport and (b) any structural controls (above-ground or below-ground) used to treat sanitary sewer waste and storm water runoff operated by Consortium or Associated Parties at the Airport, as set forth in Section 12.1.6 (Environmental Article).

### 9.1.2 Additional Requirements.

(a) Evidence of Insurance. Consortium will furnish the Commissioner with original Certificates of Insurance (or copies thereof) and a copy of the additional insured endorsements, where applicable, evidencing the coverage required to be in force on the date of this Agreement, as well as renewal Certificates of Insurance and additional insured endorsements, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Consortium shall submit evidence prior to Effective Date. The receipt of a certificate or other insurance evidence does not constitute an agreement by the City that the insurance coverage required in this Agreement have been fully met or the insurance policies indicated on the certificate or other evidence of insurance provided are in compliance with all the Agreement requirements. Failure of the City to obtain certificates or any other insurance evidence from Consortium showing compliance with these requirements of the Agreement is not a waiver by the City of any requirements for Consortium to obtain and maintain the specified coverages. Consortium shall advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Consortium for liabilities that may arise from or relate to the Agreement. The City reserves the right to inspect complete, certified policy copies (or electronic copies thereof) of any required insurance at a mutually agreed location within the State of Illinois within ten (10) days of the City's written request.

(b) Failure to Maintain Insurance. The insurance hereinbefore specified shall be carried during the term of this Agreement. Failure to carry or keep such insurance in force shall constitute a violation of the Agreement and an Event of Default under Section 11.1. To the extent there is such a failure, the City shall provide written notice thereof and Consortium shall have fifteen (15) business days to cure such failure, after which the City may exercise any remedy in Article 11 or any other remedies under this Agreement until proper evidence of insurance is provided.

(c) Notice of Cancellation, Material Change and Non-Renewal. Consortium shall provide for thirty (30) days' advance notice to the City in the event coverage required in this Agreement (except coverage for war and allied peril risk for which Consortium shall provide seven (7) days' advance notice or such other period as may be agreed by the parties) has substantially changed, canceled, or non-renewed. Upon the earlier of Consortium's receipt of a cancellation notice for non-payment of premium or Consortium's knowledge thereof, Consortium shall provide immediate notice to the City of such cancellation or impending cancellation with Consortium's written plan for curing such non-payment and preventing non-payment of premiums thereafter.

(d) Insurance Required of Consortium Contractors and subcontractors. In each contract with any Consortium Contractor or subcontractor, Consortium shall require such Consortium Contractor or subcontractor to obtain insurance coverages to adequately cover risks associated with any such contractor or subcontractor that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract and standard in the industry within which such contractor's or subcontractor's practices. Such coverages shall insure the

interests of the City, its employees, elected officials, agents and representatives including naming the City of Chicago as an additional insured on an additional insured form acceptable to the City. Consortium is also responsible for ensuring that each Consortium Contractor and subcontractor has complied with the required coverage and terms and conditions outlined in this Section 9.1.2. When requested by the City, Consortium shall provide, or cause to be provided, to the City certificates of insurance and copies of additional insured endorsements or such other evidence of insurance, acceptable in form and content to the City. The City reserves the right to inspect complete, certified policy copies (or electronic copies thereof) of any required insurance at a mutually agreed to location within the State of Illinois within ten (10) days of the City's written request. Failure of the Consortium Contractors or subcontractors to comply with required coverage and terms and condition outlined herein will not limit Consortium's liability or responsibility hereunder.

(e) No Limitation as to Consortium's Liabilities. Consortium expressly understands and agrees that any insurance coverages and limits furnished by Consortium shall in no way limit Consortium's liabilities and responsibilities specified within this Agreement or by Applicable Law.

(f) Waiver of Subrogation. Consortium waives and shall cause its insurers to waive, and Consortium shall cause each Consortium Contractor and subcontractor and Consortium Contractors' and subcontractors' insurers to waive, their respective rights of subrogation against the City Covered Persons for recovery of damages to the extent these damages are covered by the following insurance obtained by Consortium pursuant to this Agreement: (1) Workers' Compensation and Employer's Liability Insurance; (2) Commercial General Liability Insurance (primary and umbrella); (3) Automobile Liability Insurance; (4) All Risk Blanket Builder's Risk Insurance; and (5) all Risk Property Insurance. With respect to the waiver of subrogation for Worker's Compensation and Employer's Liability Insurance, Consortium shall obtain an endorsement equivalent to WC 00 03 13 to effect such waiver.

In the event the insurers of Consortium, or the insurers of any Consortium Contractor, should seek to pursue contribution or a subrogation claim against the City, Consortium shall be responsible to pay all cost of defending such claims, including actual attorney's fees of counsel of the City's choosing, subject to Section 9.2.7.

(g) Consortium Insurance Primary. Consortium expressly understands and agrees that any insurance or self-insurance programs maintained by the City shall apply in excess of and not contribute with insurance provided by Consortium under this Agreement. All insurance policies required of Consortium under this Agreement shall be endorsed to state that Consortium's insurance policy is primary and not contributory with any insurance carried by the City.

(h) Insurance Limits maintained by Consortium. If Consortium maintains higher limits than the minimum required herein, the City requires and shall be entitled to coverage for the higher limits maintained by Consortium. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City, as its interest may appear.

(i) Joint Venture or Limited Liability Company. If Consortium is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

(j) Other Insurance obtained by Consortium. If Consortium desires additional coverages, Consortium shall be responsible for the acquisition and cost.

(k) Self-Insurance of Consortium. Consortium may not self-insure any portion of any limit of primary coverage required hereunder unless specifically permitted under this Section 9.1 or otherwise permitted by the City in extraordinary circumstances. It is understood that in any instance in which Consortium is permitted to and chooses to self-insure a portion of the limit of primary coverage required hereunder, Consortium, as a self-insurer, has the same duties and obligations to the City (i.e. obligation to provide a defense for covered claims) and to the City's liability insurer(s) as a primary liability insurer has to excess insureds and excess insurers under a standard ISO policy form even though Consortium's self-insurance is not on a standard ISO form. For purposes of this subsection, self-insurance shall not be construed to include deductibles that apply on a per-occurrence basis.

(l) City's Right to Modify. The City maintains the right, based on commercially reasonable standards, to modify, delete, alter or change the requirements set forth under this Section 9.1 with thirty (30) days prior written notice to Consortium.

### 9.1.3 City's Insurance.

The City shall maintain in force during the Term the insurance it is required to maintain pursuant to the Airline Use and Lease Agreements.

## **9.2 Indemnification**

9.2.1 Consortium agrees to defend, indemnify and hold harmless the City Covered Persons to the maximum extent allowed by applicable statutes and case law, from and against any and all Claims, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property, arising out of or relating to:

- (a) the tortious acts or omissions of Consortium or its Associated Parties;
- (b) Consortium's or its Associated Party's performance of the Services;
- (c) the violation by Consortium of this Agreement or of any law, ordinance, regulation or court order affecting the Airport; or
- (d) suits of whatever kind or nature alleging violations of any federal or state laws as a result of any actions taken by Consortium or its Associated Parties, or Consortium's failure to comply with obligations imposed upon Consortium or its Associated Parties, pursuant to this Agreement;

and Consortium will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. To the extent City Covered Persons reasonably expend any cost and expense, including attorney fees, in investigating or responding to such claims, demands and suits, Consortium will reimburse the City Covered Persons for all such costs and expense, subject to Section 9.2.7.

9.2.2 Without limiting the foregoing, Consortium also agrees to defend, indemnify and hold harmless the City Covered Persons:

- (a) from and against any and all claims or liability for compensation under any workers' compensation statute arising out of the injury or death of any employee of Consortium. Consortium shall cause its licensees and Contractors to maintain in effect at all times workers' compensation insurance as required by law; and
- (b) from, and to assume all liability for, and to pay, all taxes and assessments for payment of which the City may become liable and which by law may be levied or assessed on the Consortium-Maintained City Equipment maintained by Consortium pursuant to this Agreement, or which arise out of the operations of Consortium. However, Consortium may, at its own risk, cost and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Consortium to contest or appeal the same. Consortium shall be responsible for obtaining bills for all of said taxes and assessments for which Consortium is responsible directly from the taxing authority and shall promptly deliver to the City copies of receipts of payment. In the event the City receives any tax billings, it will forward said billings to Consortium as soon as practicable.

9.2.3 Without limiting the foregoing, Consortium shall cause any Consortium Contractor to agree to protect, defend, indemnify and hold the City Covered Persons free and harmless from and against any and all Claims including claims of property damage, injury or death, in consequence of granting the relevant Contract or arising out of or being in any way connected with the Consortium Contractor's performance under this Agreement except for matters shown by final judgment to have been caused by or attributable to the negligence of any City Covered Person to the extent prohibited by 740 ILCS 35/1 *et seq.* The indemnification provided herein shall be effective to the maximum extent permitted by applicable statutes. To the extent Consortium Contractor fails to defend any and all claims, demands or suits against the City Covered Persons including claims by any employee, Consortium Contractors, agents or servants of Consortium Contractor even though the claimant may allege that a City Covered Person is or was in charge of the work or that there was negligence on the part of a City Covered Person, Consortium shall be responsible for such defense. To the extent City Covered Persons reasonably expend any cost and expense, including attorney fees, in investigating or responding to such claims, demands and suits, Consortium will reimburse the City Covered Persons for all such costs and expense, subject to Section 9.2.7. "Injury" or "damage," as such words are used in this Section 9.2 shall be construed to include injury, death or damage consequent upon the

failure of or use or misuse by Consortium Contractor, its subcontractors, agents, servants or employees, of any scaffolding, hoist, cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by the City. Notwithstanding Consortium's obligation to cause any Consortium Contractor to agree to the requirements set forth in this Section 9.2.3, Consortium's failure to cause Consortium Contractor to do so shall not constitute a breach hereof, provided that Consortium performs all such actions Consortium Contractor would have been required to perform under this Section 9.2.3, including indemnifying and defending the City, itself.

9.2.4 The City shall notify Consortium as soon as practicable of each Claim in respect of which indemnity may be sought by the City against Consortium hereunder, setting forth the particulars of such Claim, and shall furnish Consortium with a copy of all judicial filings and legal process and any correspondence received by the City related thereto.

9.2.5 The City shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings related to any Claim against the City, provided that the City shall bear the costs of its participation to the extent such participation is not in furtherance of the City's defense of any such Claim. The City shall approve the terms of any settlement which requires the City to perform or refrain from performing any action, provided that such approval will not be unreasonably withheld if a settlement includes a full and unconditional release for City Covered Persons.

9.2.6 Without limiting the generality of any other provision hereof, Consortium shall reimburse the City for the cost of any and all reasonable attorney's fees and investigation expenses and any other reasonable costs incurred by the City in the investigation defense and handling of said suits and claims and in enforcing the provisions of this Agreement.

9.2.7 Notwithstanding the provisions of this Section 9.2, in the event that the City and Consortium mutually agree or a court of competent jurisdiction determines by a final order that (a) a City Covered Person's negligence is at least fifty-one (51%), or (b) a City Covered Person's willful and wanton misconduct is any percentage, of the total fault which proximately caused the Claims, Consortium's obligation to indemnify the City for amounts to be paid in connection with the Claims shall be limited to the amount attributable to Consortium's and its Associated Parties' proportionate share of the total fault which proximately caused the Claims. The City and Consortium agree, however, that this Section 9.2.7 is not intended to obviate or lessen in any way Consortium's duty to defend the City Covered Persons; provided, however, that to the extent the City and Consortium mutually agree or a court of competent jurisdiction rules that the Claims were the result of the sole negligent act or omission or the willful and wanton misconduct of a City Covered Person, the City shall reimburse Consortium for its proportionate share of the costs of defense, including, but not limited to, attorneys' fees and court costs. For the avoidance of doubt, the City shall reimburse Consortium for all defense costs Consortium incurred with respect to defending the City Covered Persons against Claims to the extent that the City and Consortium mutually agree or a court of competent jurisdiction rules that such Claims were the result of the sole negligent act or omission of a City Covered Person.

9.2.8 Notwithstanding the provisions of this Section 9.2, Consortium's indemnification obligations for Environmental Claims are set forth in Section 12.7.

9.2.9 The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City or a City Covered Person that would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement.

9.2.10 Subject to Section 9.2.7, Consortium shall be liable for any loss or damage to any personal property or equipment of Consortium, its agents, servants, employees, officials, or independent contractors.

9.2.11 Consortium waives the right of contribution against the City Covered Persons, subject to Section 9.2.7, and subrogation against the City Covered Persons.

9.2.12 This Section 9.2 shall survive expiration or early termination of this Agreement. Consortium understands and agrees that any insurance protection furnished by Consortium pursuant to Section 9.1 shall in no way limit Consortium's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

### **9.3 Consortium's Status as a City Indemnified Party**

The parties agree that Consortium is a City Indemnified Party (as such term is defined in the Airline Use and Lease Agreements, Non-Signatory Airline Operating Agreements, and licenses to Certified Service Provider issued by the City) for claims by third parties relating to Consortium's provision of operations and maintenance services for Consortium-Maintained City Equipment under this Agreement.

## **ARTICLE 10: TAXES; LIENS**

### **10.1 Taxes, Licenses, and Permits**

Consortium shall pay or cause to be paid any and all taxes and assessments and shall obtain or cause to be obtained all licenses, permits, certifications, and other authorizations required by any governmental authority in connection with the operations or activities performed by it hereunder, including any and all taxes and other charges in connection with Consortium's performance of the Services. Consortium may contest any such taxes as provided in Section 9.2.2(b). Consortium shall not permit a lien or encumbrance to attach to the Airport or the Consortium-Maintained City Equipment by reason of any failure to pay taxes for which it is responsible.

### **10.2 Liens Prohibited**

Consortium covenants and agrees that it shall notify its Consortium Contractors of any tier that no mechanics' liens under Ill. Rev. Stat. Ch. 82 Par. 23 ("mechanics' liens") will be

permitted to arise, be filed or maintained against the Airport or the Consortium-Maintained City Equipment or any part thereof or any interest therein or any improvements thereon, against any monies due or to become due to any Consortium Contractors of any tier for or on account of any work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Consortium-Maintained City Equipment; and Consortium, for itself, its Consortium Contractors, and its employees, hereby expressly waives, releases, and relinquishes such liens and all rights to file or maintain such liens, and agrees further that this waiver of liens and waiver of the right to file or maintain such liens shall be an independent covenant.

If any Consortium Contractors, employees, or any other person directly or indirectly acting for, through, or under any of them, files or maintains a lien or claim as described in paragraph (a) above, Consortium agrees to cause such liens and claims to be satisfied, removed, or discharged, as a Project Cost, by bond, payment, or otherwise, within thirty (30) calendar days from the date of the filing thereof; provided, however, that City may extend the thirty day period if City determines that such lien or claim cannot be so satisfied, removed, or discharged in such period, and that Consortium is proceeding diligently to cause such liens or claims to be satisfied, removed, or discharged. Upon Consortium's failure to cause such liens or claims to be satisfied, removed, or discharged, City shall have the right, in addition to all other rights and remedies provided under this Agreement or by law, to cause such liens or claims to be satisfied, removed, or discharged as a Project Cost, such cost to include legal fees and disbursements.

Consortium shall give, or cause to be given, a copy of the provisions set forth in this Section 10.2 to all Consortium Contractors and shall include these provisions in all written Contracts with Consortium Contractors and/or give written notice of same to all Consortium Contractors or other persons having oral agreement with such Consortium Contractors.

## **ARTICLE 11: DEFAULT AND RIGHTS AND REMEDIES UPON DEFAULT**

### **11.1 Events of Default**

Each of the following shall be an "Event of Default" under this Agreement:

11.1.1 Consortium shall become insolvent (as such term is defined under Section 101 of the Federal Bankruptcy Code); or shall fail to pay its debts generally as they mature; or shall take the benefit of any present or future federal or state insolvency statute; or shall make a general assignment for the benefit of creditors.

11.1.2 Consortium shall file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Federal Bankruptcy Code or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property; or an order for relief shall be entered by or against Consortium under any chapter of the Federal Bankruptcy Code.

11.1.3 By order or decree of a court, Consortium shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the restructuring of its indebtedness under the Federal

Bankruptcy Code or under any other law or statute of the United States or any state thereof and such order or decree shall not be stayed or vacated within sixty (60) days of its issuance.

11.1.4 A petition under any chapter of the Federal Bankruptcy Code or an action under any federal or state insolvency law or statute shall be filed against Consortium and shall not be dismissed or stayed within sixty (60) days after the filing thereof.

11.1.5 By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator or other similar official shall take possession or control of all or substantially all of the property of Consortium and such possession or control shall continue in effect for a period of sixty (60) days.

11.1.6 Consortium shall become a corporation in dissolution.

11.1.7 The letting, license or other interest of or rights of Consortium hereunder shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Section 11.1.1 through 11.1.6.

11.1.8 Consortium shall fail to keep, perform and observe any promise, covenant or other provision of this Agreement (including meeting the Minimum Service Levels set forth in Exhibit C) for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Consortium by the City; provided, however, that any such failure which can be remedied, but which cannot with due diligence be remedied within such thirty (30) day period, shall not give rise to the City's right to terminate this Agreement if corrective action is instituted by Consortium within such thirty (30) day period and diligently pursued until the failure is remedied.

11.1.9 Any lien shall be filed against the Consortium-Maintained City Equipment or Airport premises or any portion thereof resulting from any act or omission of Consortium, and shall not be discharged within thirty (30) days, unless Consortium shall within the aforesaid thirty (30) days furnish the City such security as the Commissioner in his or her discretion determines to be adequate to protect the interests of the City.

11.1.10 Consortium shall make any purported assignment without the consent of the City.

11.1.11 Consortium shall fail to maintain its corporate existence or to remain duly qualified to do business in the State of Illinois or Consortium shall dissolve or otherwise dispose of all or substantially all of its assets or shall consolidate with or merge into another corporation; provided, however, that it shall not be an Event of Default if Consortium consolidates with or merges into a wholly owned subsidiary of Consortium or City otherwise approves any such consolidation or merger.

11.1.12 Consortium shall default under the Facilities Lease.

11.1.13 Consortium shall violate the Waste Sections of the Municipal Code or MCC 2-156-018, "Duty to report corrupt or unlawful activity" as set forth in Article 15 of this Agreement.

11.1.14 Consortium shall fail to maintain insurance as required by this Agreement, including the cure period provided in Section 9.1.2(b).

## **11.2 Termination by the City**

11.2.1 Whenever an Event of Default has occurred and is continuing, the City may, at its option and without precluding other means to resolve such Event of Default, immediately and without prior notice of such Event of Default:

- (a) terminate this Agreement and the rights of Consortium hereunder, without discharging any of Consortium's obligations hereunder; or
- (b) without terminating this Agreement, request that Consortium cease performing any Services it may perform pursuant to this Agreement.

11.2.2 In addition, the City may, from time to time, take whatever action at law or in equity appears necessary or desirable to collect any amounts payable by Consortium hereunder then due and thereafter to become due, and to enforce the performance and observance of any obligation, agreement or covenant of Consortium under this Agreement. For the avoidance of doubt, the City may compel specific performance by Consortium of any obligation pursuant to this Agreement, perform said obligations itself or take other actions to mitigate losses that may result from Consortium's failure to perform and charge Consortium for the City's costs plus a 15% administrative fee.

11.2.3 All rights and remedies given to the City in this Agreement and all rights and remedies given to the City by law, shall be cumulative and concurrent. No termination of this Agreement shall deprive the City of any of the City's remedies or actions against Consortium for any fees or charges or for damages or for the breach of any covenant herein contained.

11.2.4 In no event shall this Agreement or any rights or privileges hereunder be an asset of Consortium under any bankruptcy, insolvency or reorganization proceedings.

11.2.5 To the extent consistent with the United States Bankruptcy Code or similar debtor relief laws, if Consortium seeks protection under the United States Bankruptcy Code or similar debtor relief laws, or is currently operating under the protection of the United States Bankruptcy Code or other similar debtor relief laws, Consortium will comply with every provision of this Agreement as and when required under this Agreement, including without limitation performing any required remediation relating to any environmental matter pursuant to Consortium's obligations under Article 12 which arose prior to or arises during the course of Consortium's bankruptcy case. Consortium will not be allowed to assume this Agreement without performing any required remediation as part of the cure for any assumption of this Agreement.

### **11.3 Agreement to Pay Attorneys' Fees and Expenses**

In the event Consortium defaults under this Agreement and the City employs attorneys or incurs other expenses for the collection of any amounts due hereunder, or for the enforcement or performance or observance of any obligation or agreement on the part of Consortium herein contained, Consortium shall, on demand, pay to the City the reasonable fees and expenses of such attorneys and any such other reasonable expenses incurred by the City as a result of such default.

### **11.4 Force Majeure**

11.4.1 If either party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor disputes (all of which shall be subject to Section 15.14), inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty, or other reason of a similar nature beyond the reasonable control of the party delayed in performing work or doing acts required under this Agreement, performance of such act shall be excused for the period of the actual delay attributable to such causes, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay is herein referred to as an “**Unavoidable Delay**”). This Section shall not be applicable to Consortium’s obligations to procure insurance or to pay any fees or charges, or any other sums, moneys, costs, charges or expenses required to be paid by Consortium. If any provision of this Agreement negates or limits the period of any force majeure or Unavoidable Delay extension, such provision shall override this Section 11.4. Consortium shall give the City notice of any Unavoidable Delay within a reasonable time (not to exceed one (1) month) following the occurrence of the delaying event.

11.4.2 The City and the Consortium shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any federal, state, county or municipal law, rule, regulation, requirement, order or directive.

## **ARTICLE 12: ENVIRONMENTAL MATTERS**

### **12.1 Consortium Representations, Warranties, and Covenants**

Consortium represents, warrants, and covenants the following with respect to its use of the Airport pursuant to this Agreement:

12.1.1 Consortium has obtained and throughout the term of this Agreement shall regularly maintain and timely update all applicable licenses, permits, registrations and other authorizations and approvals required under Environmental Laws, and shall provide any notices required under Environmental Laws (as defined in the Airline Use and Lease Agreements), for conducting its operations at the Airport during the term of this Agreement; provided, however, that for the purposes of this Agreement, “**Environmental Laws**” will also include, where applicable, the rules and regulations of the United States Department of Agriculture Animal and Plant Health Inspection Service, including 7 C.F.R. 330.400-403 and 9 C.F.R. 94.5. Consortium

shall ensure that its Associated Parties obtain, maintain and update all applicable licenses, permits, registrations and other authorizations required by Environmental Law pertaining to its and their use of and operations at the Airport.

12.1.2 Consortium shall comply and shall ensure that its Associated Parties comply, with all applicable Environmental Laws pertaining to its and their use of and operations at the Airport.

12.1.3 Consortium shall not conduct its operations at the Airport during the Term of this Agreement in such a manner so as to cause, unlawfully allow or contribute to, and shall ensure that its Associated Parties do not cause, unlawfully allow or contribute to:

- (a) any Release, Discharge or Disposal of any Hazardous Substance or Other Regulated Material at the Airport, unless authorized by an Environmental Law;
- (b) any violation of any applicable Environmental Law as a result, in whole or in part, of the use by or operations of Consortium or its Associated Parties at the Airport;
- (c) any Release, Discharge or Disposal in violation of any applicable Environmental Law which is a contributing cause of the City exceeding any terms, conditions or effluent limits of any NPDES permit or individual storm water discharge permit issued to the City, Multi-Sector General Permit, Municipal Separate Storm Sewer System permit, or any applicable federal or State of Illinois effluent limitation guideline, or standard of the MWRD;
- (d) any Release, Discharge or Disposal to soil or Waters at, underlying, or adjacent to the Airport in violation of any applicable Environmental Law; or
- (e) any emissions to the air in violation of any applicable Environmental Law that results in an exceedance of an applicable emission standard at the Airport or, if applicable, any terms or conditions of any of Consortium's air permits.

12.1.4 Consortium shall, and shall ensure that its Associated Parties, handle, use, store, Dispose of, transport, or otherwise manage, any Hazardous Substance or Other Regulated Material at the Airport during the Term of this Agreement in a lawful manner. Without limiting the foregoing and as applicable, Consortium shall not conduct and shall ensure that its Associated Parties do not conduct any operations or activities involving the use or application of ethylene glycol, propylene glycol, or any other substance in de-icing or anti-icing at any location at the Airport except in accordance with all applicable Environmental Laws and, as applicable, in compliance with any de-icing policies and practices as may be adopted by the City in consultation with Consortium.

12.1.5 Consortium shall be, and shall ensure that its Associated Parties are, responsible for the proper transportation and Disposal of all Hazardous Substances or Other Regulated Material generated by Consortium or its Associated Parties, or resulting from Consortium's use, activities, and operations, at the Airport during the term of this Agreement, including those activities and operations conducted by its Associated Parties. In such cases, in the event a

signature as “Generator” is required on waste manifests, waste profile sheets or generator’s certifications of non-special waste, Consortium shall ensure that either Consortium or its appropriate Associated Party(ies) signs such documents.

12.1.6 Consortium shall be, and shall ensure that its Associated Parties are, responsible for the maintenance of any structural controls (above-ground or below-ground), as defined below, used to treat sanitary sewer waste and storm water runoff operated by Consortium or its Associated Parties at the Airport during the term of this Agreement. Maintenance frequencies for any such structural controls shall be established by Consortium in a reasonable manner in accordance with industry standards and applicable Environmental Law to ensure effective operation of such controls and to prevent failures of such controls that could result in the Discharge, Release or Disposal of pollutants in violation of any applicable Environmental Law. Consortium shall ensure that environmental records required to be kept by applicable law, including the O’Hare SWPPP, are maintained on-site for a period of three (3) years, unless a different document retention requirement is provided by applicable law. Structural controls to be maintained shall include, but not be limited to: oil/water separators (both storm and sanitary sewer), grease traps, sand traps, diversion valves, shut-off valves, storm sewer drain filters, trench drains, catch basins, rain gardens, and retention/holding ponds and any other structural controls. Consortium shall remove and properly Dispose of any Waste in said designated structural controls maintained by Consortium prior to vacating the Airport.

12.1.7 Consortium shall be, and shall ensure that its Associated Parties are, responsible for the maintenance of any air pollution control equipment required by any applicable Environmental Law operated by Consortium or its Associated Parties on the Airport during the term of this Agreement. Maintenance frequencies for any such air pollution control equipment shall be established by Consortium in a reasonable manner in accordance with industry standards, the provisions of applicable air permits and applicable Environmental Law to ensure effective operation of such equipment and to prevent failures of such equipment that could result in the emission of pollutants in violation of any applicable Environmental Law. Consortium shall ensure that environmental records required to be kept by applicable law are maintained on-site for a period of three (3) years, unless a different document retention requirement is provided by applicable law. The air pollution control equipment units to be maintained shall include, but are not limited to: scrubbers, filters, absorbers, condensers, precipitators, and other equipment, in each case to the extent such equipment is specifically listed on Exhibit A to this Agreement as the maintenance responsibility of Consortium. Consortium shall remove and properly Dispose of any Waste in said designated air pollution control equipment operated by Consortium prior to vacating the Airport.

12.1.8 If Consortium or its Associated Parties cause, unlawfully allow or contribute to a Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material at the Airport in violation of any applicable Environmental Law that is above any applicable reportable quantity, emission standard or effluent guideline set forth in any applicable Environmental Law including the O’Hare Spill Response Guide, Consortium shall report such Release, Discharge or Disposal to the appropriate governmental authorities in compliance with applicable Environmental Law, including the O’Hare Spill Response Guide. Consortium shall ensure that its Associated Parties report any Release or Discharge in violation of any applicable

Environmental Law to the appropriate governmental authorities, in compliance with applicable Environmental Law, if the operations of said third party cause, unlawfully allow or contribute to a Discharge or Release of a Hazardous Substance or Other Regulated Material in violation of any applicable Environmental Law that is above any reportable quantity set forth in any applicable Environmental Law.

12.1.9 Consortium acknowledges that the City is subject to certain NPDES permits, state and federal storm water regulations, federal and state effluent limitation guidelines, and MWRD standards for operations at the Airport. Consortium shall conduct operations and activities at the Airport, including but not limited to construction, and shall ensure that its Associated Parties conduct operations and activities at the Airport in compliance with applicable Environmental Laws. Consortium acknowledges that its reasonable cooperation is necessary to ensure Airport's compliance with any applicable NPDES storm water permits and effluent limitation guidelines under Environmental Laws. Consortium shall minimize the exposure to storm water of materials generated, stored, handled, or used by Consortium or its Associated Parties at the Airport including Hazardous Substances or Other Regulated Material, by implementing and requiring implementation of certain written "Best Management Practices" as defined by and required under Environmental Laws, and shall make them available to the City upon reasonable request. Consortium further acknowledges that any effluent limitation guidelines in any NPDES storm water discharge permit issued to the City and timely provided to Consortium applicable to Consortium are incorporated by reference into this Agreement to the extent affecting Consortium's operations at or use of the Airport or operations or activities conducted on its behalf at the Airport, or necessitating Consortium's reasonable cooperation to assure the City's compliance therewith. The City shall provide advance notice to Consortium of and a reasonable opportunity to comment on, and shall otherwise endeavor to negotiate reasonable and cost effective terms and conditions of, any permits issued to the City which may affect Consortium's operations at or use of the Airport or operations or activities conducted on its behalf at the Airport, or which may necessitate Consortium's reasonable cooperation to assure the City's compliance therewith.

12.1.10 Consortium or its Associated Parties shall cooperate with the City, as reasonably requested from time to time by the City, to ensure that Consortium's operations at or use of the Airport will not unreasonably interfere with the City's implementation of its Chicago O'Hare International Airport Wildlife Hazard Management Plan to reduce wildlife hazards at the Airport.

12.1.11 Consortium, prior to vacating space at the Airport at which it performs Services for any reason, shall:

- (a) remove and Dispose of any and all trash, debris, or Waste generated by Consortium or its Associated Parties;
- (b) remove any and all above-ground containers and non-permanent structural controls owned by Consortium or its Associated Parties, including, but not limited to, removable filters, grates and above-ground tanks located at the Airport, unless Consortium and the City agree otherwise; and

- (c) comply with applicable Environmental Laws regarding the closing or removal from service of any underground or aboveground tanks, vessels, and containers operated or owned by Consortium or its Associated Parties and located at the Airport, provided, however, that Consortium shall have no such obligation with respect to any airport hydrant fuel system maintained by an airport fueling consortium.

12.1.12 Consortium understands and acknowledges that certain of its and the City's future capital projects at the Airport may require review or approval by the FAA, the United States Environmental Protection Agency ("USEPA"), or the Illinois Environmental Protection Agency ("IEPA"), pursuant to requirements imposed upon the Airport or the City. If requested by the City, Consortium shall reasonably cooperate with the City in its preparation of such submittals as are required of the City by FAA, USEPA, or IEPA, or their successor agencies, in connection with Consortium's future capital projects or in connection with the City capital projects at the Airport which benefit Consortium.

12.1.13 Consortium shall, and shall ensure that its Associated Parties, dispose of Hazardous Substances or Other Regulated Material in accordance with applicable Environmental Laws. Consortium shall, and shall ensure that its Associated Parties, employ properly permitted disposal facilities. Upon the City's reasonable request, the Consortium shall make available for City inspection documents relating to disposal activities of Consortium or its Associated Parties and/or the disposal facilities employed.

## **12.2 Right of Entry to Perform Environmental Inspections and Sampling**

12.2.1 The City and its contractors and other agents shall have the full right to enter any part of the areas in the Airport where Consortium performs the Services, at all reasonable times and in the City's sole discretion, for the purpose of conducting an inspection, assessment, investigation, regular inspection, or regulatory compliance audit of Consortium's operations thereon, or any other party's use and operations, including operations of Consortium's Associated Parties. The City and its authorized agents may take samples and perform tests as needed, including but not limited to soil borings, ground water monitoring, and collection of samples of air, soil, water, groundwater, Hazardous Substances or Other Regulated Material Releases, and Discharges, at the City's expense. The City will provide seventy-two (72) hours' advance written notice of any City inspection, assessment, investigation, regular inspection, or regulatory compliance audit of Consortium's operations thereon, or any other party's use and operations, including operations of Consortium's Associated Parties or intrusive City sampling to Consortium, except in emergencies, when advance notice shall not be required. Consortium shall have the right to accompany the City when any such inspection or sampling is performed, provided that the City is not required to unreasonably delay its inspection or sampling to enable Consortium to be present. Consortium shall have the right to obtain, at Consortium's expense, split samples and City shall promptly provide copies of all analytical results of such sampling, including any non-privileged reports.

12.2.2 Consortium shall cooperate, and shall ensure that its Associated Parties cooperate, in allowing prompt, reasonable access to the City to conduct such inspection, assessment, audit, sampling, or tests. In the exercise of its rights under this Section, the City shall not unreasonably

interfere with the authorized use of the areas in the Airport where Consortium performs the Services by Consortium or Consortium's Associated Parties. Consortium remains solely responsible for its environmental, health, and safety compliance, notwithstanding any City inspection, audit, or assessment.

### **12.3 Information to be Provided to the City**

12.3.1 If Consortium receives any written notice, citation, order, warning, complaint, claim or demand regarding Consortium's use of, or operations at, the Airport during the term of this Agreement or other property at the Airport used by Consortium pursuant to this Agreement that is not legally privileged, made confidential by applicable law, or protected as trade secrets:

- (a) concerning any alleged Release, Discharge or Disposal of a Hazardous Substance or Other Regulated Material by Consortium or by its Associated Parties; or
- (b) alleging that Consortium or any of its Associated Parties is the subject of an Environmental Claim or alleging that Consortium or any Associated Party is, or may be, in violation of any Environmental Laws; or
- (c) asserting that Consortium or any such third party as identified in Section (i) and (ii) above is liable for the cost of investigation or remediation of a Release or Discharge;

Consortium shall promptly, but not later than five (5) business days after Consortium's receipt, inform the City in writing of same, including a copy of such notice received by Consortium.

12.3.2 Consortium shall simultaneously provide to the City copies of its submittals of any non-privileged reports or notices required under Environmental Laws to any governmental agency regarding:

- (a) Consortium's or its Associated Parties' alleged failure to comply with any Environmental Laws at the Airport used by Consortium pursuant to this Agreement, or
- (b) any Release or Discharge arising out of the past or present operations at or use of the Airport used by Consortium or its Associated Parties pursuant to this Agreement.

12.3.3 In connection with any matter arising under Section 12.3.1 above, Consortium shall make available, within ten (10) business days of Consortium's receipt of the City's written request, subject to document retention requirements provided by applicable law, the non-privileged documents that Consortium has submitted to any governmental agency pertaining to the environmental compliance status of Consortium's operations at or use of the Airport used pursuant to this Agreement by Consortium, including without limitation any and all non-privileged records, permits, permit applications, test results, sample results, written or electronic documentation, studies, or other documentation regarding environmental conditions or relating to the presence, use, storage, control, Disposal, or treatment of any Hazardous Substance or Other Regulated Material by Consortium or its Associated Parties at the Airport used by Consortium pursuant to this Agreement.

## **12.4 Consortium's Environmental Response and Compliance Obligations**

12.4.1 Without limiting the indemnity obligations of Section 12.7, if, during the term of this Agreement, Consortium or any of its Associated Parties causes, unlawfully allows or contributes to a Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material (including, but not limited to those which contaminate or pollute any air, soil, Waters, storm sewer, detention basin, other stormwater infrastructure, or conveyance system) in violation of any applicable Environmental Law that is above any applicable reportable quantity, emission standard or effluent guideline set forth in an applicable Environmental Law including the O'Hare Spill Response Guide, at any portion of the Airport or adjacent Waters, in connection with their operations at the Airport used by Consortium pursuant to this Agreement, Consortium shall perform or shall cause to be performed, consistent with the provisions of Section 12.5, the following:

- (a) notify the O'Hare Communications Center ("OCC") of such Release, Discharge, or Disposal as required by and in accordance with the O'Hare Spill Response Guide and applicable Environmental Laws;
- (b) report such Release, Discharge, or Disposal to appropriate governmental agencies as required by and in accordance with applicable Environmental Laws;
- (c) promptly Respond to the Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material, as required by applicable Environmental Laws;
- (d) promptly take all further actions required under Environmental Laws to abate any threat to human health or the environment;
- (e) promptly undertake any further removals, remediation, or corrective actions as are required by Environmental Laws or a governmental agency exercising its authorized regulatory jurisdiction under Environmental Laws, to remedy any such Release, Discharge or Disposal of a Hazardous Substance or Other Regulated Material, and any resulting impacts; and
- (f) promptly obtain documentation of the approval of the closure of such Release, Discharge, or Disposal from the governmental agency(ies) with regulatory jurisdiction as such may be issued under Environmental Laws, and provide such documentation to the City.

12.4.2 Any remedial or other activity undertaken by Consortium under this Article shall not be construed to impair Consortium's rights, if any, to seek contribution or indemnity from any person, consistent with the terms and limitations of this Agreement, including Section 12.7, below.

## **12.5 Investigation, Remediation, or Corrective Action Process**

Before commencing any subsurface soil, surface water, stormwater, or groundwater investigations, removals, remediation, or corrective actions that Consortium or Consortium's Associated Parties are required to perform at the Airport under this Agreement, including any

such actions mandated in Section 12.4, and except for immediate removal actions required by Environmental Laws and otherwise undertaken pursuant to Section 12.4, Consortium shall promptly provide any proposed plans for such investigations, removals, remediation, or corrective actions to the City for approval in accordance with applicable Environmental Laws, which shall not be unreasonably withheld or conditioned. The work shall be performed in a diligent manner consistent with the time(s) prescribed by Environmental Laws and relevant governmental authorities and at Consortium's expense, and the City shall have the right to review and inspect all such work at any time using consultants and representatives of the City's choice, at the City's expense. Specific cleanup levels for any environmental removals, remediation or corrective actions shall comply with applicable Environmental Laws, with commercial and industrial remediation standards being applied to such actions consistent with the use of the Airport for such purposes. Consortium may also utilize institutional controls and other engineered barriers as part of any removals, remediation or corrective actions to the extent authorized by Environmental Laws and approved by the City in writing, which shall not be unreasonably withheld. In the event deed recordation by the City is necessary for the utilization of commercial and industrial remediation standards or other controls as part of any removals, remediation or corrective actions or any other costs and expenses are incurred in connection with the use of such standards or controls Consortium shall reimburse the City for all deed recordation fees and reasonable attorneys' fees incurred in connection with such recordation. Consortium shall, at Consortium's own cost and expense, have all tests performed, and reports and studies prepared, and shall provide such information to any governmental agency as may be required by applicable Environmental Laws, with a copy simultaneously provided to the City. This obligation includes but is not limited to any requirements for a site characterization, site assessment, remediation objectives report, remedial action plan, and remedial action completion report that may be necessary to comply with applicable Environmental Laws.

## **12.6 The City's Rights to Ensure Consortium's Compliance with Environmental Response and Compliance Obligations**

12.6.1 If, as is reasonably determined by the City, Consortium, Consortium's Associated Parties or their Associated Parties:

(a) do not take appropriate Response actions required by applicable Environmental Laws in response to a Release, Discharge or Disposal for which it is responsible under Section 12.4, within the time(s) prescribed by such Environmental Law(s) and relevant governmental authorities; or

(b) do not perform or complete reporting, notifications, investigations, removals, remediation, corrective actions, or closure actions for which it is required under Section 12.4 within the time(s) prescribed by applicable Environmental Laws and relevant governmental authorities, or within the time reasonably necessary to enable the City to meet its obligations under Environmental Laws (subject to the condition that, in the case of both Sections 12.6.1(a) above and this Section 12.6.1(b), the City must first provide reasonable advance written notice to Consortium of Consortium's failure to comply with such obligations and a reasonable opportunity for Consortium to cure such failure to comply by Consortium initiating or recommencing any such actions consistent with required schedules (including exercising its legal right to reasonably and in good faith challenge such alleged obligation to comply), but in any

event not to exceed forty-five (45) days, except in emergency circumstances in which such advance notice is not possible), then the City or its authorized contractor, in addition to its rights and remedies described elsewhere in this Agreement and otherwise available at law, in equity, or otherwise, may, at its election, upon reasonable notice, enter the affected area, and take whatever action the City reasonably deems necessary to meet Consortium's obligations under Environmental Laws, within the time required under such Environmental Laws, consistent with the requirements of Section 12.4. In addition to notice and opportunity to cure as set forth in this Section 12.6.1(b), the City shall provide Consortium with its plan to perform such work for Consortium's review and comment at least seven (7) business days before the commencement of such work, which comments shall be reasonably considered by the City, except in emergency circumstances where such advance notice is not possible. Such action taken by the City consistent with the requirements of this Agreement shall be at Consortium's expense plus administrative expenses of the greater of five hundred dollars (\$500.00) or 25% of all costs incurred by the City, including but not limited to reasonable attorneys' and consultants' fees and expenses, monetary fines and penalties, litigation costs or costs incurred in anticipation of litigation, expert witness fees, and expenses of investigation, removal, remediation, or other required plan, report, or Response action performed in accordance with applicable Environmental Laws.

12.6.2 Except as set forth in Section 12.6.3, below, if the City cannot identify with commercially reasonable effort any of the parties causing, unlawfully allowing, contributing to or responsible for a Release, Discharge, or Disposal at or from the Airport requiring the completion of appropriate Response actions as provided in Section 12.4.1, then City shall provide reasonable advance written notice to Consortium of its intention to take actions, to the extent of Consortium's obligations for such actions as provided in 12.4.1, to report, repair, contain, investigate, remove, correct or remediate such Release, Discharge, or Disposal consistent with the requirements of Section 12.4. Consortium shall thereafter be afforded a reasonable opportunity (not to exceed forty-five (45) days) to commence such actions or provide the City with information on the identity of the party or parties causing, contributing to, or responsible for such Release, Discharge, or Disposal, which information shall be considered in good faith by the City and, as appropriate, shall provide a basis for the City's pursuit of any responsible parties consistent with the provisions of Section 12.6.1. In addition to the above written notice, the City shall provide Consortium with its plan to perform such actions for Consortium's review and comment at least seven (7) business days before the commencement of any work (except in emergency circumstances in which such advance notice is not possible), which comments shall be reasonably considered by the City, after which the costs of such actions, if implemented by the City, shall be allocated by the City to the Terminal Cost Center.

12.6.3 Nothing in this Section 12.6 is intended or shall be construed so as to prevent the City or Consortium from exercising, in their reasonable discretion, any rights granted or available elsewhere in this Article, in this Agreement, or by law.

## **12.7 Environmental Indemnification and Reimbursement**

12.7.1 Notwithstanding any other provision to the contrary, Consortium agrees to indemnify, defend, and hold harmless the City, its past and present elected and appointed

officials, officers, agents and employees ("Environmental Indemnitees"), from and against any and all Environmental Claims resulting from:

- (a) the breach by Consortium of any representation or warranty made in this Article; or
- (b) the failure of Consortium to meet its obligations under this Article, whether caused or unlawfully allowed by Consortium or any third party under Consortium's direction or control; or
- (c) documented loss by any Environmental Indemnitee(s) from any Environmental Claim, to the extent caused, unlawfully allowed or contributed to by the unauthorized Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material by Consortium or by its Associated Parties or the failure of Consortium or any Associated Party to comply with applicable Environmental Laws in connection with the operations of Consortium or its Associated Parties at the Airport or at other property at the Airport used by Consortium pursuant to this Agreement, during the term of this Agreement;

12.7.2 Notwithstanding the provisions of this Section 12.7, in the event that the City and Consortium mutually agree or a court of competent jurisdiction determines by a final order that an Environmental Indemnitee's negligence or willful and wanton misconduct is at least fifty-one (51%) of the total fault which proximately caused the Environmental Claims, Consortium's obligation to indemnify the Environmental Indemnitee for amounts to be paid in connection with the Environmental Claims shall be limited to the amount attributable to Consortium's and its Associated Parties' proportionate share of the total fault which proximately caused the Environmental Claims. The City and Consortium agree, however, that this Section 12.7.2 is not intended to obviate or lessen in any way Consortium's duty to defend the Environmental Indemnitees; provided, however, that to the extent the City and Consortium mutually agree or a court of competent jurisdiction rules that the Environmental Claims were the result of the sole negligent act or omission or the willful and wanton misconduct of an Environmental Indemnitee, the City shall reimburse Consortium for its proportionate share of the costs of defense, including, but not limited to, attorneys' fees and court costs. For the avoidance of doubt, the City shall reimburse Consortium for all defense costs Consortium incurred with respect to defending the City Covered Persons against Claims to the extent that the City and Consortium mutually agree or a court of competent jurisdiction rules that such Claims were the result of the sole negligent act or omission of a City Covered Person.

12.7.3 The City shall provide Consortium with prompt notice of any Environmental Claims to allow Consortium the opportunity to properly and effectively respond to or otherwise defend such Environmental Claims. Consortium shall, at its own cost and expense, defend all Environmental Claims whether frivolous or not. In the event the City undertakes any action, including but not limited to investigations, removals, remediation, or corrective actions with respect to any Environmental Claims in response to the failure of Consortium to defend such Environmental Claims as Consortium deems appropriate in its reasonable judgment, Consortium shall reimburse the City, upon written demand by the City, for all reasonable and documented costs that the City incurs in association with such action, including but not limited to consultants'

fees, contractors' fees, reasonable attorneys' fees and expenses of investigation, removal, Response, remediation, or corrective action.

12.7.4 Except to the extent set forth in Section 12.7.2, above, Consortium waives the right of contribution and subrogation against the Environmental Indemnitees in connection with Environmental Claims set forth in Sections 12.7.2 and 12.7.3, above.

12.7.5 Regardless of the date of termination of this Agreement, the indemnifying party's representations, obligations and liabilities under this Article shall continue as long as the indemnified party bears any liability or responsibility under this Article or the Environmental Laws.

12.7.6 Any claims for environmental matters shall be subject to this Section 12.7 and shall not be subject to the General Indemnity provision of Section 9.2 in this Agreement.

## **12.8 Limitations**

Except pursuant to Sections 12.6.2 and 12.6.3, Consortium's obligations under this Article shall not apply to: (a) any Release, Discharge or Disposal, or Hazardous Substances or Other Regulated Materials that existed at the Airport prior to Consortium's or its corporate predecessor(s)'s initial occupancy or operations at such area(s) of Release, Discharge or Disposal, or Hazardous Substances or Other Regulated Materials at the Airport, provided that neither Consortium or its corporate predecessor(s) nor any other party under Consortium's or its corporate predecessor(s)'s direction or control, or conducting operations or activities on its or their behalf caused, unlawfully allowed or contributed to such Release, Discharge or Disposal, or Hazardous Substances or Other Regulated Materials, or caused, unlawfully allowed or contributed to a subsequent Release, Discharge or Disposal of such pre-existing Hazardous Substances or Other Regulated Materials; or (b) Releases, Discharges, or Disposal that migrate onto, into, or from the areas in the Airport where Consortium performs its Services or the Airport and that were not caused, unlawfully allowed or contributed to by Consortium or its corporate predecessor(s) or third parties under Consortium's or its corporate predecessor(s)'s direction or control or conducting operations or activities on its or their behalf; or (c) Releases, Discharges, or Disposal on, at, or from the Airport not caused, unlawfully allowed or contributed to by Consortium or its corporate predecessor(s) or by its or their Associated Parties, or any other party under Consortium's or its corporate predecessor(s)'s direction or control.

## **12.9 Baseline Environmental Site Inspection**

Prior to Consortium's initial use of, or operations at, the areas in the Airport where Consortium performs the Services, the City shall have the opportunity to perform, at its own expense, an Initial Walk-Through of the areas in the Airport where Consortium performs the Services regarding the environmental condition of the areas in the Airport where Consortium performs the Services and their state of compliance with Environmental Laws and produce an Initial Walk-Through report. The City shall provide Consortium with an opportunity to participate in the walk-through and review and comment upon the conclusions and findings of the Initial Walk-Through report. In the event pre-existing environmental conditions are encountered, the provisions of Section 12.4 shall apply, except that the provision in Section 12.4 limiting Consortium's obligations to incidents during the term of this Agreement shall not apply.

## **12.10 Concluding Environmental Site Inspection**

At least sixty (60) days prior to vacating or surrendering the areas in the Airport where Consortium performs its Services or any portion of them for any reason, Consortium shall provide the City with access to perform a Concluding Walk-Through in order to determine the environmental condition of the Airport or that part of the areas in the Airport where Consortium performs the Services being vacated, and their state of compliance with the requirements of Section 12.1.11. City shall provide Consortium with an opportunity to participate in the walk-through. If the Concluding Walk-Through reveals that Consortium has not removed all trash, containers, tanks, structures, debris, residue, and other items, materials and Waste for which Consortium or anyone operating on its behalf is responsible as required by Section 12.1.11, or has otherwise failed to comply with the requirements of Section 12.1.11, the City will share its Concluding Walk-Through report and any relevant photographs with Consortium. Consortium will remove or correct any items to the extent not in compliance with the requirements of Section 12.1.11 within five (5) business days of receipt of said report and photographs or such longer period of time as reasonably requested by Consortium to perform the corrective actions. Consortium shall leave facilities and equipment being surrendered or vacated by Consortium in a state of good repair. However, tanks, structures and other items and materials owned by Consortium may revert to the City upon agreement of Consortium with the City accepting such tanks, structures and other items and materials in an "as is, where is" condition.

## **12.11 Consortium's Hazardous Substance-Related Equipment and Fixtures**

Any fixed tanks, pumps, chemical or Hazardous Substance or Other Regulated Material containers, pipelines, lines, and equipment or other such fixtures installed by or on behalf of Consortium shall at all times remain the property of Consortium, and ownership of or responsibility for such equipment shall not pass to the City by virtue of such equipment being installed at the areas in the Airport where Consortium performs the Services, except pursuant to the agreement of the City and Consortium. No such equipment shall be installed without the written consent of the City.

## **12.12 Waiver**

Any waiver of any provision of this Article, or any delay by the City in the enforcement of any right hereunder, shall neither be construed as a waiver, nor create an expectation of non-enforcement of that or any other provision or right. In order to be effective, any waiver of any right, benefit, or power hereunder must be in writing and signed by an authorized representative of the City, it being intended that no waiver shall be implied by the City's conduct or failure to act. Any specific written waiver shall be applicable only to the particular facts and circumstances thereby addressed and shall not be of any effect with respect to future events, even if any of said future events involve substantially similar circumstances. Any remedies provided for in this Article shall be cumulative and in addition to, and not in lieu of, any other remedies available to the City elsewhere in this Agreement, at law, in equity, or otherwise.

## **12.13 Notice for Environmental Matters**

With respect to those provisions of this Article 12 which expressly require the City to provide written notice to Consortium, electronic mail to the designated Consortium representative will satisfy such requirement. Consortium's representative for receiving environmental notices is designated in the general Notices provisions in Section 15.3.

#### **12.14 Survival of Environmental Provisions**

Unless specifically stated elsewhere herein, the provisions of this Article, including the representations, warranties, covenants and indemnities of Consortium, are intended to and shall survive termination of this Agreement.

### **ARTICLE 13: SIMILAR FACILITIES**

#### **13.1 Similar Facilities**

The City may, in its sole discretion, construct facilities which have functions that are similar to the Consortium-Maintained City Equipment, and Consortium shall not have any rights hereunder with respect to such facilities.

### **ARTICLE 14: COMPLIANCE WITH LAWS AND RULES**

#### **14.1 Airport Rules**

Consortium shall comply, and, to the maximum extent Consortium has the legal power to do so, shall cause its agents, employees, guests, invitees and Consortium Contractors to comply, with all Airport Rules.

#### **14.2 Observance and Compliance with Laws**

14.2.1 Consortium shall comply, and to the maximum extent Consortium has legal power to do so, shall cause its agents, employees, Consortium Contractors and licensees to, observe and comply with, and pay all taxes and obtain all licenses, permits, certificates and other authorizations required by, all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, including all rules, regulations and directives of the Federal Aviation Administration. Consortium agrees to make a part of and incorporate into this Agreement, by reference or by setting forth at length, at the option of the City, any and all statutes, rules and regulations and any assurances and covenants required pursuant thereto which may now or hereafter be required by the Federal Aviation Administration, or other federal, state, county or municipal agency. To the extent applicable, Consortium shall comply, and cause Consortium Contractors to comply, with the provisions of Exhibit E (City-Delineated Requirements) and Exhibit F (Compliance with Other Laws) of this Agreement.

14.2.2 The City shall operate and maintain the Airport in a reasonably prudent manner and in accordance with Applicable Laws.

14.2.3 Consortium shall perform the Services in a reasonably prudent manner and in accordance with Applicable Laws; provided, however, that this provision shall not be construed

as a waiver by Consortium to challenge a local law, rule, regulation or ordinance that is preempted by State or Federal law.

14.2.4 Notwithstanding anything herein to the contrary, references herein to a statute or law shall be deemed to be a reference to (i) such statute or law as may be amended from time to time, (ii) all regulations, rules, executive orders, policies and instructions pertaining to or promulgated pursuant to such statute or law, and (iii) all future statutes, laws, regulations, rules, executive orders, policies and instructions pertaining to the same or similar subject matter.

### **14.3 Subordination to Sponsor's Assurance Agreement**

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

### **14.4 Agreements with the United States**

This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United States, the terms and execution of which have been or may be required to enable or permit the transfer of rights or property to the City for airport purposes, or the expenditure of federal grant funds for Airport improvement, maintenance or development. Consortium shall reasonably abide by the requirements of agreements entered into between the City and the United States, as applicable to Consortium, and shall consent to amendments and modifications of this Agreement if required by such agreements or if required as a condition of the City's entry into such agreements.

### **14.5 Security and Payment of Fines for Violation of Federal Regulations**

14.5.1 Consortium acknowledges that security is of primary importance at the Airport and that security requirements are likely to change during the Term. Consortium, its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, shall comply with security measures, as applicable, (a) required of Consortium by the FAA or the TSA or by the City in accordance with applicable requirements of the FAA or the TSA or their authorized successor(s) or (b) contained in any Airport master security plan approved by the FAA or the TSA or their authorized successor(s). Consortium shall comply, at its own expense, with the TSA's security requirements applicable to Consortium at the Airport including, but not limited to, employee security training, badging, criminal background checks, access control, screening and inspections. Consortium shall cooperate with the TSA on all security matters.

14.5.2 Consortium understands and agrees that security requirements may affect Consortium's operations and costs. Consortium shall be strictly liable for the payment of any fines assessed by the City or the payment of (or reimbursement of City for any payments of) any civil penalties assessed against City or Consortium relating to security and resulting from the negligence or intentional acts of omission or commission of Consortium's officers, employees,

representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, and Consortium shall be solely and fully responsible for any and all breaches of security and the consequences thereof resulting from the negligence or intentional acts of omission or commission of its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control.

14.5.3 The City may impose and Consortium agrees to pay a reasonable non-discriminatory cost-based user fee, if any, for the privilege of using identification cards or badges to gain access to the Airport security access control system.

#### **14.6 Federal Tax and Securities Laws**

14.6.1 Consortium, upon the City's request, shall provide to the City such information and certifications as the City may require to maintain the tax-exempt status of the interest on GARBs.

14.6.2 Consortium, upon the City's request, shall provide to the City such information as the City may reasonably request in writing in connection with the offering, sale and remarketing of GARBs to enable the City to comply with the requirements of the federal securities laws and to comply with the City's continuing disclosure requirements under SEC Rule 15c2-12, as it may be amended from time to time, provided, however, that Consortium may, in lieu of providing the requested information, direct the City to an Consortium or SEC website where the requested information is then currently available.

#### **14.7 Anti-Scofflaw**

Consortium hereby represents and warrants as to itself, and shall cause each of its Consortium Contractors to represent and warrant as to such Consortium Contractor, that it is not in violation of Section 2-92-380 of the Municipal Code, and further represents and warrants that, in the event of any such violation, the City shall be entitled to set off from those amounts invoiced by Consortium an amount equal to the amount of any fines or penalties owed to the City, subject to those exceptions stated in the Municipal Code.

#### **14.8 Ethics**

Consortium hereby represents and warrants and shall cause each of its Consortium Contractors to represent and warrant that Consortium or such Consortium Contractors, as the case may be, is not in violation of Chapter 2-156 of the Municipal Code.

#### **14.9 Inspector General**

Consortium understands and will abide by the provisions of Chapter 2-56 of the Municipal Code. Consortium acknowledges and agrees that it shall be the duty of Consortium and its sub-licensees, Contractors and all their officers, directors, agents, partners and employees to cooperate with the Inspector General of the City in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. All contracts and other agreements must inform the parties of this provision and require understanding and compliance with it.

#### **14.10 Business Relationships With Elected Officials, Municipal Code Section 2-156-030(b)**

Consortium understands and will abide by the provisions of Section 2-156-030 of the Municipal Code, as applicable. Pursuant to Municipal Code Section 2-156-030(b), it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. Violation of Municipal Code Section 2-156-030(b) by any elected official with respect to this Agreement at the request or direction of Consortium will be grounds for termination of this Agreement. The term “financial interest” is defined as set forth in Municipal Code Section 2-156-080.

Municipal Code Section 2-156-010(l) defines a “financial interest” as an interest held by an official or employee that is valued or capable of valuation in monetary terms with a current value of more than \$1,000.00, provided that such interest shall not include: (1) the authorized compensation paid to an official or employee for any office or employment; or (2) a time or demand deposit in a financial institution; or (3) an endowment or insurance policy or annuity contract purchased from an insurance company; or (4) any ownership through purchase at fair market value or inheritance of the shares of a mutual fund corporation, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; or (5) any ownership through purchase at fair market value or inheritance of not more than one-half of one percent of the outstanding common stock of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended.

#### **14.11 City of Chicago Hiring Plan (Shakman Accord)**

The City is subject to the May 31, 2007 Order entitled “Agreed Settlement Order and Accord” and the June 16, 2014 “City of Chicago Hiring Plan” (the “2014 City Hiring Plan”) entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Agreed Settlement Order and Accord and the 2014 City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

Consortium is aware that City policy prohibits City employees from directing any individual to apply for a position with Consortium, either as an employee or as a contractor, and

from directing Consortium to hire an individual as an employee or as a contractor. Accordingly, Consortium must follow its own hiring and contracting procedures, without being influenced by City employees.

#### **14.12 No Waste Disposal in Public Way, Municipal Code Section 11-4-1600(E)**

Consortium warrants and represents that it has not violated and is not in violation of the following sections of the Municipal Code (collectively, the “Waste Sections”):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory, Consortium’s violation of the Waste Sections, whether or not relating to this Agreement, constitutes a breach of and an event of default under this Agreement. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

This Section 14.12 does not limit Consortium’s duty to comply with Applicable Law.

### **ARTICLE 15: GENERAL PROVISIONS**

#### **15.1 No Partnership or Agency**

Nothing herein contained is intended or shall be construed to in any respect create or establish any relationship other than that of City and Consortium, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Consortium the general representative or agent of the City for any purpose whatsoever.

#### **15.2 No Personal Liability**

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

#### **15.3 Notices**

Except as otherwise expressly provided hereunder, all notices and other communications provided for under this Agreement shall be in writing and shall be: (a) mailed; (b) personally delivered, including via overnight courier; or (c) to the extent expressly permitted elsewhere in

this Agreement for a specific notice or as mutually agreed by parties, sent by electronic mail with electronic receipt, to the City and Consortium at the following addresses:

If to the City, to:

Commissioner  
Chicago Department of Aviation  
Chicago O'Hare International Airport  
10510 West Zemke Road  
Chicago, IL 60666  
[CDACommissioner@cityofchicago.org](mailto:CDACommissioner@cityofchicago.org)

With a copy to:

General Counsel  
Chicago Department of Aviation  
Chicago O'Hare International Airport  
10510 West Zemke Road  
Chicago, IL 60666  
[CDAGeneralCounsel@cityofchicago.org](mailto:CDAGeneralCounsel@cityofchicago.org)

If to Consortium for all notices, except pursuant to Section 12.13 (Notice for Environmental Matters) or 15.7 (Service of Process) of this Agreement, to:

Terminal 5 – Mezzanine Level  
10000 West O'Hare Drive  
Chicago, Illinois

If to Consortium for notices on environmental matters pursuant to Section 12.13,  
to:

\_\_\_\_\_  
[cc: Consortium general contact] \_\_\_\_\_  
[Non-individual Electronic Mail Address]

Or, with respect to any notice given pursuant to this Section 15.3, to such other person or address as either the City or Consortium may hereafter designate by written notice to the other in accordance with this Notices section. Except as otherwise expressly provided hereunder, any notice or communication under this Agreement shall be deemed to have been given or made: (a) if a messenger or courier service is used, when delivered to the addressee; (b) if sent by mail (certified or by other method with tracking and confirmation receipt), upon receipt, or upon attempted delivery where delivery is refused or mail is unclaimed five (5) days after being deposited in the mails, postage prepaid and properly addressed; and (c) if sent by electronic mail, upon receipt by either party of a written reply or electronic receipt). Consortium agrees to provide the City with any changes to its notice information, including electronic mail addresses, within five (5) business days of such change.

With respect to Section 15.7 (Service of Process) of this Agreement, Consortium hereby designates as its agent in Chicago, Illinois;

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

**15.4 Entire Agreement**

This Agreement, including the attached Exhibits and endorsements, constitutes the entire agreement of the parties on the subject matter hereof. The parties intend that this Agreement shall be the final expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever (including prior drafts of the Agreement) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

**15.5 Amendment**

Except as otherwise expressly provided herein, the provisions of this Agreement may be amended only by a written agreement signed by the City and Consortium.

**15.6 Applicable Law**

This Agreement shall be deemed to have been made in, and shall be construed in accordance with, the laws of the State of Illinois.

**15.7 Authorization to Operate; Consent to Service of Process and Jurisdiction**

15.7.1 Consortium warrants that it is a non-for-profit corporation organized and existing under the laws of the State of Illinois on the signature page hereof. Consortium warrants that it is, and throughout the term of this Agreement it will continue to be, duly qualified to do business in the State of Illinois.

15.7.2 All judicial proceedings brought by the City against Consortium with respect to this Agreement may be brought in any court of competent jurisdiction having situs within the boundaries of the federal court district of the Northern District of Illinois including any of the courts within Cook County, and by execution and delivery of this Agreement, Consortium accepts, for itself and in connection with its properties, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. Consortium irrevocably designates and appoints the representative designated in Section 15.3 as its agent in Chicago, Illinois to receive on its behalf service of all process in any such proceedings in any such court (which representative shall be available to receive such service during regular

business hours), such service being hereby acknowledged by such representative to be effective and binding service in every respect. Said agent may be changed only upon the giving of written notice by Consortium to the City of the name and address of a new Agent for Service of Process that works within the geographical boundaries of the City and is employed by Consortium. Consortium irrevocably waives any objection (including any objection of the laying of venue or based on the grounds of forum non conveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Agreement in the jurisdiction set forth above. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of the City to bring proceedings against Consortium in the courts of any other jurisdiction.

### **15.8 Severability**

If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

### **15.9 Representatives**

The City and Consortium shall each designate a representative who, except as otherwise provided hereunder, shall be authorized to act for the City and Consortium, respectively, with respect to any actions to be taken by either of them under the terms of this Agreement. Except as specifically set forth herein, for the purposes of actions to be taken by it or by the Commissioner, the City's representative shall be the Commissioner. Consortium's representative shall be designated in a written notice delivered to the City. Any party hereto may change its designated representative by notice to the other party.

### **15.10 Successors and Assigns**

All of the covenants, stipulations and agreements herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

### **15.11 No Third Party Beneficiaries**

Unless otherwise provided in this Agreement, this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

### **15.12 No Waiver**

No failure by City to insist upon the strict performance of any obligation of Consortium under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, prior to the expiration of the Term by City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Agreement.

No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed or operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party.

### **15.13 No Exclusive Right or Remedy**

All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties hereunder or at law or in equity.

### **15.14 Labor Disputes**

Consortium agrees to use reasonable efforts to avoid disruption to the City, its tenants, or members of the public arising from labor disputes involving Consortium, and in the event of a strike, picketing, demonstration or other labor difficulty involving Consortium, to use its good offices, including the utilization of available legal remedies Consortium deems appropriate, to minimize or eliminate any disruption to the City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

### **15.15 Headings**

The headings of the several sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions, or the interpretation or construction, of this Agreement.

### **15.16 Action or Exercise of Power by the City**

Any provision in this Agreement that requires action or an exercise of power by the City may be performed by the Commissioner or her or his designee, unless otherwise specified in this Agreement.

### **15.17 Counterparts**

This Agreement may be executed in one or more counterparts.

*[Rest of page intentionally left blank]*

**IN WITNESS WHEREOF**, the City has caused this Agreement to be executed on its behalf by its Mayor, pursuant to the due authorization of the City, and its seal to be hereunder affixed and attested by the City Clerk of City, and Consortium has caused this Agreement to be executed on its behalf by its Authorized Representative.

CITY OF CHICAGO

\_\_\_\_\_  
Mayor

Recommended by:  
DEPARTMENT OF AVIATION

\_\_\_\_\_  
Commissioner

Approved as to form and legality:

\_\_\_\_\_  
Chief Assistant Corporation Counsel

Chicago Airlines Terminal Consortium

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

Address for Notice to Chicago Airlines  
Terminal Consortium:

Terminal 5 – Mezzanine Level  
10000 West O’Hare Drive  
Chicago, Illinois

Designation of Agent for Service of Process:

\_\_\_\_\_

## EXHIBIT A

### CONSORTIUM-MAINTAINED CITY EQUIPMENT

The equipment listed below is representative of the types of Consortium-Maintained City Equipment that the Consortium will be responsible for operating and maintaining pursuant to this Agreement. The Consortium will only be responsible for maintaining City Equipment as defined in the Airline Use and Lease Agreement. Airlines will have the right to maintain City Equipment located on preferentially leased space if they so desire. A detailed list of specific equipment, including type and location, will be developed and included as an update and/or attachment to this Exhibit.

Consortium acknowledges and agrees that this Exhibit A may be revised by the City and reissued to Consortium from time to time during the Term in accordance with terms and conditions of this Agreement. The City and Consortium agree that, upon issuance by the City, and acknowledgement and acceptance in writing by Consortium, each revised Exhibit A shall be deemed attached to and incorporated into this Agreement, and shall supersede and replace the last issued Exhibit A attached to and incorporated into this Agreement without the need for a written amendment of the Agreement signed by the City and Consortium.

- Passenger Loading Bridges
- Ground Power Units (400 Hertz)
- Pre-Conditioned Air
- Potable Water Closets
- Airline Waste Triturator Facilities
- Gate Guidance Systems
- Ticket Podium Millwork
- Portable Gate Podiums
- Dumb Waiters
- Share Equipment Technology/Common Use Technology Equipment System
- Ticket Counters
- Check in Kiosks
- Ticket Counter Informational Displays
- Back Wall Displays
- Baggage Scales
- Electronic Ground Support Equipment Charging Station
- Baggage Systems
- Baggage Carousels
- Tower Equipment
- Power Center Charging Branch Circuit Plants
- UPS Battery Back Up Systems

- Pumps and other equipment for ethylene glycol, propylene glycol or other substance in deicing or anti-icing

## EXHIBIT B

### CONSORTIUM-PROVIDED-TO-CITY SERVICES

The Consortium shall provide the following services within the geographic areas agreed upon by City and Consortium in an attachment to this Exhibit B, as may be updated from time to time.

Consortium acknowledges and agrees that this Exhibit B may be revised by the City and reissued to Consortium from time to time during the Term in accordance with terms and conditions of this Agreement. The City and Consortium agree that, upon issuance by the City, and acknowledgement and acceptance in writing by Consortium, each revised Exhibit B shall be deemed attached to and incorporated into this Agreement, and shall supersede and replace the last issued Exhibit B attached to and incorporated into this Agreement without the need for a written amendment of the Agreement signed by the City and Consortium.

- **Ramp Management.** Consortium will be responsible for the safe and efficient management of all common use ramp space and other ramp space designated by the City and Consortium space (such as ramp space for irregular operations and accommodated gates), including all City Equipment and non-City owned equipment (including Consortium Property) used in such common use or other designated ramp as indicated in a diagram, drawing, or other document agreed upon by the City and Consortium.
- **Gate Coordination.** The City may request Consortium to manage day-to-day utilization of Common Use Gates and, in cases of accommodation or irregular operations, Preferential Use Gates and, in all cases, in accordance with the Terminal Space Use Protocols.
- **Management of Scheduling Manager Contract.** Consortium will contract with the Scheduling Manager and manage the Scheduling Manager Agreement.
- **Passenger Bussing.** The City may request Consortium to manage the airside and/or landside bussing of passengers between the terminals.
- **Airport Employee Parking.** Consortium will manage Airport parking lots for certain non-City Airport employees and enter into the East Airport Employee Parking Lot Lease with Consortium to facilitate such management.

## **EXHIBIT C – MINIMUM SERVICE LEVELS**

### **Overview**

These Minimum Service Levels (“MSL”) establish the minimum requirements to be maintained by Consortium for the facilities system and equipment. Provisions of the MSL must be met or exceeded by Consortium and all Consortium vendors. Failure to maintain the levels specified herein may constitute a default in accordance with this Agreement.

Consortium acknowledges and agrees that this Exhibit C may be revised by the City and reissued to Consortium from time to time during the Term in accordance with terms and conditions of this Agreement. The City and Consortium agree that, upon issuance by the City, and acknowledgement and acceptance in writing by Consortium, each revised Exhibit C shall be deemed attached to and incorporated into this Agreement, and shall supersede and replace the last issued Exhibit C attached to and incorporated into this Agreement without the need for a written amendment of the Agreement signed by the City and Consortium.

### **Standard of Performance**

Consortium will perform, or cause to be performed, all services required of it under the terms and conditions of this Agreement with that degree of skill, care, and diligence normally exercised by agents performing similar types of services in projects of a comparable scope and magnitude. Consortium will use its best efforts to assure timely and satisfactory performances of services in the manner that fulfills the stated purposes of this agreement. Consortium will at all times act in the best interest of CDA and Consortium’s Member airlines, consistent with the professional and fiduciary obligations assumed by it in entering into this Agreement.

Consortium will require its contractors and subcontractors of any tier to perform all services required of them in accordance with these standards. Consortium will further require its contractors and its subcontractors of any tier to perform again, or cause to be performed again, at their own expense, any and all services which are required to be re-performed as a direct or indirect result of such failure.

### **Goals and Objectives**

The purpose of the MSL is to establish the minimum service requirements and quality standards to be maintained by Consortium for Consortium-Maintained City Equipment to extend their useful life and for Consortium-Provided Services.

The goal of the MSL is to ensure excellent services levels for the City of Chicago and all members represented by Consortium.

The objectives of the MSL are to:

- Provide clear delineation of services ownership, accountability, roles and/or responsibilities.
- Present a clear, concise, and measurable description of services provision to the City.

- Match perceptions of expected service provision with actual service support and delivery.
- Provide the City with transparent and accessible maintenance records

## **The City of Chicago Department of Aviation (CDA) and Consortium Requirements**

CDA's responsibilities related to the MSL include:

- Providing Consortium, Members, Consortium Contractors, service providers and their employees access to areas in which Consortium performs Services.
- Badging for Consortium and Consortium Contractor personnel
- Coordinating CDA maintenance and operations activities with Consortium
- Providing access to appropriate CDA representatives when resolving a service related issue or request
- Notifying Consortium of MSL deficiencies

Consortium Requirements related to the MSL include:

- Meeting response times associated with service related incidents
- Generating reports on service levels for the CDA
- Training required staff on equipment and associated service support tools
- Maintaining, storing and procuring spare parts, tools, and accessories for Consortium-Maintained City Equipment and Consortium-Provided-to-City Services.
- Tracking Consortium resources hours associated with service provided
- Providing and maintaining a Computerized Maintenance Management System ("CMMS") to be used for record maintenance of equipment maintained by Consortium
- Providing appropriate notification to CDA and all affected stakeholders regarding scheduled maintenance
- Facilitating all service support activities involving incidents, problems, changes, releases, and configuration management
- Providing Consortium Contractor personnel with the appropriate qualifications and security credentials to perform their work
- Performing all manufacturer-recommended preventative maintenance in accordance with the manufacturer's recommended schedule and specifications
- Performing maintenance in the public circulation areas between the hours of 2100 and 0500 when practical to minimize passenger inconvenience and disruptions
- Maintaining and repairing Consortium-Maintained City Equipment in proper working order in accordance with manufacturer recommendations, specification or standard industry practice, whichever is most stringent
- Maintaining a complete set of all maintenance records and to the CDA upon request, including preventative maintenance, reactive maintenance, corrective maintenance records, and inventory levels

- Maintain records of all user and maintenance training activities including trainer and trainees
- Logging maintenance work orders in the CMMS
- Staffing and maintaining a 24/7/365 dispatch office located in the Terminal Complex to provide support to all users and stakeholders
- Provide a duty manager 24/7/365 who is responsible for all Consortium activities

## **Service Requests**

In support of minimum service requirements outlined in the MSL, Consortium will respond to service related incidents and/or requests submitted by users with the following time frames:

- Fifteen (15) minutes for issues classified as Critical
- One (1) hour for issues classified as High Priority
- Eight (8) hours for issues classified as Medium Priority
- Twenty-Four (24) hours of issues classified as Low Priority
- Seven (7) days for general service request.

Consortium will be responsible for assigning the appropriate classification to each service request received.

## **Service Exceptions**

Consortium will meet or exceed all service levels and standards contained herein. However, certain events are outside the control of Consortium and will affect the level of service that Consortium is able to provide.

Unless caused by a Consortium Contractor, the following issues will be deemed outside the control of Consortium and will not be factored in determining Consortium's achievement of service levels, including but not limited to:

- An act of negligence by tenants using or operating Consortium-Maintained City Equipment
- Loss of terminal utility infrastructure that affects Consortium systems and equipment
- Fire or security event requiring the shutdown of the terminal facilities, system, or equipment.

Although Consortium cannot control or eliminate these types of issues, Consortium will mitigate them by providing refresher training to the responsible parties, or take alternative actions to mitigate future similar incidents. Consortium will be responsible for notifying the responsible parties and providing support information to the CDA as needed.

## **Service Management**

The effective provision of the in-scope services will result in consistent service levels. The following sections provide relevant detail defining MSL requirements for service availability, monitoring, measurement, reporting, and other related components of in-scope services.

### **Service Maintenance Window Definition**

All system equipment, and/or related components require regularly scheduled maintenance in order to meet established service levels. These activities will render system and/or applications unavailable for normal use. Consortium will coordinate all scheduled maintenance with the affected parties to minimize disruptions. Maintenance that impacts the public will be performed between the hours of 2100 and 0500 when practical.

### **Outage Definition**

An Outage is defined as a temporary suspension of operation due to the failure of the equipment or system component or system software, rendering the system unusable for its intended purpose. An outage begins once it is reported to Consortium dispatch, and will be deemed over once the equipment or system has been returned to service, or once a temporary solution has been implemented by Consortium.

### **Availability Restrictions**

Scheduled maintenance must be coordinated with all tenants and stakeholders and accommodate regular and irregular operations in accordance with the Facilities Maintenance Protocols. Tenants and the CDA must be provided the opportunity to make a proceed/abort decision prior to the start of scheduled maintenance.

### **Reporting**

As part of the MSL, Consortium will be responsible to provide the CDA with reports related Consortium-Maintained City Equipment and Consortium-Provided-to-City Services, each containing the information below.

#### **Monthly**

Consortium will submit to the CDA a monthly status report Consortium-Maintained City Equipment and Consortium-Provided-to-City Services. The monthly status report will be provided within 14 days of the end of each month, and will include, at a minimum the following information:

##### **System and Equipment Status Reports**

- Number of service requests by category
- Number of open service requests

- Number of closed service request by category
- Scheduling of major maintenance activities for the next 30/60/90 days
- Overall availability for each Consortium-Maintained City Equipment and Consortium-Provided-to-City Services
- Number of outages for each Consortium-Maintained City Equipment and Consortium-Provided-to-City Services

#### Ramp Control

- Average aircraft wait time from requests to authorization for clearance to push
- Volume during peak periods
- Common use gate activity
  - Air Carrier
  - Aircraft Type
  - Activity Type ( Turnaround, Terminator, Originator)
- Number and type of ground handling infractions
  - Offender
  - Offense
  - Remedy

#### Quarterly

Consortium will submit to the CDA a quarterly status report Consortium-Maintained City Equipment and Consortium-Provided-to-City Services. The quarterly status report will be provided within 30 days of the end of each quarter, and will include, at a minimum, a summary of the monthly status reports for each month in the quarter, and the following information:

#### System and Equipment Status Report

- Recurring issues and mitigation plan(s)
- Training activities
- Inventory levels

#### Ramp Control Report

- Ground handling infraction trends and mitigation plan(s)

#### Management Report

- Budgeted vs. Actual expense for each Consortium vendor or contractor
- Projected expenses for the next quarter
- Issues related to the business processes established for Consortium and recommendations for improvement
- Any Contractual issues related to Consortium vendors and contractors

## **Annual Report**

Consortium will submit to the CDA an annual status report for Consortium-Maintained City Equipment and Consortium-Provided-to-City Services. The annual status report will be provided within 30 days of the end of the year, and will include, at a minimum, a summary of the quarterly status reports for each month of the year, and the following information:

### **Ramp Control Report**

- Common use gate turns
- Common use gate activity projections

## **Ad Hoc Reports**

The following Ad Hoc Reports will be provided at a specific time or on an as needed basis as indicated in the report description below.

### **Consortium Budget Report**

The budget report will provide an estimate budget for all services of the MSL related to the Consortium-Maintained City Equipment and Consortium-Provided-to-City Services for the upcoming fiscal year. The budget report will be provided to the CDA on or before June 30 of each year. The budget report will provide a breakdown of all Consortium contract budgets including in the MSL as follows:

- Executive Summary
- Fiscal Year Budget Summary
- Budget Detail
  - Vendor/Contractor Name
  - Vendor/Contractor Description
  - Vendor/Contractor Duration
  - Vendor/Contractor Estimated Budget
  - Vendor/Contractor MBE/WBE total payments

### **Incident Reports**

The incident report will be provided for any incident that occurs in the area of responsibility of Consortium. The incident report will provide a copy of the service request and will include, at a minimum, the following information:

- Incident number
- Date of incident
- Time of incident
- Duration of incident

- Location of incident
- Description of incident
  - Cause of incident
  - Effect of incident
  - Resolution of incident
- Action to be taken against offending party
- Mitigation plan to prevent future similar incidents

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**EXHIBIT D – AMENDED AND RESTATED MEMBER AGREEMENT**

**CHICAGO AIRLINES TERMINAL CONSORTIUM  
AMENDED & RESTATED MEMBER AGREEMENT**

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## EXHIBITS

- Exhibit A: Existing Members
- Exhibit B: Voting Requirements Index
- Exhibit C: Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services
- Exhibit D: Cost Centers for Consortium-Maintained City Equipment, Consortium Property, and Consortium-Provided-Services; and Calculation of Usage for Consortium Property and Consortium-Provided to Airlines Services

## **CHICAGO AIRLINES TERMINAL CONSORTIUM**

### **AMENDED & RESTATED MEMBER AGREEMENT**

THIS AMENDED AND RESTATED MEMBERS AGREEMENT (this "Agreement") is made and entered into and effective as of May 12, 2018 ("the Effective Date") by and among the Air Carriers that execute this Agreement as Member airlines as named on the signature page hereof and Chicago Airlines Terminal Consortium ("CATCo" or the "Consortium"), formerly known as CICA Terminal Equipment Corporation, all of whom acknowledge entering into this Agreement on the basis of the following facts and understandings:

WHEREAS, CICA Terminal Equipment Corporation has been operating and maintaining facilities, equipment and systems specifically at International Terminal 5 ("Terminal 5") of Chicago O'Hare International Airport ("Airport") under the CICA Terminal Equipment Corporation Members Agreement dated January 1, 1990; and

WHEREAS, the Member airlines wish to amend the CICA Terminal Equipment Corporation Members Agreement so that CATCo will operate and maintain facilities, equipment and systems in Terminal 5 and the Main Terminal of the Airport and provide other services to the City of Chicago (the "City"), Member airlines and other third parties; and

WHEREAS, the Member airlines have formed the Consortium to operate and maintain facilities, equipment, and systems owned by the City or owned, leased or otherwise acquired by the Consortium and to perform certain services for handling of passengers and flights at the Airport, providing reasonable access to such facilities, equipment and systems to all Air Carriers; and

WHEREAS, the Consortium and the City are parties to that certain agreement by and between the City and the Consortium effective as of May 12, 2018 (the "Consortium Agreement"), pursuant to which the City grants to the Consortium and the Consortium undertakes the right and responsibility to use, operate and maintain the Consortium-Maintained City Equipment and provide other services to the City as described in the Consortium Agreement, and the City acknowledges that the Consortium may provide services to Air Carriers; and

WHEREAS, the Consortium desires to acquire certain Consortium Property (as defined below) for use in its operations at the Airport; and

WHEREAS, the Consortium and the City may establish reasonable and equitable standards, practices and fees relating to the use, operation and maintenance of the Consortium-Maintained City Equipment and Consortium Property and the performance of Consortium-Provided Services for the City and Member airlines; and

WHEREAS, the Consortium and the Consortium Manager will be parties to the Consortium Manager Agreement, pursuant to which the Consortium will engage the Consortium Manager to manage the Maintenance Operators, Scheduling Manager and other Contractors, and for any other duties as specified in the Consortium Manager Agreement; and

WHEREAS, the Consortium and the Maintenance Operators will be parties to the Maintenance and Operating Agreements, pursuant to which the Consortium will engage the Maintenance Operators to maintain and operate the Consortium-Maintained City Equipment and Consortium Property and to provide Consortium-Provided Services at the Airport; and

WHEREAS, the Consortium and the Scheduling Manager will be parties to the Scheduling Manager Agreement, pursuant to which the Consortium will engage the Scheduling Manager, subject to City approval, to provide Scheduling Manager services at the Airport; and

WHEREAS, the Member airlines desire to execute this Amended and Restated Member Agreement among themselves to provide for the rights and duties of the Members as among themselves relating to: (i) the Consortium; (ii) the use, operation and maintenance of the Consortium-Maintained City Equipment and Consortium Property and the performance of Consortium-Provided Services; (iii) the allocation of costs and revenues thereof; and (iv) other matters related to the foregoing.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements herein contained, the Members and the Consortium agree as follows:

## **ARTICLE 1. DEFINITIONS**

### **1.1 Definitions.**

All capitalized terms used but not otherwise defined in this Member Agreement shall have the respective meanings ascribed to them in the Airline Use & Lease Agreement as may be amended from time to time.

“Acceptance Date” means the date on which an Air Carrier becomes a New Member or an Additional Member pursuant to Article 4 and Article 5 respectively.

“Additional Member” means an Air Carrier that becomes a party to this Member Agreement pursuant to Article 5 after the Effective Date.

“Airline Use and Lease Agreement” means the Airline Use and Lease Agreement effective as of May 12, 2018 between the City and various Signatory Airlines.

“Auditor” means the accounting firm that may be selected by a Consortium Majority-In-Interest of the Board of Directors to audit the financial records of the Consortium.

“Board of Directors” means the Board of Directors of the Consortium established

pursuant to Article 8 hereof.

"Business Day" means any day other than Saturday, Sunday, or legal holidays in Chicago, Illinois.

"Capital Contribution" means, with respect to any Member, the aggregate amount of money contributed to the Consortium pursuant to Section 6.1 hereof.

"CDA" or "Department of Aviation" means the Chicago Department of Aviation or any successor agency thereto.

"Certified Service Provider" means any entity providing commercial aeronautical or other services to one or more Air Carriers at the Airport or the Consortium, who has obtained all necessary licenses and approvals of the City.

"Certificate" means the Certificate of Organization of the Consortium and any and all amendments thereto and restatements thereof filed on behalf of the Consortium with the State of Illinois.

"Chairperson" means the Chairperson of the Board of Directors appointed by the Board of Directors in accordance with Section 8.3 of this Member Agreement.

"City" means the City of Chicago, a municipal Corporation and home rule unit of local government organized and existing under Article VII, Sections 1 and (6)(a), respectively, of the 1970 Constitution of the State of Illinois.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the date of this Member Agreement. A reference to a specific section (§) of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Member Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Member Agreement containing such reference.

"Consortium" means Chicago Airlines Terminal Consortium, an Illinois not-for-profit corporation, previously known as CICA Terminal Equipment Corporation.

"Consortium Agreement" means the Agreement entered into by and between the City of Chicago and the Chicago Airlines Terminal Consortium, effective as of May 12, 2018, as may be amended or supplemented, from time to time, in which the City grants to the Consortium and the Consortium undertakes the right and responsibility to use, operate and maintain Consortium-Maintained City Equipment, provides for certain Consortium-Provided-to-City Services and acknowledges that the Consortium may provide Consortium-Provided-to-Airlines Services.

"Consortium Associated Party(ies)" means employees, contractors, subcontractors, agents, licensees, sublessees, vendors, invitees, and other parties under Consortium's direction or

control that come onto the Airport arising out of or relating to Consortium's use or occupancy of the Airport.

"Consortium Charge" means the total amount invoiced by the Consortium to Users who are Members, minus any payments received from Users who are not Members, in each case with respect to Consortium Property and Consortium-Provided –to-Airlines Services.

"Consortium-Maintained City Equipment" shall have the meaning ascribed in the Consortium Agreement.

"Consortium-Maintained City Equipment Refurbishment and Replacement Plan" has the meaning ascribed to it in Section 2.8 of the Consortium Agreement.

"Consortium Majority-In-Interest" means, during any Fiscal Year any five (5) or more Members which, in the aggregate, represent more than fifty percent (50%) or more of Usage of Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services by all Members for the preceding Fiscal Year in those instances where such approval is required. For purposes of determining a Consortium Majority-in-Interest of Members, no Air Carrier shall be deemed a Member so long as an Event of Default (as defined in Article 13 hereof) with respect to such Member has occurred and is continuing, and the Board of Directors has given written notice of such Event of Default to such Member. Whenever such approval of or action by a Consortium Majority-in-Interest is required hereunder, it shall be evidenced in writing by the Chairperson of the Board of Directors. In the event that an action is to be taken and the vote required is not specified, a Consortium Majority-in-Interest shall be the vote required.

"Consortium Management and Administration Costs" means the management and administrative costs and expenses of the Consortium attributable either as a Direct Cost to one of the functional cost centers, or as an Indirect Cost of the Consortium.

"Consortium-Provided-to-Airlines Services" means those services, agreed upon by the Members of the Consortium and set forth in Exhibit C of this Agreement as may be amended from time to time.

"Consortium-Provided-to-Airlines Services Charge" shall mean the Direct Costs charged to an airline for the use of specific services plus an allocation of Consortium Management and Administrative Costs as further detailed in Exhibit D of this Agreement.

"Consortium-Provided-to-City Services" means those services, set forth in Exhibit C of this Agreement as may be amended from time to time pursuant to the Consortium Agreement.

"Consortium Property" means equipment, systems, furnishings and fixtures owned leased, or otherwise acquired by the Consortium but, in no case, owned by the City, that are used by the Consortium or the Users in their operations.

“Consortium-Provided Services” means Consortium-Provided-to-Airlines Services and Consortium-Provided-to-City Services.

“Consortium Rentals” means amounts paid by the Consortium to the City for lease of the premises exclusively used by the Consortium pursuant to the Facilities Lease.

“Consortium Super Majority-In-Interest” means, with respect to a vote for or against any matter arising under or related to this Member Agreement, the votes of those Member Representatives of Members entitled to vote and not then in default that collectively represent: (a) more than seventy-five percent (75%) in number of the Members; and (b) more than seventy-five percent (75%) of Usage of the Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services of the Members for the twelve months prior to the month in which the vote is taken.

“Contractor” means a person or firm hired by Consortium to act as an agent or independent contractor, as well as subcontractors of any such agent or independent contractor, in connection with or pursuant to the performance of any acts or obligations under this Agreement, including the Consortium Manager, Scheduling Manager, Ramp Manager and any Maintenance Operator.

“Cost Centers” means those categories of the Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services defined for the allocation of expenses as outlined in Exhibit D.

“Covered Person” means a Member, any Affiliate of a Member, any officers, directors, managers, trustees, members, shareholders, partners, employees, representatives or agents of a Member, or their respective Affiliates, or any employee or agent of the Consortium any Consortium Associated Parties, or any members of the Consortium’s Board of Directors, Management Committee and Operations Committee.

“Deplaned Passenger” means all revenue passengers arriving at the Airport.

“Direct Costs” means those costs and expenses directly related to a particular cost center, including costs and expenses resulting from but not limited to Maintenance and Operating Agreements, service contracts, lease payments, dedicated Consortium Manager staff, and any other costs and expenses directly attributable to a particular cost center.

“Employee Lot Busing Operations and Maintenance” means the employee lot busing operation including the ground lease, busing, and facility maintenance.

“Enplaned Passengers” means all originating and all outgoing on-line transfer and off-line transfer revenue passengers departing from the Airport, but does not include through passengers.

“Existing Member” means any Air Carrier who is a member of CICA Terminal Equipment Corporation and elects to become a Member of CATCo on or before the Effective Date.

“Extraordinary Cost” means a non-recurring expenditure or obligation of the Consortium: (a) that is not a part of the normal and regular ongoing expense of maintaining and operating the Consortium-Maintained City Equipment and Consortium Property; and (b) the cost of which is recovered in a manner and over a period determined by the Consortium. Extraordinary Cost shall not include the obligation of non-defaulting Members to provide funds to the Consortium in the event of a default by a Member.

“Facilities Lease” shall have the meaning ascribed thereto in the in the Consortium Agreement.

“Final Audit” shall have the meaning set forth in Section 9.3.

“Fiscal Year” means January 1 through December 31 of any year or such other fiscal year as the Consortium may adopt.

“Indirect Costs” means those costs and expenses that are not directly related to any one of the functional cost centers, including costs and expenses resulting from but not limited to office rent, office equipment, office supplies, office utilities, insurance, accounting, annual audit, and the indirect costs of the Consortium Manager staff.

“Maintenance and Operating Agreements” means the maintenance, operation and management services agreements as in effect from time to time between the Consortium and the Maintenance Operators for the maintenance, operation and management of the Consortium-Maintained City Equipment and Consortium Property, as specified and agreed from time to time.

“Maintenance Operators” means qualified and duly licensed independent contractors hired by the Consortium to maintain and manage the Consortium-Maintained Consortium-Maintained City Equipment and Consortium Property, as specified and agreed from time to time and consistent with the terms of this Agreement and the Maintenance and Operating Agreements.

“Management Committee” means the Management Committee of the Consortium, established pursuant to Article 8 hereof.

“Member” means each of the Existing Members and includes any Air Carrier admitted as a New Member or an Additional Member pursuant to the provisions of this Member Agreement, in such Air Carrier’s capacity as a member of the Consortium, and "Members" means two (2) or more of such Air Carriers when acting in their capacities as members of the Consortium.

“Member Agreement” means this Chicago Airlines Terminal Consortium Amended and Restated Member Agreement, and all amendments or modifications thereto, among the Members of the Consortium.

“Member Representative” means the person appointed by a Member or by the CDA to be that Member’s or CDA’s representative on the Board of Directors, as that person may be changed from time to time by such Member or by CDA.

“New Member” means an Air Carrier that elects to become a Member in conjunction with the approval of this Member Agreement.

“Non-Member” means an Air Carrier which is not a Member.

“Maintenance and Operating Agreements” means a maintenance, operation and management services agreement as in effect from time to time between the Consortium and the Maintenance Operators for the maintenance, operation and management of the Consortium-Maintained City Equipment and Consortium Property, as specified and agreed from time to time.

“Operating Reserve Account” means the Operating Reserve Account outlined in Section 12.6.

“Ownership Interest” means the total Capital Contribution of each Member, plus its membership fee.

“Ramp Manager” shall have the meaning ascribed thereto in the Consortium Agreement.

“Scheduling Manager” shall have the meaning ascribed thereto in the Consortium Agreement.

“Service Access Agreement” means an agreement between the Consortium and any Non-Member or Certified-Service Provider which desires to use any Consortium Property or Consortium-Provided-to-Airlines Services.

“Subsidiary” means an airline controlling or controlled by a Member. Control, for purposes of this Agreement, means owning 51% or more of the voting rights of the Member in question.

“Usage” means the usage of any Member as determined in accordance with Exhibit D to this Member Agreement with respect to Consortium Property or Consortium-Provided-to-Airlines Services, and in accordance with the terms of the Financial Accounting Protocols with respect to Consortium-Maintained City Equipment and Consortium-Provided-to-City Services.

“User” means any Member, Non-Member, or Certified Service Provider that uses the Consortium-Maintained City Equipment and/or the Consortium Property or receives Consortium-Provided Services.

“Vice Chairperson” means the Vice Chairperson of the Board of Directors appointed by the Board of Directors in accordance with Section 8.3 of this Member Agreement.

“Withdrawal Date” means the date specified when the Member gives written notice to the Chairperson of the Board of Directors of its withdrawal pursuant to Article 16 hereof.

“Withdrawing Airline” means any Member, or the successor or assignee thereof, and that has withdrawn from this Agreement pursuant to Article 16.

1.2 Article and Section Headings. Gender and References. Defined Terms.

The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. Unless otherwise indicated, all references herein to "Article", "Section" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby”, “herein”, “hereof”, “hereto”, “herewith”, “hereunder” and other words of similar import refer to this Member Agreement as a whole and not to any particular article, section, subdivision or clause hereof. The terms defined herein shall include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof. References to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to. References herein to “day” or “days” shall mean calendar day or days, and if any event is scheduled or required to occur on a day which is not a Business Day in Chicago, Illinois, then the event shall be scheduled or required to occur on the next following Business Day in Chicago, Illinois. The words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import. References to a person include any individual, corporation, association, partnership, joint venture, trust, estate, limited liability corporation, or other legal entity or organization, and such person's successors and permitted assigns.

1.3 Incorporation of Exhibits. The following Exhibits attached hereto are hereby made a part of this Agreement:

Exhibit A – Existing Members

Exhibit B – Voting Requirements Index

Exhibit C - Consortium-Maintained City Equipment, Consortium Property, Consortium-Provided-to-City Services, and Consortium-Provided-to-Airlines Services

Exhibit D - Cost Centers for Consortium-Maintained City Equipment, Consortium Property, and Consortium-Provided Services; and Calculation of Usage for Consortium Property and Consortium-Provided-to-Airlines Services

## **ARTICLE 2. TERM**

2.1 Commencement. This Agreement shall be effective and binding upon the parties hereto when it has been fully executed by the Air Carrier and the Consortium as outlined in Sections 4.1-4.3 and 5.1-5.5.

### 2.2 Term of Agreement.

Unless terminated as provided herein, this Agreement shall continue in effect until the withdrawal of all Members. This Agreement may be terminated with respect to an individual Member if such Member withdraws from this Agreement or is deemed a Withdrawing Airline, in accordance with the provisions of Articles 12 or 16 herein. Upon withdrawal of all Members, the liabilities hereon shall be allocated as set forth in Section 16.2 hereof.

### 2.3 Termination of Consortium Agreement.

If the Consortium Agreement is terminated, this Member Agreement may be terminated at any time by the Members which constitute a Consortium Super Majority-In-Interest, subject however, to Section 2.2 above and Section 2.4 below.

### 2.4 Survival of Certain Provisions.

Articles 10, 12, 13, 15, 16 and 17, and the responsibilities, liabilities and obligations of a Member under the provisions of Section 7.7, shall survive the termination of this Member Agreement as to any one or as to all Members for events occurring prior to the termination.

### 2.5 Liquidation.

Upon termination by all Members, the Consortium may be liquidated in accordance with Section 17.3.

## **ARTICLE 3. PURPOSES AND POWERS OF THE CONSORTIUM**

### 3.1 Purposes.

(a) The Consortium was formed for the object and purposes of, and the nature of the business to be conducted and promoted by the Consortium includes: (i) using, operating and maintaining Consortium-Maintained City Equipment, Consortium Property, and performing the Consortium-Provided-to-City Services, and Consortium-Provided-to-Airlines Services at the Airport and (ii) engaging in any and all legal activities necessary, related, convenient, desirable or incidental to the foregoing, including acquiring, holding, managing, operating and disposing of interests in real and personal property and contracting for personal services, but only if such activities are permitted to not-for-profit corporations under the State of Illinois.

(b) In fulfilling its functions, the Consortium shall not operate to derive a financial profit from providing services to Members, Non-Members or Certified Service Providers; provided that nothing herein stated, omitted or implied shall preclude or prohibit the Consortium from charging Non-Member Users fees that are in excess of the fees and charges payable by Members. To this end, monies received by the Consortium from its Members for ordinary

operations shall be sufficient only to fulfill the Members' obligations resulting from the Consortium's ordinary operations. Any amounts received for ordinary operations that are in excess of the Members' annual obligations for ordinary operations shall be reimbursed to the Members not then in default pro rata in accordance with each Member's Usage for the previous twelve months. Monies received by the Consortium from its Members for extraordinary items, such as capital improvements, shall be sufficient only to fund the cost of such extraordinary items, and any excess shall be refunded to the Members not then in default, pro rata in accordance with each Member's contribution, either (at the sole discretion of the Board of Directors) in cash or through a credit to the Members.

### 3.2 Powers of the Consortium.

Subject to Article 8, the Consortium shall have the power and authority, and is authorized, to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes set forth in Section 3.1, including the power, authority and authorization:

(a) To conduct its business, carry on its operations to have and exercise the powers granted to a not-for-profit corporation by the state of Illinois in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purposes of the Consortium;

(b) To acquire Consortium Property by purchase, lease, contribution of property or otherwise;

(c) To own, hold, operate, maintain, finance, improve, lease, sell, convey, mortgage, transfer, demolish or dispose of any real or personal property;

(d) To acquire loans secured by real and personal property that may be necessary, convenient or incidental to the acquisition of Consortium Property and the accomplishment of the purposes of the Consortium;

(e) To enter into, perform and carry out contracts of any kind, including contracts with any Member, any Affiliate thereof, or any agent of the Consortium necessary to perform the services identified in Exhibit C;

(f) To invest and reinvest its funds;

(g) To sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;

(h) To appoint officers and agents of the Consortium, establish their offices and titles, and define their power, authority and duties and fix their compensation;

(i) To indemnify any person and to obtain any and all types of insurance;

- (j) To cease its activities and cancel its Certificate;
- (k) To negotiate, enter into, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge or take any other action with respect to any lease, contract or security agreement in respect of any assets or obligations of the Consortium;
- (l) To borrow money and issue evidences of indebtedness and guaranties, and to secure the same by a mortgage, pledge or other lien on the assets of the Consortium;
- (m) To pay, collect, compromise, litigate, arbitrate or otherwise adjust or settle any and all other claims or demands of or against the Consortium or to hold such proceeds against the payment of contingent liabilities;
- (n) To perform any other action that the Board of Directors determines is necessary, convenient or incidental to the accomplishment of the purposes of the Consortium; and
- (o) To make, execute, acknowledge and file any and all documents or instruments necessary, convenient or incidental to the accomplishment of the purposes of the Consortium.

#### **ARTICLE 4. ADMISSION OF MEMBERS**

##### **4.1 Existing Members.**

Any Existing Member (as listed on Exhibit A) shall retain its ownership interest in the Consortium if such Existing Member meets the following conditions:

- (a) has a fully executed Long-Term or Short-Term Airline Use and Lease Agreement; and
- (b) has submitted an Economic Disclosure Statement as required by City ordinance in form and substance satisfactory to the City's Corporation Counsel; and
- (c) has executed this Agreement.

An Affiliate (if it has signed an Affiliate Operating Agreement and has been designated as an Affiliate under the Airline Use and Lease Agreement) of each Existing Member shall enjoy membership rights under the Member airline but shall not be required to pay a Membership Fee or contribute into the Operating Reserve, and the Affiliate's Usage activity will be credited to the Member airline.

##### **4.2 Admission of New Members.**

Admission of an Air Carrier as a New Member of the Consortium shall be open to any Air Carrier if such Air Carrier meets the following conditions:

- (a) has a fully executed Long-Term or Short-Term Airline Use and Lease Agreement;

- (b) has submitted an Economic Disclosure Statement as required by City ordinance in form and substance satisfactory to the City's Corporation Counsel; and
- (c) has executed this Agreement.

An Affiliate (if it has signed an Affiliate Operating Agreement and has been designated as an Affiliate under the Airline Use and Lease Agreement) of each New Member shall enjoy membership rights under the Member airline but shall not be required to pay a Membership Fee or contribute into the Operating Reserve, and the Affiliate's Usage activity will be credited to the Member airline.

Further, the Air Carrier must have been determined by the Consortium as being creditworthy. For purposes of this paragraph, an Air Carrier may be determined to be not creditworthy if such Air Carrier:

- (a) has been in default under any agreement with City in the past eighteen (18) months; or
- (b) failed to make payments in a timely fashion to City or the Consortium; or
- (c) is otherwise unable to demonstrate an ability to pay fees projected hereunder or cannot provide a security deposit as required under Section 4.6, if required.

The Chairperson of the Board of Directors shall execute all required documents immediately after such documents have been delivered and the requirements of this Section 4.2 hereof have been satisfied.

4.3 Purchase of New Membership. Each New Member shall purchase a membership in the Consortium in the amount of \$20,000, which will be discounted to \$10,000 if this Member Agreement is executed and purchase of membership payment is made by May 12, 2018. By execution hereof, each Member represents and warrants to the Consortium that it is acquiring the membership solely for its own account and not with a view to resale and that it understands that the membership is subject to the restrictions imposed by law, the Consortium's bylaws and this Agreement.

4.4 Acceptance Date. The Acceptance Date at which time an Air Carrier shall be deemed to be a Member shall be at 12:01 a.m. Chicago time on the date following written acknowledgement of satisfaction by the Air Carrier of all requirements of Section 4.1 or 4.2 above, and acceptance by the Chairperson of the Board of Directors of all required executed documents and payments.

4.5 Assessment, Fees or Dues. In the event that a Consortium Majority-in-Interest authorizes the Board of Directors to levy assessments, fees and dues on the Members from time to time, in accordance with Article 15 hereof, each Member shall pay such amount as is due within thirty (30) days following receipt of the notice thereof.

#### 4.6 Member Security Deposit.

A security deposit may be required of Members if so determined by the affirmative vote of a Consortium Majority-In-Interest. However, a new entrant that has no credit history with the City of Chicago will be required to pay a security deposit equal to 2 months of projected Usage fees.

### **ARTICLE 5. ADDITIONAL MEMBERS**

#### 5.1 Admission of Additional Members.

Admission of an Air Carrier as an Additional Member of the Consortium shall be open to any Air Carrier, who is not already a Member, and has (a) executed a Long-Term or Short-Term Airline Use and Lease Agreement with the City, and (b) has submitted an Economic Disclosure Statement as required by City ordinance in form and substance satisfactory to the City's Corporation Counsel, in all cases subject to satisfaction of all requirements set forth in Section 5.2 below.

#### 5.2 Requirements.

In order to become an Additional Member, an Air Carrier must submit to the Consortium:

- (a) A written notice stating the requested Acceptance Date;
- (b) A copy of the fully executed signature page of its Airline Use and Lease Agreement;
- (c) If the Additional Member has operated at the Airport for the previous twelve month period, a statement providing the actual schedule of Arriving Seat and Departing Seats, actual schedule of operations (International and Domestic), number of Enplaned and Deplaned Passengers (International and Domestic), and number of Outbound Checked Bags and Inbound Bags (International and Domestic) and FIS Users;
- (d) If the Additional Member has not operated at the Airport for the previous twelve month period, a statement providing an estimated schedule of Arriving Seat and Departing Seats, actual schedule of operations (International and Domestic), number of Enplaned and Deplaned Passengers (International and Domestic), and number of Outbound Checked Bags and Inbound Bags (International and Domestic) and FIS Users for the Fiscal Year for the twelve month period following the requested Acceptance Date;
- (e) An executed counterpart copy of this Member Agreement; and
- (f) The payment of amounts as specified by the Consortium pursuant to Section 5.3 below.

An Affiliate (if it has signed an Affiliate Operating Agreement and has been designated as an Affiliate under the Airline Use and Lease Agreement) of each Additional Member shall enjoy membership rights under the Member airline but shall not be required to pay a Membership Fee or contribute into the Operating Reserve, and the Affiliate's Usage activity will be credited to the Member airline.

Further, the Air Carrier must have been determined by the Consortium as being creditworthy. For purposes of this paragraph, an Air Carrier may be determined to be not creditworthy if such Air Carrier:

- (a) has been in default under any agreement with the City in the past eighteen (18) months; or
- (b) failed to make payments in a timely fashion to the City or the Consortium; or
- (c) is otherwise unable to demonstrate an ability to pay fees projected hereunder or cannot provide a security deposit, if required.

**5.3 Purchase of Membership.** Each Additional Member, in accordance with Section 5.1 hereof, shall purchase a membership in the Consortium in the amount of \$20,000, payable in cash, which may be adjusted by the Board of Directors from time to time. This cost of membership will be increased annually on January 1<sup>st</sup> by the Consumer Price Index (CPI) effective January 1, 2019. By execution hereof, each Member represents and warrants to the Consortium that it is acquiring the membership solely for its own account and not with a view to resale and that it understands that the membership is subject to the restrictions imposed by law, the Consortium's bylaws and this Agreement.

**5.4 Procedure.** If the material submitted pursuant to Section 5.2 is found by the Consortium to comply with this Article 5, then the Consortium shall provide a notice of eligibility to the requesting Air Carrier with a copy of the Member Agreement, a written statement of the requirements for membership, a written statement of the fees and other payments required for membership, consistent with Section 5.2 hereof, and such other documents for signature as may reasonably be required. Air Carrier shall become an Additional Member on the Acceptance Date and thereafter shall have the same rights and obligations under this Member Agreement as all other Members.

**5.5 Acceptance Date.** The Acceptance Date for any Additional Member shall be the first day of the month (commencing at 12:01 a.m. Chicago time) following the date the Additional Member is notified by the Consortium that all required signed documents and payments have been received.

**5.6 Usage.** The Additional Member shall not participate in any vote of Consortium Majority-In-Interest or Consortium Super Majority-In-Interest for the first twelve (12) months following the Acceptance Date, unless the Additional Member has operated at the Airport for the previous

twelve month period and can provide a statement providing their Usage for the previous twelve month period.

## **ARTICLE 6. CAPITAL CONTRIBUTIONS AND TAX MATTERS**

### **6.1 Capital Contributions.**

(a) In addition to the payment of the membership fee set forth in Articles 4 and 5, a New Member or Additional Member must also contribute to the capital of the Consortium, in accordance with Section 12.6, to fund its pro-rata share of the Operating Reserve Account based on the ratio of such Additional Member's estimated Usage, as determined by the Consortium, to the Usage of all other Members. The contribution of the Additional or New Members to fund pro-rata share of the Operating Reserve Account is to be reconciled among all Members within thirty (30) calendar days of actual Usage becoming available for the Additional Member.

(b) No Member shall be required to make any additional capital contribution to the Consortium unless such additional capital contribution is on a pro-rata basis and approved by the affirmative vote of a Consortium Majority-In-Interest. No Member shall have any personal liability for the repayment of any Capital Contribution of any other Member. Notwithstanding the foregoing or any other provision of this Member Agreement, however, each Member shall be obligated to make all payments due and payable by such Member in connection with the Consortium-Provided-to-Airlines Service Charge, which is applicable to such Member, repayment of debts or the funding of the Operating Reserve Account and perform all obligations of such Member all of which are pursuant to the terms of this Member Agreement.

(c) Capital Contributions shall be returned to Members, if at all, only in accordance with Section 6.1(d) or upon dissolution of the Consortium in accordance with Article 17 and only to Members who are Members not in default under this Member Agreement at the time of dissolution.

### **6.2 Status of Capital Contributions.**

- (a) Upon withdrawal or termination of a Member under this Member Agreement, the amount of a Member's Capital Contributions shall not be returned to it, except for withdrawal or termination in connection with the dissolution of the Consortium.
- (b) No Member shall receive any interest with respect to its Capital Contributions or for services rendered to or on behalf of the Consortium or otherwise in its capacity as a Member, Member Representative, Chairperson or Vice Chairperson, or other officer.
- (c) No Member shall receive salary (unless independently contracted by Consortium) with for services rendered to or on behalf of the Consortium or otherwise in its capacity as a Member, Member Representative, Chairperson or Vice Chairperson,

or other officer, except as otherwise specifically provided in this Member Agreement.

### 6.3 Tax Election.

(a) The Consortium will elect to be taxed as a corporation.

(b) When the Consortium files tax returns as a corporation: (i) all Federal, State and local taxes will be an expense of the Consortium; (ii) all such taxes will be included as an Indirect Cost; and (iii) each Member shall be liable for its share of the Indirect Expenses, as determined in Article 12 and Exhibit D.

(c) Consortium and Members will cooperate with one another in providing information which may be reasonably required to fulfil each party's tax filing requirements, including any information necessary to mitigate any such taxes or related tax withholdings.

## **ARTICLE 7. MEMBER INTERESTS**

### 7.1 Member's Interest.

A Member's Interest in the Consortium shall be limited to the benefits such Member derives from the Consortium in accordance with this Member Agreement. An individual Member has no specific Interest in, or ownership of, Consortium Property.

### 7.2 Powers of Members.

The Member Representatives, on behalf of the Members, shall have the power to exercise any and all rights or powers granted to the Members pursuant to the express terms of this Member Agreement.

### 7.3 Reimbursements.

Subject to proper documentation and prior approval of a Consortium Majority-in-Interest, the Consortium shall reimburse the Members for all ordinary and necessary out-of-pocket expenses incurred by the Members on behalf of the Consortium. Such reimbursement shall be treated as an expense of the Consortium and shall not be deemed to constitute a distribution or return of capital to any Member.

### 7.4 Partition.

To the fullest extent permitted by applicable law, each Member waives any and all rights that it may have to maintain an action for partition of the Consortium Property.

### 7.5 Transfer Void.

A Member shall not sell, assign, transfer, pledge or otherwise dispose of or encumber (collectively, for purposes of this Article 7, a "transfer") all or any part of its Interest in the Consortium to any Air Carrier or other person unless the Consortium shall give its prior written consent to such transfer, which consent shall not be unreasonably withheld, delayed or conditioned. The Consortium may only approve such a transfer to an Air Carrier who is concurrently becoming a Member and a party to this Member Agreement in accordance with the

terms and conditions of this Agreement. In approving or disapproving any request for transfer, the Consortium shall not discriminate against any one or more Member(s).

#### 7.6 Exception for Transfer to Subsidiary or in Connection with Merger.

Notwithstanding Section 7.5, a Member may transfer all or any part of its Interest in the Consortium, without first obtaining the Consortium's consent, to an Affiliate of such Member or to another another Air Carrier, which meets the requirements of Section 4.2 hereof, with which it merges, or into which it consolidates; provided however, the transferee (i) must expressly assume in writing all of the obligations of the Member hereunder, and (ii) if such transferee is not organized and existing under the laws of the United States of America or any State or District of Columbia, deliver to City and the Consortium an irrevocable consent to service of process and jurisdiction.

#### 7.7 Termination as Member upon Default.

Upon the occurrence of an Event of Default by a Member under Section 13.1 of this Member Agreement, the Consortium has the right to terminate the Interest of such Member in the Consortium in accordance with Section 13.2(b), effective as of a date specified by the Consortium by written notice to such Member. From and after the occurrence of an Event of Default by a Member, such Member shall have no rights to vote as a Member, nor shall its Member Representative have any right to vote on the Board of Directors. If its Member Representative is serving on the Management Committee, its Member Representative shall be removed from the Management Committee. Such Member's Usage shall not be counted, individually or as part of aggregate Usage, respecting a Consortium Majority-In-Interest, a Consortium Super Majority-In-Interest or otherwise in connection with any voting. Notwithstanding the foregoing, such Member shall not cease to be, and shall remain, a Member of the Consortium unless the Consortium elects to terminate such Member. Such Member shall not be relieved of any of the responsibilities, liabilities or obligations of a Member hereunder because of the occurrence of an Event of Default. If the Consortium elected to terminate such Member, such Member shall remain liable for all of its obligations hereunder arising up to and including the effective date of its termination as a Member of the Consortium, and those obligations shall survive the termination of the Member under this Agreement.

#### 7.8 Termination of Interest upon Mergers or Acquisitions.

In the event of any merger, consolidation, conversion, acquisition, or contractual arrangement as a result of which any Member becomes the beneficial owner of more than one Interest (whether directly or through control of one or more other Members), the Consortium has the right to terminate Interests such that no Member owns, directly or through control of other Members, more than one Interest. Such Member shall remain liable for all of its obligations hereunder arising up to and including the effective date of any termination of any Interests in the Consortium.

#### 7.9 Consortium's Inability to Terminate.

In the event that the Consortium has a right to terminate a Member or a Member's Interest pursuant to this Article 7, but is prevented from doing so (e.g., as a result of bankruptcy protection of a Member), the Consortium may deliver written notice to that effect to the Member

whose status as a Member or Interest in the Consortium would otherwise terminate whereupon all of such Member's Interest shall become a non-voting Interest, and such Member shall not be entitled to vote as a Member or have its Member Representative sit on the Management Committee, until such time as the Consortium is permitted to and does effect the termination. Such Member shall remain liable for all of its obligations hereunder arising up to and including the effective date of its termination as a Member of the Consortium.

## **ARTICLE 8. MANAGEMENT AND MEETINGS**

### **8.1 Board of Directors.**

(a) **Powers.** The business and affairs of the Consortium shall be conducted and managed through a Board of Directors composed of one (1) Member Representative appointed by each Member, along with one (1) City Representative from the Chicago Department of Aviation as outlined in Section 4.4 of the Consortium Agreement. A meeting of the Board of Directors shall be the same as a meeting of the Members for purposes of satisfying any requirements of the laws of the State of Illinois for meetings of members of not-for-profit corporations. The Board of Directors shall have the power and authority, acting in accordance with the procedures of this Article 8, to do or cause to be done any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described in Section 3.1 of this Member Agreement, including all powers, statutory or otherwise, possessed by managers and/or members of a not-for-profit corporation under the laws of the State of Illinois. The Board of Directors shall act on all matters that are referred to in this Member Agreement to be done by (i) the Members; (ii) a Consortium Majority-In-Interest or Consortium Super Majority-In-Interest; (iii) a Consortium Majority-In-Interest or Consortium Super Majority-In-Interest of the Member Representatives; or (iv) a Consortium Majority-In-Interest or Consortium Super Majority-In-Interest of the Members.

(b) **Appointment of Member Representatives.** Each Member Representative, with the exception of the CDA-appointed Member Representative, shall be a regular salaried employee (or retired employee with no conflicting employment) of the Member appointing him or her unless the Board of Directors approves, in its sole discretion, appointment of a Member Representative who is not a regular salaried employee (or retired employee with no conflicting employment) of such Member. Each Member shall appoint its Member Representative in writing in a letter addressed to the Consortium and delivered to the Consortium at its address for notice. Each Member and the CDA-appointed representative may, in writing, designate one or more alternate Member Representatives who shall, if attending a Board of Directors meeting in the absence of the designated representative, have the full authority to vote and speak for the designating Member; provided however, only one such alternate representative may exercise the Member's or CDA's rights at any meeting. Member Representatives and alternates shall serve until the Consortium receives written notice of the appointment of a new Member Representative or alternates from a Member or, with respect to the CDA-appointed Member Representative, the Commissioner.

(c) Proxies. A Member Representative may give to any other Member Representative a proxy, in writing, provided that the Chairperson or Vice Chairperson, if presiding, of the Board of Directors may refuse to recognize a proxy if there exist any indications of fraud or other material uncertainty about its terms. Any such proxy must be submitted to and approved or disapproved by the Chairperson or Vice Chairperson, if presiding, prior to the Board of Directors meeting.

## 8.2 Meetings.

Meetings of the Board of Directors shall be held at least annually at such time and place as determined by the Chairperson of the Board of Directors or requested by (a) Member Representatives representing at least twenty-five percent (25%) of the Usage of all Members for the twelve (12) months prior to the month in which the request is made; or (b) CDA-appointed Representative. A complete list of Members entitled to vote at any meeting of the Board of Directors, arranged in alphabetical order showing the address of each such Member and the name of its Member Representative, shall be made available to any Member upon request.

(a) Participation by Telephone. Member Representatives may participate in a meeting of the Board of Directors through use of conference telephone or similar communication equipment so long as all representatives participating in such meeting can hear one another.

(b) Action Without Meeting. Any action of the Board of Directors may be taken without a meeting if Member Representatives constituting a Consortium Majority-In-Interest, Consortium Super Majority-In-Interest or all of the Member Representatives, as applicable to the subject action, consent in writing to such action after solicitations of such written consents have been provided to all Member Representatives by e-mail, facsimile or letter. Unless otherwise specified in this Member Agreement, any action of the Board of Directors may be taken if approved by a Consortium Majority-In-Interest. All written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

(c) Notice. All notices of meetings of the Board of Directors must be received by the Member Representatives at least ten (10) business days prior to the meeting. Notices sent by certified mail shall be deemed received on the date of delivery as indicated on the return receipt; notices sent by e-mail, or facsimile shall be deemed received on the date transmitted, if transmitted prior to 4:00 p.m. time of recipient, otherwise on the next business day.

(d) Twenty-Day Notice Requirement. Notwithstanding Section 8.2(c), when any of the following items is to be the subject of a meeting of the Board of Directors, at least twenty (20) business days' prior notice is required:

- (i) Selection of a Maintenance Operator or a Contractor by competitive proposal or other procedure approved by a Consortium Majority-In-Interest;
- (ii) The approval of an agreement with a Maintenance Operator or a Contractor, or amendments thereto or termination thereof;

- (iii) The selection of a Consortium Manager;
- (iv) The approval of an agreement with a Consortium Manager, amendments thereto or termination thereof;
- (v) Approval of any non-budgeted single expenditure or obligation over One Hundred Thousand Dollars (\$100,000);
- (vi) The determination of whether any non-budgeted single expenditure authorized by the Chairperson, the Management Committee or the Board of Directors should be deemed an Extraordinary Cost, and the allocation thereof among the Members;
- (vii) Approval of the terms and conditions of any general plan of financing that may be required relating to the Consortium-Maintained City Equipment, Consortium Property or the Operating Reserve Account; or
- (viii) Determination to dissolve the Consortium.

(e) Waiver of Notice in Emergency. In case of an emergency, the Chairperson of the Board of Directors has the power to call a meeting of the Members without notice as required above; provided, that the Chairperson of the Board of Directors uses his or her best efforts to give notice verbally or by e-mail or facsimile. The Members acknowledge that CDA has the right to request the Chairperson to call an emergency meeting.

(f) Form of Notice. Best business practices will be used when transmitting notices of any meeting of the Board of Directors and, therefore, such notices will include agendas, analyses, background material, ballots, etc. as appropriate for the subject matter of the meeting. The notice of any meeting of the Board of Directors shall be directed to the place and in the manner set forth in Section 18.3 herein.

(g) Waiver of Notice. Any meeting of the Board of Directors, however called and noticed and whenever held, and the transaction of business at such meeting, shall be valid as though duly called, noticed and held if a quorum is present and if either before or after the meeting each of the persons entitled to vote, but not present, signs: (i) a written waiver of notice; or (ii) a consent to the holding of the meeting; or (iii) an approval of the minutes thereof. All such waivers, consents, or approvals shall be made a part of the minutes of the meetings.

(h) Quorum. A quorum consists of Member Representatives, or their alternates or assigned proxies, representing a Consortium Majority-In-Interest.

(i) Voting. Other than as provided in Section 8.2(b), any action of the Board of Directors shall be effective only if made at a properly called meeting at which a quorum is present and upon the affirmative voice or hand vote of a Consortium Majority-In-Interest or such other percentage as may be specifically provided for in this Member Agreement for a particular action.

### 8.3 Chairperson.

A Consortium Majority-in-Interest of the Board of Directors shall elect a Chairperson and may elect a Vice Chairperson from among its representatives. Election shall be held annually and the term of the Chairperson and Vice Chairperson shall be one year. Members may serve as Chairperson or Vice Chairperson for an unlimited number of consecutive terms. The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors and in his or her absence the Vice Chairperson shall preside. In the absence of both the Chairperson and the Vice Chairperson, a meeting chairperson may be elected by a Consortium Majority-In-Interest in attendance at the meeting. The Chairperson of the Board of Directors shall have the power and authority to authorize non-budgeted single expenditures or obligations by and on behalf of the Consortium of Twenty Five Thousand Dollars (\$25,000) or less without the approval of the Board of Directors; provided, however, if for any reason it is not practical to call for a vote of the Management Committee for approval of a non-budgeted single expenditure of Fifty Thousand Dollars (\$50,000) or less, the Chairperson may authorize such expenditure if failure to take such immediate action would adversely impact the operational and/or financial well-being of the Consortium.

### 8.4 Chairperson to Execute Contracts.

Each Member and the Consortium hereby authorizes and empowers the Chairperson of the Board of Directors to execute and deliver, for and on behalf of the Board of Directors and the Consortium, all documents contemplated herein, including amendments and counterparts to this Member Agreement, accepting Additional Members, and/or any construction, service agreements, financing arrangements, guaranties and related agreements, or other contracts authorized by a Consortium Majority-In-interest in accordance with the terms of this Member Agreement.

### 8.5 Management Committee.

(a) Committee. The Membership desires that a Management Committee be established by the Board of Directors. This Committee shall have seven (7) members, five (5) of which shall be elected by a Consortium Majority-in-Interest of the Board of Directors and which shall function in the manner set forth in this Article 8, and one (1) of which shall be a City Representative from the Chicago Department of Aviation as outlined in Section 4.4 of the Consortium Agreement. The Chairperson of the Board of Directors shall serve on the Management Committee as the seventh (7<sup>th</sup>) member and shall act as its Chairperson. The term of the members of the Management Committee shall be the later of one year or until their successors are elected, unless removed by a Consortium Majority-In-Interest.

(b) Appointment of Management Committee Members. Each Management Committee member shall be the Member Representative appointed by the Member or by the CDA for the CDA-appointed Member Representative, as set forth in Section 8.1(b). Member Representatives shall serve on the Management Committee until the Consortium receives written notice of the appointment of a new Member Representative from a Member or, with respect to the CDA-appointed Member Representative, the Commissioner. Upon receipt of such notice, the Board of Directors will convene to elect a new Member Representative to the vacant position on the

Management Committee (other than the CDA-appointed Member Representative).

(c) Authority. The Management Committee, subject to control of the Board of Directors, shall be delegated responsibility for the day-to-day management and operation of the Consortium, the Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services. It shall perform such other duties as are delegated and assigned to the Management Committee from time to time by the Board of Directors. The Management Committee shall have the power and authority to authorize non-budgeted single expenditures or obligations by and on behalf of the Consortium up to the amount of One Hundred Thousand Dollars (\$100,000) or less without the approval of the Board of Directors. The Management Committee shall in no event have any authority greater than the Board of Directors or be authorized to take any actions that the Board of Directors could not take.

(d) Quorum and Voting. A quorum for the transaction of business at a regular or special meeting of the Management Committee shall consist of a majority of the members of the Management Committee. The act of at least a majority of the members of the Management Committee shall constitute the act of the Management Committee.

(e) Meetings. Meetings of the Management Committee may be called by the Chairperson of the Management Committee, or members of the Management Committee constituting at least one-third of the members of such Management Committee. Notice must be given in accordance with the procedures to be established by the Management Committee.

(f) Participation by Telephone. Members of the Management Committee may participate in a meeting of the Management Committee through use of conference telephone or similar communication equipment, so long as all members participating in such meeting can hear one another.

(g) Waiver of Notice. Any meeting of the Management Committee, however called and noticed and whenever held, and the transaction of business at such meeting, shall be as valid as though had at a meeting duly called, noticed, and held if a quorum is present and if either before or after the meeting each of the persons on the Management Committee entitled to vote but not present signs: (i) a written waiver of notice; or (ii) a written consent to the holding of the meeting; or (iii) an approval of the minutes thereof. All such waivers, consents, or approvals must be made a part of the minutes of the meetings.

(h) Action Without a Meeting. Any action to be taken by the Management Committee may be taken without a meeting if all members of the Management Committee consent in writing to such action. Such written consent(s) shall be filed with the minutes of proceedings of the Management Committee.

#### 8.6 Operations Committee.

(a) Committee. An Operations Committee shall be established by a Consortium Majority-In-Interest of the Board of Directors. The Operations Committee shall consist of the

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Chairperson of the Board of Directors, who shall also serve as Chairperson of the Operations Committee, and a local representative appointed by each Member. In addition, CDA has the option to appoint a CDA representative to the Operations Committee. Each local Member representative on the Operations Committee shall serve until his or her successor is appointed.

(b) Authority. The Operations Committee, subject to control of the Board of Directors and the Management Committee, shall be delegated responsibility for resolving any day-to-day operational concerns at the Airport. It shall perform such other duties as may be delegated to it by the Management Committee or the Board of Directors. The Operations Committee may make recommendations to the Management Committee or the Board of Directors, but it shall have no authority to authorize expenditures or to commit any funds of the Consortium.

(c) Quorum and Voting. A quorum for the transaction of business at a regular or special meeting of the Operations Committee shall consist of representatives constituting at least a Consortium Majority-In-Interest of the Members. The act of at least a Consortium Majority-In-Interest of the Members, so long as a quorum is in attendance, shall constitute the act of the Operations Committee.

(d) Meetings. Meetings of the Operations Committee may be called by the Chairperson of the Operations Committee or representatives on the Operations Committee constituting at least one-third of the representatives. Notice must be given in accordance with the procedures to be established by the Operations Committee.

(e) Participation by Telephone. Representatives on the Operations Committee may participate in a meeting of the Operations Committee through use of conference telephone or similar communication equipment, so long as all representatives participating in such meeting can hear one another.

(f) Waiver of Notice. Any meeting of the Operations Committee, however called and noticed and whenever held, and the transaction of business at such meeting, shall be as valid as though had at a meeting duly called, noticed, and held if a quorum is present and if either before or after the meeting each of the representatives on the Operations Committee entitled to vote but not present signs: (i) a written waiver of notice; or (ii) a written consent to the holding of the meeting; or (iii) an approval of the minutes thereof. All such waivers, consents, or approvals must be made a part of the minutes of the meetings.

(g) Action Without a Meeting. Any action to be taken by the Operations Committee may be taken without a meeting if all representatives on the Operations Committee consent in writing to such action. Such written consent(s) shall be filed with the minutes of proceedings of the Operations Committee.

#### 8.7 Members' Consent.

Each of the Members, by signing this Member Agreement, specifically consents to the authority given herein to the Board of Directors, the Management Committee, the Operations Committee and the Chairperson and Vice Chairperson and hereby certifies (and upon request of

the Consortium shall promptly deliver further assurance of its certification) that the persons designated from time to time by such Member as a Member Representative and as a representative on the Operations Committee are duly authorized to act for and on behalf of such Member.

## **ARTICLE 9. BOOKS AND RECORDS**

### **9.1 Books, Records and Financial Statements.**

(a) At all times during the continuance of the Consortium, the Consortium shall maintain, at the Airport, separate books of account for the Consortium that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the Consortium's business in accordance with generally accepted accounting principles consistently applied, and, to the extent inconsistent therewith, in accordance with this Member Agreement. Such books of account, together with a copy of this Member Agreement and of the Certificate, shall at all times be maintained at the Airport and shall be open to inspection and examination at reasonable times by each Member and its duly authorized representative for any purpose reasonably related to such Member's Interest.

(b) The Members shall prepare and maintain, or cause to be prepared and maintained, the books of account of the Consortium. The Consortium shall prepare and file, or cause to be prepared and filed, all applicable federal and state tax returns.

### **9.2 Accounting Method.**

For both financial and tax reporting purposes, the books and records of the Consortium shall be kept on the accrual method of accounting applied in a consistent manner and shall reflect all Consortium transactions and be appropriate and adequate for the Consortium's business.

### **9.3 Final Audit.**

The financial statements of the Consortium may be audited annually by an independent certified public accountant, selected by the Consortium, with such audit to be accompanied by a report of such accountant containing its opinion (the "Final Audit"). The cost of such audits will be an expense of the Consortium. A copy of any such audited financial statements and accountant's report will be made available for inspection by the Members.

## **ARTICLE 10. ACCESS TO CONSORTIUM-MAINTAINED CITY EQUIPMENT, CONSORTIUM PROPERTY AND CONSORTIUM-PROVIDED SERVICES**

### **10.1 Use.**

The Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services shall be managed, maintained, and operated to provide for the handling of departing and arriving flights and passengers at such locations at the Airport as may be determined by the Consortium and the City. The Members covenant and agree that the

Consortium may establish standards and practices and fees for access to and the operation and maintenance of the Consortium Property and the Consortium-Provided-to-Airlines Services and any other costs associated with the operations of the Consortium, except those relating to the Consortium-Maintained City Equipment and Consortium-Provided-to-City Services. The covenant and agreement of each Member set forth in this Section 10.1 shall survive any withdrawal by such Member from this Member Agreement.

#### 10.2 Non-Member Users.

The Consortium shall allow any Air Carrier who does not become a party to this Member Agreement as a Member to use the Consortium Property and Consortium-Provided-to-Airlines Services for its flights and passengers upon proof of execution of a Non-Signatory Airline Operating Agreement with the City, and execution by that Air Carrier of the then-current Service Access Agreement.

#### 10.3 Service Access Agreement.

The Consortium shall, by the vote of a Consortium Majority-In-Interest of the Members, approve from time to time the form of a Service Access Agreement, which shall be consistent with this Member Agreement, and which shall contain, *inter alia*, the terms and conditions governing use of Consortium Property, Consortium-Provided-to-Airlines Services, deposits, use fees and charges, and indemnification and insurance provisions. The Service Access Agreement shall provide that, so long as the Non-Member User abides by the terms of that agreement and pays the fees and charges provided therein, its access to and use of Consortium Property and Consortium-Provided-to-Airlines Services otherwise shall be nondiscriminatory. The Consortium may approve separate forms of the Service Access Agreement for use of the Consortium Property and Consortium-Provided-to-Airlines Services. Notwithstanding anything to the contrary in this Member Agreement, the Consortium may charge fees to Non-Member Users which are greater than those charged to Members.

#### 10.4 Certified Service Providers.

The Consortium may allow a Certified Service Provider to access to Consortium Property to provide passenger and flight handling services, subject to the requirements of this Section 10.4. Each such Certified Service Provider: (a) must provide proof of an executed Certified Provider license agreement with the City, (b) must have entered into an agreement with a Member or a Non-Member User to provide handling services at those Airport locations where Consortium Property or Consortium-Provided-to-Airlines Services may be situated; (c) must execute a Service Access Agreement; and (d) must comply with all of the terms and conditions of the Service Access Agreement.

#### 10.5 Access by Users.

(a) Except as provided for herein with respect to allocation of the Consortium-Provided-to-Airlines Services and otherwise as provided herein, access to Consortium Property and receipt of Consortium-Provided-to-Airlines Services by all Members shall be on an equal and nondiscriminatory basis, with no Members being afforded priority or preferential treatment over another.

(b) In the event of a dispute regarding access to Consortium Property and Consortium-Provided Services , the Consortium Manager is authorized to review and resolve the dispute, and will document such resolution by providing written notice to all Members involved, with copies provided to the Management Committee. In the event that the Members involved in the dispute do not accept or are otherwise unable to implement the resolution provided by the Consortium Manager within fifteen (15) calendar days of receiving written notice, the Management Committee shall review and resolve the dispute within fifteen (15) calendar days of the dispute being submitted to the Management Committee. A decision evidenced by written notice from the Management Committee comprising 75% of the total Usage of the Members of the Management Committee, which Usage shall be determined using the methodology set forth in Exhibit D will be final.

## **ARTICLE 11. CONSORTIUM MANAGER, MAINTENANCE OPERATORS, SCHEDULING MANAGER & CONTRACTORS**

### **11.1 Consortium Manager.**

By the vote of a Consortium Majority-In-Interest of the Members the Consortium shall approve the selection of a Consortium Manager to manage the Maintenance Operators and other Contractors. The Consortium shall, by the vote of a Consortium Majority-In-Interest of the Members approve the form of the Consortium Manager Agreement which shall be consistent with this Member Agreement and subject to reasonable approval by the City as further described in Section 4.2 of the Consortium Agreement. The Consortium Manager shall execute the Consortium Manager Agreement with the Consortium, which shall specify the Consortium Manager's duties, responsibilities and compensation, as well as the rights and obligations of the Consortium and the Members with respect to the Consortium Manager.

### **11.2 Consortium Manager Responsibilities.**

The Consortium Manager Agreement shall require the Consortium Manager to, *inter alia*, manage the Maintenance Operators and Contractors, to establish standards and practices for the operation and maintenance of the Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services; to monitor and require compliance with this Member Agreement; and to invoice, collect and pay monies on behalf of the Consortium including to provide such bookkeeping, accounting, invoicing, filing of the Consortium's tax returns and other reports to governmental bodies and to perform such other services, as are necessary to accomplish the requirements of this Member Agreement, and to comply with all applicable laws and this Member Agreement.

### **11.3 Maintenance Operator and Contractors.**

The Consortium shall procure Maintenance Operators and Contractors to operate and maintain the Consortium-Maintained City Equipment, to operate and maintain the Consortium Property, and to provide the Consortium-Provided Services. By the vote of a Consortium Majority-In-Interest of the Members, the Consortium shall approve the selection of Maintenance Operators and Contractors. The Consortium shall, by the vote of Consortium Majority-In-Interest of the Members, approve the form of the Maintenance and Operating Agreement and the

Contractors Agreements. The selected Maintenance Operators and Contractors shall execute agreements with the Consortium, which shall specify their respective duties, responsibilities and compensation, as well as the rights and obligations of the Consortium and the Members with respect to each Maintenance Operator and Contractors. The selected Maintenance Operators and Contractors shall also secure all necessary approvals and permits from the City, and failure to do so shall prohibit any such entity from entering into an agreement with the Consortium. Notwithstanding anything in this Section 11.3 to the contrary, a selection committee including a representative from CDA shall be established for the selection of the Scheduling Manager and the Consortium Manager as required by Section 2.9 of the Consortium Agreement.

#### 11.4 Maintenance Operators and Contractors Responsibilities.

The Maintenance and Operating Agreements and Contractors Agreements shall require the Maintenance Operators and Contractors to, *inter alia*, maintain, operate and manage the Consortium-Maintained City Equipment, the Consortium Property and provide the Consortium-Provided Services. The Consortium shall require the Maintenance Operators and Contractors to comply with all applicable laws, rules, and regulations, this Member Agreement and any requirements, rules or procedures established by the City.

#### 11.5 Scheduling Manager.

By the vote of a Consortium Majority-In-Interest of the Members and subject to approval by the City, the Consortium shall approve the selection of a Scheduling Manager.

#### 11.6 Scheduling Manager Responsibilities.

The Scheduling Manager will communicate with the City in connection with the performance of its work under the Scheduling Management Agreement and in accordance with the Terminal Space Use Protocols and Section 5.5 of the Airline Use and Lease Agreement.

#### 11.7 Payments.

Each of the Members acknowledges that, in accordance with the Consortium Manager Agreement, (a) the Consortium Manager may act for and on behalf of the Consortium in accounting, billing, and collecting monies and (b) at the time they become due, the Consortium Manager shall remit payments as directed by the Consortium.

### **ARTICLE 12. CALCULATION OF FEES AND CHARGES**

#### 12.1 Consortium-Provided-to-Airlines Services Charge.

(a) The "Consortium-Provided-to-Airlines Services Charge" shall be determined as defined in Section 1.1 above.

(b) The following costs incurred by the Consortium, the Consortium Manager, the Maintenance Operators or the other Contractors, shall not be part of the Consortium-Provided-to-

Airlines Services Charge, but shall instead be charged directly to the applicable Member, Non-Member User, or other responsible Air Carrier:

- (i) costs incurred for the sole benefit of the Air Carrier being charged;
- (ii) costs incurred as a result of the negligence, intentional wrongdoing or breach of its contract obligations under this Member Agreement or Service Access Agreement, as applicable, by the Air Carrier being charged; and
- (iii) costs incurred to repair damage to the Consortium-Maintained City Equipment or Consortium Property caused by the Air Carrier or its agents.

(d) Each Member shall be liable for its pro rata share of the Consortium-Provided-to-Airlines Services Charge as determined under this Article 12 and in Exhibit D.

#### 12.2 Liability for Consortium-Provided-to-Airlines Services Charge and Extraordinary Costs.

(a) Allocation. The Consortium-Provided-to-Airlines Services Charge shall be allocated among the Members in accordance with Exhibit D, as that Exhibit D may be amended from time to time by a Consortium Super Majority-In-Interest of the Members. The Consortium Manager shall prepare a schedule of fees and charges for the next fiscal year, which shall be used by the Consortium Manager in calculating each Member's projected monthly share of the Consortium-Provided-to-Airlines Services Charge. The Consortium Manager shall provide the schedule to each Member no later than thirty (30) calendar days prior to the beginning of the fiscal year to which the schedule applies.

(b) Allocation of Extraordinary Costs. The Consortium shall allocate Extraordinary Costs among Cost Centers to which it directly applies. Extraordinary Costs that are not directly allocable to a Cost Center will be allocable to the Members on a reasonably equitable basis as it may determine through an affirmative vote of a Consortium Majority-In-Interest, and the Consortium may instruct the Consortium Manager as to the allocation and collection thereof. In the absence of agreement on allocation, Extraordinary Costs that are not directly allocable to a Cost Center shall be allocated on the basis of each Member's Usage for the preceding six (6) months and collected over a twelve (12) month period. For the first twelve (12) months following the Acceptance Date of Additional Members, the Usage of an Additional Member shall be the greater of: (a) the Usage estimated by the Consortium for the Additional Member based on the information submitted pursuant to Section 5.2; or (b) the actual Usage, if available, pro-rated as necessary.

#### 12.3 Temporary Shutdown.

In the event that there have been no operations at the Airport for a period of thirty (30) consecutive calendar days, then the Consortium-Provided-to-Airlines Services Charge shall be allocated among the Members on the basis of Usage for the twelve months ending immediately

prior to the cessation of operations at the Airport (or, if shorter, the period that the Member has been a party to this Member Agreement).

#### 12.4 Invoicing.

(a) Users of the Consortium-Maintained City Equipment and Consortium-Provided to City Services will be invoiced by the City in accordance with Articles 8 & 9 of the Airline Use & Lease Agreements, the Financial Accounting Protocols, and Exhibit D.

(b) Users of Consortium-Provided to Airlines Services shall report to the Consortium Manager no later than the 10<sup>th</sup> business day of the month all Consortium-Provided-to-Airlines activity described on Exhibit D for the preceding month. The Consortium Manager shall calculate each Member's share of the Consortium Charge, based on the formulas described in Exhibit D attached hereto. Beginning with the month that is estimated to be one month prior to operations, and for each subsequent month, on or about the 15<sup>th</sup> day of the month, the Consortium Manager will invoice each Member for the period one month in the future, based on the Consortium's estimated operating expense budget and an allocation of this budget to the Members in accordance with Exhibit D (the "Advance Billing"). Beginning with the month following operations, each Member will be invoiced for the preceding month, based on the Consortium's actual operating expenses allocated in accordance with Exhibit D. Concurrently, each Member's account will be reconciled and adjusted in accordance with the actual activity for the month to which the billing applies versus the estimates used for the Advance Billing.

(c) Consortium Management and Administration Costs will be allocated to the Cost Centers as provided for in Exhibit D and shall be included in the invoices provided in (a) and (b) above.

(d) In accordance with Section 12.1(b), costs incurred: (i) for the sole benefit of one or more particular User(s) or (ii) as the result of the negligence of, or damage to the Consortium-Maintained City Equipment or Consortium Property, caused by any User or its Certified Service Provider, shall be charged to and paid only by the persons causing such costs to be incurred.

(e) Subject to the proviso at the end of this sentence, not more than two times during any fiscal year, if a current schedule based on the most recently available projections and other information indicates that payments of the Consortium-Provided-to-Airlines Services Charge at the then-existing rates would result in an overpayment or underpayment by more than five percent of the amount required to be collected by the Consortium, then the Management Committee may revise the schedule and adjust the rates for the remainder of such year to conform to its current projections; provided that, notwithstanding the foregoing, the Management Committee may revise and adjust the rates at any time. The Management Committee shall notify the Members at least thirty (30) calendar days in advance of its intention to adjust the schedule, providing revised charges in sufficient detail to allow a Member to make informed comments thereon. A Member may submit written comments on such revised schedule to the Management Committee within fifteen (15) calendar days following delivery of the notice to the Member. The Management Committee shall give due consideration to any comments submitted in a timely

manner by a Member. If requested by a Consortium Majority-In-Interest, the Management Committee shall convene a meeting with the Members to discuss the revision and adjustments.

(f) As soon as practicable after the end of each calendar year, the Consortium shall render an itemized accounting (which itemized accounting may be audited by the Consortium's Auditor) to each Member and remit payment or an invoice to Member for the actual Consortium-Provided-to-Airlines Services Charge incurred by, and allocable to, each Member during the preceding calendar year, based on each Member's actual Usage and reflecting any adjustments permitted hereunder.

## 12.5 Payments.

(a) Each Member shall make payments to the City for use of Consortium-Maintained City Equipment and for Consortium-Provided-to-City Services in accordance with the Airline Use and Lease Agreement.

(b) Each Member shall make its respective pro rata share payments for Consortium-Provided-to-Airlines Services to the Consortium when due at the office of the Consortium Manager or at any alternate location specified in writing by the Consortium Manager and approved by the Management Committee. Any invoice submitted to a Member by the Consortium shall have the due date stated thereon. The amount of any delinquent payment shall include a penalty equivalent to ten percent (10%) of the value of the invoice and shall bear interest at a rate equal to two percent (2%) per month (or the maximum rate permitted by law, whichever is lower), from the date such amount is due until paid in full.

(c) If a Member fails to pay its share of the Consortium-Provided-to-Airlines Services Charge within thirty (30) calendar days of the date payment was due (including any amounts due after such Member has withdrawn from this Member Agreement pursuant to Article 16 hereof), and the amount of the Operating Reserve Account is not sufficient to make such payment, each non-defaulting Member must pay, within ten (10) calendar days of demand, its *pro rata* share of the amount in default, determined by the Consortium in accordance with the allocations set forth in Section 12.2(a) above, but calculated assuming that the defaulting Member was not a Member for the period in question. Such payments shall be deemed to be loans to the defaulting Member and the amounts due shall be calculated as set forth in Section 12.5(b) hereof. In the event of default in the payment of any of its share of the Consortium-Provided-to-Airlines Services Charge by a Member or its *pro rata* share of an amount in default from another Member, which default shall continue for thirty (30) calendar days, the amount of such defaulted charges shall be payable as provided in Article 13 below.

(d) Each Member must make payments to the Consortium in accordance with the terms of this Member Agreement with no defense or right of set-off, reduction, counterclaim (other than a compulsory counterclaim or one that would be lost if not asserted) or recoupment for any reason, including the unenforceability or invalidity of this Member Agreement, the bankruptcy, insolvency, liquidation or reorganization of the Consortium, any Event of Default or withdrawal under this Member Agreement by any other Member, any breach by the Consortium or any other

party of any obligation to the Member, whether under this Member Agreement, the Consortium Manager Agreement or otherwise, or any indebtedness or liability at any time owing to the Member by the Consortium, or any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, or the destruction by fire or other casualty of the Consortium-Maintained City Equipment or Consortium Property or any portion thereof, commercial frustration of purpose, any change in the tax or other laws or administrative rulings or administrative actions by the United States of America or the State of Illinois or any political subdivision of either, the taking of title thereto or the use thereof by the exercise of the power of eminent domain or the termination of the Consortium Agreement.

#### 12.6 Operating Reserve Account.

- (a) The Consortium shall establish and maintain an Operating Reserve Account in an amount determined by the Board of Directors, based upon Usage in the various cost centers.

Within 30 days of the effective date of this Agreement, the Consortium Manager will:

- a. Prepare an assessment of the Operating Reserve Account to determine the balance necessary under the new invoicing and payment process, and;
- b. Review current Ownership Interest to rebalance as necessary based on actual usage.
- c. All existing Ownership Interest effective as of May 11, 2018 shall be reset as necessary and any existing Ownership Interest above the approved requirements shall be refunded, and any Member of the CICA Terminal Equipment Corporation dated January 1, 1990 who does not continue as a Member shall have their entire Ownership Interest refunded.

(b) The Consortium will draw upon the Operating Reserve Account as a course of business to provide timely payments to the Consortium's service providers. Draws made in this manner will be replenished by the timely payments of the Members under this Member Agreement for the Consortium-Provided to Airlines Services.

(c) The Consortium may also draw upon the Operating Reserve Account after a failure by a Member to pay or perform its obligation to cover any required payment, or to perform any other obligation of such Member under this Member Agreement. A defaulting Member shall not be entitled to prior notice of or have the right to consent to any draw from the Operating Reserve Account, and shall immediately replenish the Operating Reserve Account and reimburse the Consortium and the non-Defaulting Members, if applicable, for any costs and penalties associated with the draw therefrom.

(d) The Consortium may establish the Operating Reserve Account by actual Member cash deposits. The Operating Reserve Account deposits shall be held by such institutions, and the monies therein invested, as the Consortium shall determine.

#### 12.7 Operating Reserve Account Charge.

(a) The costs associated with the establishment and maintenance of the Operating Reserve Account, other than the costs associated with a Member's default, shall be part of the the Consortium's management and administration expenses.

(b) For accounting purposes, payments and contributions to the Operating Reserve Account shall not be considered revenues of the Consortium.

### **ARTICLE 13. DEFAULT**

#### **13.1 Events of Default and Termination.**

An Event of Default with respect to a Member shall exist if an one or more of the following events shall occur:

(a) The failure of the Member to pay any amount when due under this Member Agreement in accordance with the terms hereof, which failure continues unremedied for 10 (ten) calendar days following a Member's receipt of written notice of the amount overdue; or

(b) The failure by the Member punctually and properly to perform any covenant (other than that specified in Section 13.1(a)), agreement, obligation, term or condition contained herein which is not cured within 30 (thirty) calendar days of notice from the Consortium; or

(c) The Member shall (i) commence a voluntary case under any chapter of the Federal Bankruptcy Code (11 U.S.C. §101, et seq., as amended) as now or hereafter in effect, or shall consent to (or fail to controvert in a timely manner) the commencement of an involuntary case against the Member under said Code; (ii) institute proceedings for liquidation, termination, dissolution, rehabilitation, readjustment or composition (or for any related or similar purpose) under any law (other than the Federal Bankruptcy Code as now or hereafter in effect) relating to financially distressed debtors, their creditors or property, or shall consent to (or fail to controvert in a timely manner) the institution of any such proceedings against the Member; (iii) make an assignment for the benefit of creditors or enter into any arrangement for the adjustment or composition of debts or claims; (iv) apply for or consent to the appointment of, or the taking possession by, a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of itself or any of its property; or (v) take corporate action for the purpose or with the effect of authorizing, acknowledging or confirming the taking or existence of any action or condition specified in clause (i), (ii), (iii) or (iv) above; or

(d) The Member shall be insolvent (within the meaning of any applicable law), or shall be unable, or shall admit in writing its inability, to pay its debts as they become due, or take corporate action for the purpose or with the effect of authorizing or confirming the taking or existence of any action or condition specified in this Section 13.1(d); or

(e) A court or other governmental authority or agency having jurisdiction shall enter a decree or order (i) for the appointment of a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the Member of any part of its property, or for the winding-up or liquidation of its affairs, and such decree or order shall remain in force

undischarged and unstayed for a period of more than thirty (30) calendar days or (ii) for the sequestration or attachment of any material part of the property of the Member without its unconditional return to the possession of the Member or its unconditional release from such sequestration or attachment within thirty (30) calendar days thereafter; or

(f) A court having jurisdiction shall enter an order for relief in any involuntary case commenced against the Member under the Federal Bankruptcy Code as now or hereafter in effect, and such order shall remain in force undischarged and unstayed for a period of more than thirty (30) calendar days; or

(g) A court or other governmental authority or agency having jurisdiction shall enter a decree or order approving or acknowledging as properly filed or commenced against the Member a petition or proceedings for liquidation, rehabilitation, readjustment or composition (or for any related or similar purpose) under any law (other than the Federal Bankruptcy Code as now or hereafter in effect) relating to financially distressed debtors, their creditors or property, and such petition or proceedings shall not be dismissed within thirty (30) calendar days of the date of filing or commencement.

### 13.2 Consequences of Default.

(a) Report to Consortium. If any Member knows of an Event of Default or of facts that lead it to believe an Event of Default has occurred, then it shall endeavor to provide notice in writing to the Consortium.

(b) Notice of Defaulting Member. The Consortium shall give notice to the defaulting Member and any other person entitled thereto as soon as practicable after there has been an Event of Default under this Member Agreement. Such Member shall have ten (10) calendar days (or such longer period as is permitted under this Member Agreement) from the date of such notice in which to cure such Event of Default. (If the end of the ten (10) day calendar cure period ends on a non-Business Day, the cure period shall be extended to the next Business Day.) If such Event of Default has not been cured within the ten (10) calendar days (or longer, if permitted by this Member Agreement) period, the defaulting Member shall be retroactively billed by the Consortium as a Non-Member User from the date of the Event of Default and shall continue to be billed as a Non-Member User until one (1) month after the defaulting Member has cured the Event of Default if, during such one (1) month period, the Member has paid when due all monies owed the Consortium and has otherwise cured the Event of Default and performed all of its obligations hereunder. As an additional remedy hereunder, the Consortium may terminate the membership of such defaulting Member pursuant to this Member Agreement, and thereupon, the defaulting Member shall cease to be a Member hereunder. In the event that a Member has filed for protection under the laws protecting creditors, such Member shall have sixty (60) calendar days in which to assume this Member Agreement, and if such assumption is not made within sixty (60) calendar days, such defaulting Member shall be treated as a Non-Member User. Such defaulting Member, during the period of any Event of Default under this Member Agreement, shall remain subject to all obligations herein as a Member but shall have no rights to vote as a Member nor shall its Member Representative vote as a Member with respect to the

Consortium or hold a seat on the Management Committee nor shall its Usage be counted respecting a Consortium Majority-In-Interest, a Consortium Super Majority-In-Interest or otherwise in connection with any voting. Notwithstanding anything to the contrary contained in this Member Agreement, calculation of a Consortium Majority-In-Interest or Consortium Super Majority-In-Interest in voting with respect to a defaulting Member shall not include the Usage of such defaulting Member in the aggregate Usage of all Members nor count such defaulting Member as a Member. A Member which has defaulted under this Article 13 shall not be relieved of any of the responsibilities, liabilities or obligations of a Member hereunder because of its default.

(c) Collection. The Consortium shall have a claim, which the Consortium Manager is authorized to pursue and collect, against any defaulting Member in an amount equal to any payment due, together with costs associated with any draw on the Operating Reserve Account, interest on the defaulted payment amount from the date it was due, and expenses of collection as provided herein, including amounts due or owed to non-defaulting Members as provided in Section 12.5(c) hereof. Such claim may be enforced, immediately upon the occurrence of and after any default of a Member, by: (i) terminating the defaulting Member's right to use Consortium Property and Consortium-Provided-to-Airlines Services; and (ii) pursuing any and all other legal or equitable remedies available to the Consortium, the Consortium Manager, the Maintenance Operator, or the Contractors.

### 13.3 Reimbursement.

In the event that the Members have been required to pay on behalf of a defaulting Member, the Members shall be reimbursed by the Consortium, *pro rata*, according to the respective amounts advanced as monies are collected from a defaulting Member.

### 13.4 Costs.

The defaulting Member shall be liable for all reasonable costs and expenses, including reasonable attorneys fees and disbursements at trial or on appeal, expended in order to collect or attempt to collect any amounts due or owed. Any amounts due from or owed by a defaulting Member hereunder may be offset against any amounts otherwise payable to such defaulting Member by the Consortium.

## **ARTICLE 14. CONSORTIUM-MAINTAINED CITY EQUIPMENT; CONSORTIUM PROPERTY**

### 14.1 Consortium-Maintained City Equipment.

The Consortium shall use, operate and maintain the Consortium-Maintained City Equipment in accordance with the provisions of this Member Agreement and the Consortium Agreement. Consistent with Section 7.4 of the Consortium Agreement, each Member shall treat as confidential all reports, information, or data prepared or assembled by or provided to Consortium pursuant the Consortium Agreement and made available to such Member by Consortium.

14.2 Consortium Property.

The Consortium shall arrange for the transfer, purchase, lease or other acquisition of Consortium Property to be used for Consortium operations as well as Consortium Property to be used by the Members and Non-Members at the Airport in accordance with the terms of this Agreement. Consortium Property may be acquired by agreement of a Consortium Super Majority-In-Interest of the Members if involving an expenditure of more than One Hundred Thousand Dollars (\$100,000), and by a Consortium Majority-In-Interest if involving an expenditure of One Hundred Thousand Dollars (\$100,000) or less.

**ARTICLE 15. LIABILITY, EXCULPATION AND INDEMNIFICATION**

15.1 Member Liability Related to Consortium-Maintained City Equipment and Consortium Property Use.

Each Member (the "Indemnitor") shall defend, indemnify, and hold harmless Covered Persons against and from any and all liability, claims, suits, judgments, losses, damages, settlements or costs (including reasonable attorneys' fees and expenses) for injuries to or deaths of persons or loss of or damage to property (including financial loss) arising from: (i) the use of the Consortium-Maintained City Equipment and Consortium Property by the Indemnitor or its employees, agents, contractors, or invitees; or (ii) any failure by the Indemnitor to pay all amounts when due or any other breach by the Indemnitor of this or any related agreement. The Indemnitor shall accept and defend all such claims and suits regardless of the merit thereof (including investigation, pleading, discovery, motions, trial and appeal) at Indemnitor's sole cost and expense, and including any settlement thereof. The Covered Persons shall cooperate in the defense as reasonably requested by the Indemnitor at the Indemnitor's expense. Indemnitor's obligation and Covered Persons' rights under this Section 15.1 shall survive the withdrawal of Indemnitor as a Member or the termination of this Member Agreement. The foregoing shall not apply by reason of such Covered Person's own negligence or willful misconduct in respect of such liability, claims, suits, judgments, losses, damages, settlements or costs.

15.2 Consortium Liabilities.

(a) Except as otherwise provided, the debts, obligations and liabilities of the Consortium, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Consortium, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Consortium solely by reason of being a Covered Person.

(b) To the fullest extent permitted by applicable law, but without limiting the provisions of Sections 15.1 and 15.5, a Member, in its capacity as Member, shall have no liability in excess of (a) the amount of its Capital Contributions, (b) its share of any assets and undistributed profits, if any, of the Consortium, (c) its obligation to make other payments expressly provided for in this Member Agreement, and (d) the amount of any distributions wrongfully distributed to it.

(c) In the event that one or some but not all Members or Covered Persons are named in an action against the Consortium related to Consortium debts, liabilities or obligations, the

named Covered Persons shall have the right to interplead all Members of the Consortium in the action and shall be entitled to indemnification by the Consortium for any loss, cost, liability or expense related to being so named pursuant to Section 15.5 and 15.6 below.

### 15.3 Exculpation.

(a) No Covered Person shall be liable to the Consortium or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Consortium or as a Member Representative to the Board of Directors or the Management Committee and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by or pursuant to this Member Agreement or as a Member Representative to the Board of Directors or the Management Committee, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's negligence or willful misconduct.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Consortium and upon such information, opinions, reports or statements presented to the Consortium or such Covered Person by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Consortium or such Covered Person, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

### 15.4 Fiduciary Duty.

To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Consortium or to any other Covered Person, a Covered Person acting under this Member Agreement shall not be liable to the Consortium or to any other Covered Person for its good faith reliance on the provisions of this Member Agreement and, to the fullest extent permitted by law, shall not be liable for monetary damages for breach of any such duties. Duties (including fiduciary duties) and liabilities, whether existing at law or in equity, of Covered Persons, are hereby restricted to the fullest extent permitted by law. The parties hereby agree that the provisions of this Member Agreement that restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity (including the provisions of the foregoing sentence) are intended by the parties hereto to replace and restrict such other duties and liabilities of such Covered Person.

### 15.5 Indemnification by the Consortium.

To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Consortium for any loss, expense (including reasonable attorneys' and other professionals' fees), damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Consortium and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Member Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any such loss, expense, damage or claim incurred by such

Covered Person by reason of such Covered Person's own negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 15.5 shall be provided out of and to the extent of Consortium assets only, including Consortium insurance, and no Covered Person shall have any personal liability on account thereof.

#### 15.6 Expenses.

To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding, other than a claim, demand, action, suit or proceeding under Section 15.1, shall be advanced by the Consortium from time to time prior to the final disposition of such claim, demand, action, suit or proceeding upon request therefor by such Covered Person and receipt by the Consortium of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified as authorized in Section 15.5 hereof.

#### 15.7 Insurance.

The Consortium shall purchase and maintain insurance, to the extent and in such amounts as outlined in the Consortium Agreement, on behalf of Covered Persons and such other persons as outlined in the Consortium Agreement against liabilities that may be asserted against or expenses that may be incurred by any such person in connection with the activities of the Consortium or indemnities. The Consortium may enter into indemnity contracts with Covered Persons and such other persons as a Consortium Majority-In-Interest shall determine and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under Section 15.5 hereof and containing such other procedures regarding indemnification as are appropriate.

#### 15.8 Outside Businesses.

Any Member or Affiliate thereof may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Consortium, and the Consortium and the Members shall have no rights by virtue of this Member Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Consortium, shall not be deemed wrongful or improper. No Member or Affiliate thereof shall be obligated to present any particular investment opportunity to the Consortium even if such opportunity is of a character that, if presented to the Consortium, could be taken by the Consortium, and any Member or Affiliate thereof shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment opportunity. A Member shall, however, disclose to the other Members any benefits or advantages that may accrue to it on account of a decision or action to be taken by the Consortium (other than any benefits or advantages accruing because of its membership in the Consortium).

## **ARTICLE 16. WITHDRAWAL**

### 16.1 Cessation of Operations.

If a Member decides to withdraw from this Member Agreement (subject to the limitations set forth in Section 16.4 hereof), that Member (hereinafter "Withdrawing Airline") may submit a written "Notice of Withdrawal" to the Consortium no less than sixty (60) calendar days prior to the date on which such Member shall withdraw, which Notice of Withdrawal shall specify the desired Withdrawal Date.

### 16.2 Liabilities and Credits of Withdrawing Airlines.

No return or refund of any part of the Withdrawal Deposit shall be made by the Consortium. A Withdrawing Airline shall continue to be liable after the Withdrawal Date for such Withdrawing Airline's allocated share (calculated in accordance with Article 12 hereof) for any claim or liability for matters which occurred or accrued during the time such Withdrawing Airline was a Member up to and including the Withdrawal Date, provided that the terms of Article 16 shall continue to apply with respect to such Withdrawing Airline. In the event that all Members except one have withdrawn from this Member Agreement, then each Withdrawing Airline that has been a Member at any time during the five-year period preceding the withdrawal of all Members except one shall be liable for obligations to the Consortium incurred prior to the withdrawal of all Members except one, to the extent that such Withdrawing Airline's aggregate Usage during such five-year period bears to the total of all such Withdrawing Airlines' and the one remaining Member's aggregate Usage during such five-year period or such shorter period of actual operation. The obligations of each Member set forth in the last two sentences of this Section 16.2 shall survive any withdrawal by such Member from this Member Agreement.

### 16.3 Termination.

Upon payment of all amounts due from the Withdrawing Airline, this Member Agreement shall terminate as to the Withdrawing Airline only.

### 16.4 Limitation on Withdrawal.

Notwithstanding anything herein to the contrary, no Member may withdraw from this Member Agreement under any of the following circumstances:

- (a) during any period of time when the Airport is shut down or inoperable for any reason;
- or
- (b) if immediately after such withdrawal, no Members would be a party to this Member Agreement, rather the last remaining Member would dissolve the Consortium.

## **ARTICLE 17. DISSOLUTION, LIQUIDATION AND TERMINATION**

### 17.1 No Dissolution.

The Consortium shall not be dissolved by, and the Consortium shall continue without dissolution or the winding up of its affairs in the event of the occurrence of any one or more of the following events: the admission of one or more Additional Members; the termination or

withdrawal of one or more Members; any Member ceasing to be a Member of the Consortium; or the bankruptcy, insolvency or dissolution of one or more Members.

#### 17.2 Events Causing Dissolution.

Subject to the restrictions on dissolution found in Article 3 of this Agreement, the Consortium shall be dissolved and its affairs shall be wound up only upon the occurrence of any of the following events:

(a) the written consent of a Consortium Super Majority-In-Interest of Members to such dissolution; or

(b) the entry of a decree of judicial dissolution.

#### 17.3 Liquidation.

Upon dissolution of the Consortium, the Members shall carry out the winding up of the Consortium and shall immediately commence to wind up the Consortium's affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Consortium and the satisfaction of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation. The proceeds of liquidation shall be distributed in the following order and priority:

(a) to creditors of the Consortium, including Members who are creditors, to the extent otherwise permitted by law, in satisfaction of the liabilities of the Consortium (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for distributions to Members and former Members; and

(b) after the foregoing distributions, any remaining balance according to the proportion that each then-Member's Usage bears to the total of all then-existing Members' Usage, with Usage determined as the aggregate amount of Usage for the two (2) years immediately preceding the month of such distribution (or such shorter period of actual operation of the Consortium). Notwithstanding the foregoing, there shall be set off against the amount otherwise distributable to any Member any and all amounts owed to the Consortium by such Member.

#### 17.4 Termination.

The Consortium shall terminate when all of the assets of the Consortium, after payment of or due provision for all debts, liabilities and obligations of the Consortium, shall have been distributed to the Members in the manner provided for in this Article 17 and the Certificate shall have been canceled.

#### 17.5 Claims of the Members.

The Members shall look solely to the Consortium's assets for the return of their Capital Contributions in accordance with Section 17.3, and if the assets of the Consortium remaining after payment of or due provision for all debts, liabilities and obligations of the Consortium are insufficient to return such Capital Contributions, the Members shall have no recourse against the Consortium or any other Member. In accordance with Section 6.1(f), former Members shall

have no right to a return of their Capital Contribution at the time of dissolution, liquidation or termination.

#### 17.6 Limitations on Distribution.

Notwithstanding any provision to the contrary contained in this Member Agreement, the Consortium shall not make a distribution to any Member on account of its Interest if such distribution would violate applicable law.

### **ARTICLE 18. MISCELLANEOUS**

#### 18.1 Covenant to Sign Documents.

Each Member covenants, on behalf of itself, its successors and assigns, to execute, with acknowledgment or affidavit if required, any and all documents and writings, and any opinions, which may be reasonably necessary or expedient in the implementation of this Member Agreement.

#### 18.2 Attorneys' Fees.

In the event any dispute among the parties hereto should result in litigation, the prevailing party shall be reimbursed for all reasonable actual costs including reasonable actual attorneys' fees.

#### 18.3 Notices.

All notices provided for in this Member Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered by hand, mailed via an overnight courier service, telecopied or mailed by registered or certified mail, as follows:

(a) if given to the Consortium at the address specified in this Member Agreement as such address may be changed from time to time pursuant to this Section 18.3; or

(b) if given to any Member at the address designated from time to time by written notice to the Consortium.

All such notices shall be deemed to have been given when received.

#### 18.4 Counterparts.

This Member Agreement may be executed in any number of counterparts and by the various Members on separate counterparts, all of which taken together constitute one and the same Instrument. A signed counterpart is as binding as an original.

#### 18.5 Applicable Law.

This Member Agreement is to be governed by and construed under the laws of the State of Illinois with regard to the organization and internal affairs of the Consortium and the liability and authority of its Members and any managers

#### 18.6 Not a Partnership or Joint Venture.

Except to the extent expressly provided by this Member Agreement, neither this Member Agreement nor the relationship of the Members as a consequence of their participation in: (i) the Consortium; (ii) this Member Agreement; (iii) the maintenance and operation of the Consortium-Maintained City Equipment and the Consortium Property; (iv) and the provision of the Consortium-Provided Services, creates a partnership, joint venture or agency relationship between the parties to this Member Agreement. No Member shall have power or authority to bind the Consortium. No Member may commit any other Member or the Consortium to any debt or obligation of any type whatsoever other than as specifically provided in and pursuant to the procedures set forth in this Member Agreement or in other documents signed by or binding on a Member or the Consortium.

#### 18.7 Amendments.

(a) Except as described in Subsection (b) below or otherwise expressly indicated herein, this Member Agreement may be amended only by the Members constituting a Consortium Super Majority-In-Interest. An amendment shall be effective only if evidenced by a writing which sets forth the text of the amendment and which is signed by the requisite number of Members approving the amendment.

(b) Each party hereto, by execution of a counterpart of this Member Agreement, consents to the addition of other Members from time to time pursuant to Article 4 and Article 5.

#### 18.8 Assignment.

The rights and obligations of any Member hereunder may not be pledged, encumbered, assigned or transferred in any way, except to a transferee of such Member's Interest in the Consortium. Subject to this restriction on assignment, the obligations hereunder are binding on the successors and assigns of each Member.

#### 18.9 U.S. Currency.

Any payments required by this Member Agreement from one party to any other shall be made with U.S. Dollars in locally collectible funds.

#### 18.10 Entire Agreement.

This Member Agreement represents the parties' entire agreement. There are no other agreements or promises, written or oral, incorporated herein except as specifically set forth in this Member Agreement.

#### 18.11 Severability.

If any provision of this Member Agreement is declared by a court of competent jurisdiction to be illegal, unenforceable or void (including in the event of a bankruptcy of any Member), that provision, to the extent necessary shall be modified so as to be enforceable and as nearly as possible reflect the original intention of the parties hereto, it being agreed and understood by the parties hereto that (a) this Member Agreement and all the provisions hereof shall be enforceable in accordance with their respective terms to the fullest extent permitted by law, and (b) the remainder of this Member Agreement shall remain in full force and effect.

18.12 Failure to Pursue Remedies.

The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any provision of this Member Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

18.13 Limitation of Rights.

Nothing in this Member Agreement expressed or implied is intended or shall be construed to give to any person other than the Members any legal or equitable right, remedy or claim under or in respect of this Member Agreement or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Members.

SIGNED AND AGREED:

**CHICAGO AIRLINES TERMINAL CONSORTIUM**

By: \_\_\_\_\_  
Chairperson of the Board of Directors

**MEMBER:** \_\_\_\_\_,  
Airline Name

A \_\_\_\_\_ organized under the laws of \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Consortium Address for Notices:

Terminal 5 – Mezzanine Level  
10000 West O’Hare Drive  
Chicago, Illinois

Member Address for Notices:

## **MEMBER AGREEMENT**

### **EXHIBITS**

- Exhibit A: Existing Members
- Exhibit B: Voting Requirements Index
- Exhibit C: Consortium-Maintained City Equipment, Consortium Property and Consortium-Provided Services
- Exhibit D: Cost Centers for Consortium-Maintained City Equipment, Consortium Property, and Consortium-Provided Services; and Calculation of Usage for Consortium Property and Consortium-Provided-to-Airlines Services

**EXHIBIT A  
TO MEMBER AGREEMENT**

**EXISTING MEMBERS**

Aer Lingus  
AeroMexico  
Air Berlin  
Air France  
Air India  
Alitalia  
All Nippon  
American  
Asiana  
Austrian  
British Airways  
Cathay Pacific  
China Eastern  
Copa  
Delta Airlines  
Emirates  
Etihad  
Eva  
Frontier  
Hainan  
Iberia  
IcelandAir  
InterJet  
Japan Airlines  
KLM  
Korean Airlines  
Lot-Polish  
Lufthansa  
Qatar  
Royal Jordanian  
SAS

Swiss International Airlines

TACA

Turkish Airlines

United Airlines

Virgin Atlantic

Volaris

WestJet

**EXHIBIT B  
TO MEMBER AGREEMENT**

**VOTING REQUIREMENTS INDEX**

**Consortium Majority-In-Interest**

<b>Section</b>	<b>Action</b>
Definitions	Select Auditor
Definitions	Approve Withdrawal Date
4.7	Member security deposit requirement
6.1(d)	Refund pro-rata share of Capital Contribution paid by Additional Member
6.1(e)	Approval of Additional Capital Contribution
7.3	Reimburse Members for incurring Consortium Expenses
8.2(b)	Approve action without meeting
8.2(d)	Select Maintenance Operator, Contractors, Consortium Manager
8.2(i)	Approve any action of the Board of Directors
8.3	Elect a Chairperson and a Vice Chairperson
8.3	In the absence of the Chairperson and Vice Chairperson, elect a meeting chairperson
8.3	Categorize expenditures as Extraordinary Costs
8.4	Authorize Contracts
8.5(a)	Select and Remove Management Committee
8.6(a)	Select and Remove Operations Committee
8.6(c)	Operations Committee Voting
10.3	Approve Service Access Agreement
11.1	Approve selection of Consortium Manager, and approve Consortium Manager Agreement
11.3	Approve selection of Maintenance Operators and Contractors, and approve Maintenance and Operating Agreements and Contractor Agreements
12.2(b)	Allocation of Extraordinary Costs
12.4(c)	Call meeting to discuss rate adjustments and revisions
14.2	Acquire Consortium Property for \$100,000 or less
15.7	Obtain Insurance

**EXHIBIT B  
TO MEMBER AGREEMENT**

**VOTING REQUIREMENTS INDEX**

**Consortium Super Majority-In-Interest**

<b>Section</b>	<b>Action</b>
Definitions	Define Usage
Definitions	Consortium-Provided-to-Airlines Services Charge definition change
8.2(b)	Approve action without meeting
14.2	Acquire Consortium Property for more than \$100,000
17.2(a)	Vote to Dissolve
18.7(a)	Amend Member Agreement

**EXHIBIT C  
TO MEMBER AGREEMENT**

**CONSORTIUM-MAINTAINED CITY EQUIPMENT, CONSORTIUM PROPERTY AND  
CONSORTIUM-PROVIDED SERVICES**

**Consortium-Maintained City Equipment**

Passenger Loading Bridges  
Ground Power Units (400 Hertz)  
Pre-Conditioned Air  
Potable Water Closets  
Airline Waste Triturator Facilities  
Gate Guidance Systems  
Ticket Podium Millwork  
Portable Gate Podiums  
Dumb Waiters  
Share Equipment Technology/Common Use Technology Equipment System  
Ticket Counters  
Check in Kiosks  
Ticket Counter Informational Displays  
Back Wall Displays  
Baggage Scales  
Electronic Ground Support Equipment Charging Station  
Baggage Systems  
Baggage Carousels  
Tower Equipment  
Power Center Charging Branch Circuit Plants  
UPS Battery Back Up Systems  
Pumps and other equipment for ethylene glycol, propylene glycol or other substance in deicing or anti-icing

**Consortium-Provided to City Services**

Gate Coordination Services  
Employee Parking Lot Management Services  
Passenger Busing Services  
Ramp Management Services  
Scheduling Management Services

**Consortium-Provided to Airlines Services**

Deicing Pad Services  
International Waste Disposal Services  
Passenger Assistance Services Wheelchair Services

**EXHIBIT D  
TO MEMBER AGREEMENT**

**COST CENTERS FOR CONSORTIUM-MAINTAINED CITY EQUIPMENT,  
CONSORTIUM PROPERTY, AND CONSORTIUM-PROVIDED SERVICES  
AND  
CALCULATION OF USAGE FOR CONSORTIUM PROPERTY AND CONSORTIUM-  
PROVIDED-TO-AIRLINES SERVICES**

Until changed by a Super Majority-In-Interest, each Member's Usage for Consortium-Maintained City Equipment, Consortium Property, Consortium-Provided-to-City Services, and Consortium-Provided-to-Airlines Services shall be determined as follows:

- A. Voting. The vote of the Members, whether representing a Majority-in-Interest or a Super Majority-In-Interest, requires both the affirmative votes of a certain number of Members and the affirmative votes of Members representing a certain percentage of the Usage. Each Member's Usage, for purposes of determining a Majority-In-Interest or a Super Majority-In-Interest under this Member Agreement, shall mean its pro rata share of the Consortium Charge and amounts invoiced by the City pursuant to Section 12.4(a) in the preceding twelve (12) calendar months in accordance with the allocation formulas described below.
- B. Member Participation. Members may individually elect to opt out of any Cost Center for Consortium Property or Consortium-Provided-to-Airline Services, if the Member is independently able to effectively provide a similar service for themselves. Members will not be charged for costs included in a Cost Center cost allocation if they have opted out of the services included in that Cost Center or if the Cost Center does not apply to them. Members may opt out of a service provided by the Consortium, by providing thirty (30) day prior written notice to the Consortium in accordance with Section 18.3. Members who have opted out of a service provided by the Consortium may also opt back in for that service, by providing thirty (30) day prior written notice to the Consortium in accordance with Section 18.3.
- C. Non-Member Participation. Non Members will pay a premium of 125% of the Member Rate for Consortium-Provided-to-Airlines Services.
- D. Rate Methodology. The rate methodology outlined below will be effective July 1, 2018. The rate methodology from May 12, 2018 to June 30, 2018 will be consistent with the methodology set forth in the Airline Use and Lease Agreements, including Section 8.18 (Transition Period Rates and Charges) therein.
- E. Cost Centers. The following cost centers are established:

- **Consortium Management and Administration Cost Center** means the management and administrative costs and expenses of the Consortium attributable either as a Direct Cost to one of the functional cost centers outlined, or as an Indirect Cost of the Consortium. The Consortium Management and Administration costs shall be allocated to each City-Invoiced Cost Center in accordance with Financial Accounting Protocols.
- Indirect Consortium Management and Administration costs shall be allocated based upon the prorata share of the Direct Costs allocated to each Cost Center.

**Consortium-Provided-to-City Services** – established for the purpose of cost allocations for Consortium invoicing to City.

- **Gate Coordination Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to gate coordination services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Passenger Busing Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to airside passenger busing services between the Terminals provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Employee Lot Busing Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to employee lot busing operation services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Ramp Management Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to Ramp Management Services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Scheduling Manager Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to Scheduling Manager Services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.

**Consortium-Provided-to-Airlines Services** – established for the purpose of cost allocations for Consortium invoicing to Users.

- **Deicing Pad Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to deicing pad services and glycol storage provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.

- **International Waste Disposal Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to international waste disposal services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Passenger Assistance Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to passenger assistance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Wheelchair Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to wheelchair services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.

**Consortium-Maintained City Equipment Cost Centers** – established for the purpose of cost allocation for City invoicing.

- **Common Use City-owned Baggage Claim Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to common use city-owned baggage claim operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Domestic Common Use Baggage Make-up Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to domestic common use baggage makeup operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Domestic Common Use Check-in Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to domestic common use check-in related contract costs and services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Domestic Common Use Gate Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to domestic common use gate operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **FIS Facilities Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to Federal Inspection Services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.

- **International Common Use Baggage Claim Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to international common use baggage claim operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **International Common Use City-Owned Baggage Make-up Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to international common use city-owned baggage makeup operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **International Common Use Check-in Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to international common use check-in related contract costs and services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **International Common Use Gate Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to international common use gate operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Preferential and Joint Use Baggage Claim Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to the preferential use and joint use baggage claim operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Preferential and Joint Use Baggage Make-up Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to the preferential use and joint use baggage make-up operation and maintenance services provided by the Consortium plus an allocation of the Consortium Management and Administration Cost Center.
- **Preferential and Joint Use Gate Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to maintenance and operations services provided by the Consortium for preferential and joint gates plus an allocation of the Consortium Management and Administration Cost Center.
- **Passenger Loading Bridge Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to maintenance and operations services provided by the Consortium for passenger loading bridges plus an allocation of the Consortium Management and Administration Cost Center.

- **Other City Equipment Cost Center** means the allocation of costs and expenses of the Consortium, if any, for those Direct Costs attributable to maintenance and operations services provided by the Consortium for other Consortium Maintained City Equipment plus an allocation of the Consortium Management and Administration Cost Center.

F. Consortium Charge Allocations. Consortium Charges will be accounted for by cost centers outlined above and will be allocated to participating Members by cost center based on the following cost allocation formulas:

**Consortium-Provided-to-Airlines Services**

- **Deicing Pad Cost Center**
  - Shall be allocated on the User's proportionate share of total Users' deicing services usage and storage of glycol.
- **International Waste Disposal Cost Center**
  - Shall be allocated on the User's proportionate share of total Users' arriving passengers.
- **Passenger Assistance Cost Center**
  - Shall be allocated on the User's proportionate share of departing passengers for the particular Terminal.
- **Wheelchair Cost Center**
  - Shall be allocated based upon each User's wheelchair requests.

The Members acknowledge and agree that, with respect only to Cost Centers described herein for Consortium-Maintained City Equipment and Consortium-Provided to City Services, this Exhibit D may be revised by the City and in accordance with the Consortium Agreement and reissued by the Consortium to Members from time to time during the Term (as such term is defined in the Consortium Agreement). The Members and the Consortium agree that, upon issuance by the City, and acknowledgement and acceptance in writing by the Consortium, each such revised Exhibit D shall be deemed attached to and incorporated into this Agreement, and shall supersede and replace the last issued Exhibit D attached to and incorporated into this Agreement without the need for a written amendment of this Agreement.

## EXHIBIT E – CITY-DELINATED CONTRACT REQUIREMENTS

Capitalized terms not defined in this Exhibit E shall have the meanings ascribed thereto in the Agreement.

In addition to all other requirements set forth in this Agreement or those imposed by law, Consortium shall comply and shall include in all of its Consortium Contracts requirements consistent with the City's requirements for affirmative action, equal opportunity, and such other requirements it imposes on contractors on City construction projects as the City may identify. These requirements are those set forth in this exhibit which may be unilaterally revised by the City from time to time.

In addition to complying with the requirements in this Exhibit E, in carrying out its responsibilities with respect to any Consortium Contract, Consortium shall comply with all indemnification, insurance, and environmental requirements in this Agreement, which requirements are incorporated into and made a part of this Exhibit E.

Consortium shall cause Consortium Contractors to execute a Contractor's Affidavit in the form provided by the City, and if requested by the City, to cause Consortium Contractors to complete an "Economic Disclosure Statement and Affidavit." Additionally, if form contract language is provided by the City either in this exhibit or any applicable reimbursable agreement between the City and Consortium, Consortium must use that language in its Consortium Contracts. Submission of such other information or reports regarding Consortium Contractors as may be required by the City will be a condition of payment for any reimbursable agreement associated with a Consortium Contract.

Unless expressly excepted below, Consortium shall comply with the requirements set forth in this Exhibit E in all Consortium Contracts with Consortium Contractors, regardless of whether such Consortium Contracts are subject to a Reimbursement Agreement.

Provisions required by Applicable Laws and/or Airport Rules to be inserted in a Consortium Contract shall be deemed inserted, whether or not they appear in that Consortium Contract or, upon application by either party, the Consortium Contract shall forthwith be amended by physically making such insertion; provided, however, in no event shall the failure to insert such provisions prevent the application or enforcement of such provisions or of the Consortium Contract.

### 1. Certification of Compliance with Laws

Consortium shall insure that the provision set forth below is inserted in all Consortium Contracts, and shall immediately inform the City of any disclosures pursuant to it:

"By entering into this contract, contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet City of Chicago requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any

government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to Consortium."

2. Minority and Women Business Enterprise

Consortium shall provide for the participation of Minority and Women Business Enterprises in any Consortium Contract. To this end, Consortium shall establish a policy for the utilization of Minority and Women Business Enterprises, a liaison with the Department of Aviation and Department of Procurement Services for Minority and Women Business Enterprises, a goal for the award of Consortium Contracts with Consortium Contractors, and a reporting procedure agreeable to Consortium and the City.

(a) Policy

The following statement represents Consortium's policy regarding Equal Opportunity and a Minority and Women Business Enterprises program:

Consortium is committed to providing fair and representative opportunities for minorities and women and Minority and Women Business Enterprises in its work. Neither Consortium nor its Consortium Contractors shall discriminate on the basis of race, color, religion, sex or national origin in the award and performance of Consortium Contracts to be utilized for any of the work hereunder. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable law, to ensure that Minority and Women Business Enterprises are afforded a fair and representative opportunity to participate in Consortium Contracts awarded by Consortium.

This policy shall be stated in all Consortium Contracts, circulated to all employees of Consortium and Consortium Manager in affected departments, and made known to minority and women entrepreneurs.

(b) Liaison

To ensure compliance and the successful management of Consortium's Minority and Women Business Enterprise program, Consortium shall establish a Minority and Women Business Enterprise liaison with City's Department of Aviation and with the City's Department of Procurement Services. Further, all personnel of Consortium and Consortium Manager and all others with responsibilities in the supervision of Consortium Contracts for the Consortium are to see that actions are performed consistent with the affirmative action goals of this Agreement.

(c) Goals

The goals to be met by Consortium in any Consortium Contract hereunder shall be with utilization of Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") certified by the City of Chicago, subject to the availability of MBE and WBE capable of performing the work. These goals shall be administered in a manner to assure City and Consortium that: (1) the work shall be completed at a reasonable and acceptable cost to Consortium, (2) the work shall be completed on a reasonable and acceptable timetable to Consortium and City and, (3) the quality of the work shall be reasonable and acceptable to Consortium and City.

The goals of Consortium for participation by MBEs and WBEs in the Consortium Contracts shall be to achieve a minimum of MBE participation of 26% and WBE participation of 6%, based on the total contracted expenditures under the Consortium Contract, unless otherwise directed by the City.

Should Consortium determine that no MBE and WBE is capable or available to perform under the Consortium Contract, it shall notify the Commissioner specifying the type of work required and the reasons an MBE and/or WBE is not available to perform such work. Consortium shall also notify the Department of Procurement Services, which shall determine if any MBE and WBE are available to perform the Services needed. If the Department of Procurement Services determines that MBEs or WBEs are available to perform such work, it shall notify Consortium of such availability and Consortium will be required to utilize such MBE and WBE, to the extent the goals set forth above can be met.

(d) Eligibility

Only those persons, firms, partnerships, corporations or other legal entities certified by the City of Chicago or Cook County as a certified MBE and/or WBE shall be eligible for purposes of meeting the goals established by this Agreement.

(e) Reporting

The Minority and Women Business Enterprise progress report required by this section shall be made on forms or on a format established by City and agreeable to Consortium. Such reports shall include the following items:

- (I) the total amount of prime and subcontract awards during the quarter and, for any contract awards to Minority and Women Business Enterprises resulting therefrom, the name of the Minority and Women Business Enterprise and the amount of the contract with the Minority and Women Business Enterprise;
- (ii) the cumulative value of all prime and subcontract awards to date, and the total accumulation of all awards to Minority and Women Business Enterprise;

- (iii) a projection of the total amount of prime and subcontracts to be awarded and of Minority and Women Business Enterprise contracts to be awarded during the next quarter;
- (iv) all Minority and Women Business Enterprise subcontracts that have been completed and for which final payment has been made during the quarter; and
- (v) an evaluation of the overall progress to date towards the Minority and Women Business Enterprise goals for the work.

### 3. Illinois Equal Employment Opportunity Clause

Pursuant to 44 Ill. Admin. Code Part 750, Consortium must comply with the Equal Employment Opportunity clause found in 44 Ill. Admin. Code Part 750 Appendix A with respect to work to be reimbursed by the City and must require it to be included verbatim in all Consortium Contracts subject to a Reimbursement Agreement. Failure to comply with clause may cause Consortium to be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Reimbursement Agreement may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

### 4. Equal Employment Opportunity and Affirmative Action Plan

Consortium must commit to establish, maintain and implement a written Equal Employment Opportunity and Affirmative Action Plan (the "EEO/AA Plan") for that work involving construction under Consortium Contracts, which plan is acceptable to City and Consortium.

Consortium shall establish participation goals in conformity with the Municipal Code § 2-92390, as amended from time to time, and any applicable state or federal EEO law.

### 5. Employment of City Residents

Consortium agrees to ensure that in the aggregated hours of work under any Consortium Contract involving construction work to be performed, at least 50% of the on-site worker hours in the category of construction laborers and at least 50% of the on-site worker hours in the category of skilled construction trade workers shall be residents of the City. The City may identify a required percentage of City residents who must reside in the project area (as defined by the City) and/or socio-economically disadvantaged areas of the City.

### 6. Prevailing Wage

Consortium must ensure that all Consortium Contractors comply with all applicable federal, state, and City wage laws. Unless identified otherwise by the City and with the exception of the Scheduling Manager Agreement, Consortium Contracts call for

the construction of a "public work" within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor ("IDOL") publishes the prevailing wage rates on its website at <http://www.state.il.us/agency/idol/rates/rates.HTM>. IDOL revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the IDOL web site for revisions to prevailing wage rates. With the exception of the Scheduling Manager, Consortium must require all Consortium Contractors and subcontractors to comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

As a condition of making payment under a Reimbursable Agreement, the City may require Consortium to require Consortium Contractor(s) to submit affidavit(s) to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on the Consortium Contract in accordance with Illinois law.

#### 7. Performance Bonds, Retainage, and Prompt Payment of Subcontractors

Consortium Contract requirements for performance bonds and retainage must be consistent with City requirements for its own construction work as set by ordinance. Prompt payment of subcontractors requirements must be consistent with City policy, currently requiring payment of subcontractors within seven days of payment to the prime contractor.

#### 8. Bid incentives

The City has several bid preferences and incentives, as well as mentor-protégé programs and other programs for economic and/or workforce development or other purposes (e.g. preferences for veteran-owned businesses, clean diesel, apprentice utilization, etc.) which it may require Consortium to implement in the context of bidding a Consortium Contract.

#### 9. Reporting and Compliance

In the event that there are Consortium Contracts subject to this Agreement, at quarterly intervals, beginning ninety (90) days following the execution of this Agreement, Consortium shall submit to City progress reports on forms or on a format established by City's Department of Procurement Services and agreeable to Consortium, that provide required information concerning Consortium compliance with Consortium's MBE/WBE requirements, EEO and Affirmative Action Plan, and other City programs. This may include utilization of one or more City computer reporting systems.

#### 10. Americans With Disabilities Act

Consortium shall insure that the appropriate provision set forth below is inserted in all contracts entered into with any design professional or with any Consortium Contractors and any labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with this Agreement:

A. Designs

"The Consultant warrants that all design documents produced for the City under this Agreement shall comply with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: Americans with Disabilities Act, 42 U.S.C. sec. 12102 et seq.; 41 C.F.R. part 60 et seq.; the Uniform Federal Accessibility Standards ("UFAS") or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"); the Air Carrier Access Act, 49 U.S.C. § 41705, et seq. ("ACAA"); the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq., and the regulations promulgated thereto at 71 III. Adm. Code Ch. 1, Sec. 400.110 et seq.; and all other applicable statutes, rules, regulations and executive orders. In the event that the above cited standards are inconsistent, the Consultant shall comply with the standards providing greater accessibility."

B. Construction Contracts

"All construction or alteration undertaken by Contractor under this contract shall be performed in compliance with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: Americans with Disabilities Act, P42 U.S.C. sec. 12102 et seq.; 41 C.F.R. part 60 et seq.; the Uniform Federal Accessibility Standards ("UFAS") or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAG"); the Air Carrier Access Act, 49 U.S.C. § 41705, et seq. ("ACAA"); the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq., and the regulations promulgated thereto at 71111. Adm. Code Ch. I, Sec. 400.110; and all other applicable statutes, rules, regulations and executive orders. The Contractor shall, prior to construction, review the plans and specifications and notify the Consortium and the City in the event that the plans and specifications are not in compliance with the above referenced standards."

11. Clean Diesel Contracting, Municipal Code Section 2-92-595

If a Consortium Contract is for construction, demolition, restoration, repair, renovation, environmental remediation or environmental abatement of any building, structure, tunnel, excavation, roadway, bridge, transit station or parcel of land and the estimated value of the Consortium Contract is \$2,000,000 or more, the Consortium Contractor and any subcontractors must comply with the Clean Diesel Contracting Ordinance, MCC Section 2-92-595, as if the Consortium Contract were awarded by the City.

12. Safety Enhancing Vehicle Equipment Contracting, Municipal Code Section 2-92-597

If the estimated value of a Consortium project is \$2,000,000 or more, and is for construction work or otherwise involves the use of Large Vehicles as defined in MCC

Section 2-92-597, the Consortium Contractor and any subcontractors must comply with the Safety Enhancing Vehicle Equipment Contracting Ordinance, MCC Section 2-92-597, as if the Consortium Contract were awarded by the City.

13. Non-Responsible Bidder

Prior to awarding any Consortium Contracts associated with a Reimbursement Agreement, Consortium must provide City with the names of vendors who may be awarded such contracts. Consortium agrees that no Consortium Contracts shall be awarded to persons or corporations identified on City's list of non-responsible bidders, nor shall such persons or corporations be used as subcontractors, so long as such list does not discriminate against any bidders because of race, religion, age, handicap, color, sex, national origin, citizenship or political affiliation. Consortium further agrees that no Consortium Contracts or subcontracts shall be awarded to persons or corporations that would be ineligible for contracting with the City based on federal or state law.

Consortium will comply with, and require any Consortium Contractor to comply with Section 2-92-320 of the Municipal Code of Chicago as follows:

No person or business entity shall be awarded a contract or sub-contract if that person or business entity:

- (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or
- (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or
- (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct; or
- (d) has violated Municipal Code of Chicago Section 2-92-610; or
- (e) has violated any regulation promulgated by the Chief Procurement Officer of the City of Chicago that includes ineligibility as a consequence of its violation; or
- (f) has committed, within a 24-month period, three or more violations of Chapter 1-24 of the Municipal Code of Chicago; or
- (g) has been debarred by any local, state or federal government agency from doing business with such government agency, for any reason or offense set forth in subsections (a), (b), or (c) of this section, or substantially equivalent reason or offense, for the duration of the debarment by such government agency.

For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to

the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to Section 2-92-320 of the Municipal Code of Chicago for a definition of affiliated agency, and a detailed description of the conditions which would permit the Chief Procurement Officer to reduce, suspend, or waive the period of ineligibility.

14. Federal No-Business List

Consortium shall include the following language in all Consortium Contracts:

Contractor warrants and represents that neither Contractor nor an Affiliate, as defined below, appears on the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment.

“Affiliate” means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Contractor. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity, either acting individually or acting jointly or in concert with others, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

15. Contracting Authority of Consortium

Nothing contained herein shall be deemed to supersede the authority and responsibility which may otherwise be granted to Consortium with respect to the contracting process for the work.

## EXHIBIT F

### COMPLIANCE WITH OTHER LAWS

#### Section 1. General Provisions

(A) Consortium shall comply, and shall include in all of its agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement (regardless of whether they are reimbursed by the City) a requirement that its Consortium Contractors comply, with all applicable federal, state, and local laws, codes, regulations, ordinances, executive orders, rules, and orders.

(B) Consortium agrees that all of the applicable provisions set forth in this Exhibit will be incorporated in all of its agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement.

(C) Further, Consortium shall execute, and shall include in all of its agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement a requirement that its Consortium Contractors execute, such affidavits and certifications as shall be required by the City setting forth Consortium's and its Consortium Contractor's, as applicable, agreement to comply with all applicable federal, state, and local laws, codes, regulations, ordinances, executive orders, rules, and orders. Such certifications shall be attached and incorporated by reference in the applicable agreements.

(D) In the event that any Consortium Contractor is a partnership or joint venture, Consortium shall also include provisions in its agreement with Consortium Contractor insuring that the entities comprising such partnership or joint venture shall be jointly and severally liable for its obligations thereunder.

(E) The City may unilaterally revise this Exhibit from time to time.

#### Section 2. Federal Nondiscrimination Requirements

(A) Consortium acknowledges that the City has given to the United States of America, acting by and through the FAA, certain assurances with respect to nondiscrimination required by Title VI of the Civil Rights Act 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252), 49 CFR Part 21, 49 U.S.C. § 47123, 28 CFR § 50.3 and other acts and regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation ("DOT") (collectively, and including all amendments thereto, the "Title VI Pertinent Nondiscrimination Acts and Authorities," and listed below) as a condition precedent to receiving Federal financial assistance from FAA for certain Airport programs and activities. The City is required under the Acts and Regulations to include in this Agreement, and Consortium agrees to be bound by, the following covenants and requirements:

- i. Consortium, for itself, its assignees and successors in interest, covenants and 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 program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA. In the event of Consortium's breach of any of the above Nondiscrimination covenants, the City shall have the right to terminate this Agreement.

ii. Consortium, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agree 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 Consortium will use the premises in compliance with all other requirements imposed by or pursuant to the list of Nondiscrimination Acts and Authorities.

iii. In the event of Consortium's breach of any of the nondiscrimination covenants described in subsection (ii), above, the City shall have the right to terminate this Agreement. This subparagraph (iii) shall not become effective until the procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

iv. Consortium shall include these subsections (i) through (iv), inclusive, in Consortium's contracts, and shall require that its Consortium Contractors and others similarly include these statements in their applicable contracts.

(B) Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, Consortium, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination 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 (Nondiscrimination 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 contractors, 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 Nondiscrimination 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 nondiscrimination 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.*).

(C) Nondiscrimination in Contracting Activities

i. Consortium, with regard to any contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. Any contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations.

In all solicitations, either by competitive bidding, or negotiation made by Consortium or its contractor for work to be performed under a contract or subcontract, including procurements of materials, or leases of equipment, each potential contractor, subcontractor or supplier will be

notified by the contractor of Consortium and contractor's obligations under the Acts and Regulations relative to non-discrimination on the grounds of race, color, or national origin.

Section 3. State Nondiscrimination Requirements

Consortium must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, as amended and any rules and regulations promulgated in accordance therewith, including the Equal Employment Opportunity Clause, 445 Ill. Admin. Code 750, Appendix A. Consortium must also comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*, as amended; the Environmental Barriers Act, 410 ILCS 25/1 *et seq.*; and all other applicable state laws, rules, regulations and executive orders.

Section 4. City Nondiscrimination Requirements

(A) Consortium must comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code; and all other applicable Municipal Code provisions, rules, regulations and executive orders.

(B) Further, Consortium must furnish, or cause each of its Consortium Contractors to furnish, such reports and information as requested by the Chicago Commission of Human Relations.

Section 5. Affirmative Action

Consortium assures that: (a) it shall undertake an affirmative action program as required by all federal, state and local laws, rules and regulations pertaining to Civil Rights (and any and all amendments thereto), including, without limitation, 49 CFR Part 21 and 49 U.S.C. § 47123, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the benefits of the program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section 5 in Consortium's Contracts and other applicable documents under this Agreement, and shall require that its Consortium Contractors and others similarly include these statements in their subcontracts and applicable documents.

Section 6. Safety and Security

(A) Consortium expressly acknowledges its responsibility to provide security at the Airport in accordance with 49 U.S.C. sec. 449 and 49 CFR Part 1542, "Airport Security," as such may be amended from time to time, including any applicable rules and regulations promulgated thereunder, and with all rules and regulations of the City concerning security procedures, including the Airport's approved security program. Consortium expressly

acknowledges its responsibility to provide security with respect to airplane operations in accordance with 49 CFR Part 1544, "Aircraft Operator Security," as such may be amended from time to time, and with the rules and regulations of the City concerning security procedures, including the Airport's approved security program.

(B) All employees providing services at the Airport must be badged by the City, as provided below in Section 7, "Airport Security Badges." Consortium, Contractors, and the respective employees of each are subject to such employment investigations, including criminal history record checks, as the Administrator of the Federal Aviation Administration ("FAA"), the Under Secretary of the Transportation Security Administration ("TSA"), and the City may deem necessary. Consortium, its Contractors, their respective employees, invitees and all other persons under the control of Consortium must comply strictly and faithfully with any and all rules, regulations and directions which the Commissioner, the FAA, or the TSA may issue from time to time during the life of this Agreement with regard to security, safety, maintenance and operation of the Airport and must promptly report any information regarding suspected violations in accordance with those rules and regulations.

(C) All gates and doors that permit entry into restricted areas at the Airport must be kept locked at all times when not in use or under constant security surveillance. Consortium shall ensure that such gates and doors within its Premises are kept locked at all times when not in use or under Consortium's constant security surveillance. Any gate or door malfunctions discovered by Consortium must be reported to the Commissioner without delay and must be kept under constant surveillance, in the case of malfunctions within its Premises, until the malfunction is remedied, or in the case of other malfunctions, until relieved by a responsible party.

(D) Consortium shall ensure that the following provision is inserted in all contracts entered into with any Consortium Contractors and with any labor organizations who furnish skilled, unskilled and craft union skilled labor, or who may provide any materials, labor or services in connection with this Agreement:

"Aviation Security: This Agreement is subject to the airport security requirements of 49 U.S.C. chapter 449, as amended, the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations in 49 C.F.R. Part 1542 and all other applicable rules and regulations promulgated thereunder. In the event that Consortium, or any individual employed by Consortium, in the performance of this Agreement, has (i) unescorted access to aircraft located on or at the Airport (ii) unescorted access to secured areas or (iii) capability to allow others to have unescorted access to such aircraft or secured area, Consortium shall be subject to, and further shall conduct with respect to its Contractors and their respective employees, such employment investigations, including criminal history record checks, as the Administrator of the Federal Aviation Administration, the Under Secretary of the Transportation Security Administration and City may deem necessary. Further, in the event this Agreement involves the construction, reconstruction, demolition or alteration of facilities to be located at or on the Airport, Consortium shall, notwithstanding anything contained herein, at no cost

to City, perform all obligations hereunder in compliance with those guidelines developed by City, the Transportation Security Administration and the Federal Aviation Administration, and in effect as of the Effective Date with the objective of maximum security enhancement. In the event the Agreement involves the design of facilities or equipment, the drawings, plans, and specifications to be provided under the Agreement shall comply with those guidelines developed by City, the Transportation Security Administration and the Federal Aviation Administration and in effect at the time of the submittal of such drawings, plans, and specifications.”

#### Section 7. Airport Security Badges

(A) As part of Airport operations and security, Consortium must obtain from the Airport badging office Airport Security Badges for each of its employees, subcontractors, material men, invitees or any person(s) over whom Consortium has control, which must be visibly displayed at all times while at the airport. No person will be allowed beyond security checkpoints without a valid Airport Security Badge. Each such person must submit signed and properly completed application forms to receive an Airport Security Badge. Additional forms and tests may be required to obtain Airport Driver’s Certification and Vehicle Permits. The application forms will solicit such information as the Commissioner may require in his or her discretion, including but not limited to name, address, date of birth (and for vehicles, driver’s license and appropriate stickers). Consortium is responsible for requesting and completing the form for each employee and subcontractor employee who will be working at the Airport and all vehicles to be used on the job site. Upon signed approval of the application by the Commissioner or his or her designee, the employee will be required to attend a presentation regarding airport security and have his or her photo taken for the badge. The Commissioner may grant or deny the application in his or her sole discretion. Consortium must make available to the Commissioner, within one day of request, the personnel file of any employee who will be working under this Agreement.

(B) As provided in Section 6 above, in order for a person to have an Airport Security Badge that allows access to the airfield or aircraft, a criminal history record check (“CHRC”) conducted by the Department of Aviation will also be required. The CHRC will typically include a fingerprint analysis by the Federal Bureau of Investigation and such other procedures as may be required by the TSA.

(C) Airport Security Badges, Vehicle Permits and Driver’s Licenses will only be issued based upon properly completed application forms. Employees or vehicles without proper credentials may be removed from the secured area and may be subject to fine or arrest. Consortium will be jointly and severally liable for any fines imposed on its employees or its Consortium Contractors’ employees at the Airport by the City.

(D) In addition to other rules and regulations, the following rules related to Airport Security Badges, Vehicle Permits and Driver’s Licenses must be adhered to:

i. Each person must wear and display his or her Airport Security Badge on their outer apparel at all times while at the Airport.

ii. All individuals operating a vehicle on the Aircraft Operations Area (“AOA”) must be familiar and comply with motor driving regulations and procedures of the State of Illinois, City of Chicago and the Department of Aviation. The operator must be in possession of a valid, State-issued Motor Vehicle Operator’s Driver’s License. All individuals operating a vehicle on the AOA without an escort must also be in possession of a valid Aviation-issued Airport Driver’s Permit.

iii. All operating equipment must have an Airport Vehicle Access Permit affixed to the vehicle at all times while operating on the Airport. All required City stickers and State Vehicle Inspection stickers must be valid.

iv. Individuals must remain within their assigned area and haul routes unless otherwise instructed by the Department of Aviation.

v. Consortium’s personnel who function as supervisors, and those that escort Consortium’s equipment/operators to their designated work sites, may be required to obtain an added multi-area access designation on their personnel Airport Security Badge which must also be displayed while on the AOA.

#### Section 8. Confidentiality of Airport Security Data

Consortium has an ongoing duty to protect confidential information, including but not limited to any information exempt from disclosure under the Illinois Freedom of Information Act, such as information affecting security of the airport (“Airport Security Data”). Airport Security Data includes any Sensitive Security Information as defined by 49 CFR Part 1520. Consortium acknowledges that information provided to, generated by, or encountered by Consortium may include Airport Security Data. If Consortium fails to safeguard the confidentiality of Airport Security Data, Consortium is liable for the reasonable costs of actions taken by the City, the Federal Aviation Administration (“FAA”), or the Transportation Security Administration (“TSA”) that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements, procurement and installation of security devices, and posting of guards. All agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement by Consortium must contain the language of this section. If Consortium fails to incorporate the required language in all such agreements, the provisions of this section are deemed incorporated in all such agreements.

#### Section 9. Americans with Disabilities Act and Air Carrier Access Act

(A) Consortium shall be solely and fully responsible for ensuring that Consortium’s operations, wherever they may occur at the Airport, and any improvements made by Consortium pursuant to this Agreement, shall comply with Title II (to the extent applicable) and III of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., as amended from time to time

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

(B) Consortium shall insure that the appropriate provision set forth below is inserted in all contracts entered into with any design professional or with any Consortium Contractors and any labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with this Agreement:

#### Designs

"The Consultant warrants that all design documents produced for the City under this Agreement shall comply with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq.; 41 C.F.R. part 60 et seq.; the Uniform Federal Accessibility Standards ("UFAS") or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"); the Air Carrier Access Act, 49 U.S.C. § 41705, et seq. ("ACAA"); the Illinois Environmental Barriers Act. 410 ILCS 25/1 et seq., and the regulations promulgated thereto at 71 Ill. Adm. Code ch. 1, Sec. 400.110 et seq.; and all other applicable statutes, rules, regulations and executive orders. In the event that the above cited standards are inconsistent, the Consultant shall comply with the standards providing greater accessibility."

#### Construction Contracts

"All construction or alteration undertaken by Contractor under this contract shall be performed in compliance with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq.; 41 C.F.R. part 60 et seq.; the Uniform Federal Accessibility Standards ("UFAS") or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAG"); the Air Carrier Access Act, 49 U.S.C. § 41705, et seq. ("ACAA"); the Illinois Environmental Barriers

Act, 410 ILCS 25/1 et seq., and the regulations promulgated thereto at 71 Ill. Adm. Code ch. 1, Sec. 400.110; and all other applicable statutes, rules, regulations and executive orders. The Contractor shall, prior to construction, review the plans and specifications and notify Consortium and the City in the event that the plans and specifications are not in compliance with the above referenced standards.”

Section 10. Inspector General

Consortium shall ensure that the provision set forth below is inserted in all contracts or agreements entered into with any contractors, subtenants or licensees/sub-licensees, and any work or service providers providing any materials, labor, or services in connection with this Agreement, including but not limited to Consortium Contractors and any labor organizations which furnish skilled, unskilled and craft union skilled labor:

“[Contractor/Subtenant] and all of its [subcontractors/subtenants] have a duty to cooperate with the Inspector General of the City of Chicago in any investigation or hearing, if applicable, undertaken pursuant to Chapter 256 of the Municipal Code of Chicago. [Contractor/Subtenant] understands and will abide by all provisions of that chapter. All [subcontracts/subtenant agreements] must inform [contractors/subtenants] of this provision and require understanding and compliance with it.”

Additionally, with respect to any work or services to be paid by the City, pursuant to MCC 2-156-018 it is the duty of Consortium, and any of its Consortium Contractors, to report to the Inspector General, directly and without undue delay, any and all information concerning conduct which it knows to involve corrupt activity. “Corrupt activity” means any conduct set forth in Subparagraph (a)(1), (2) or (3) of Section 1-23-020 of the MCC. Knowing failure to make such a report will be an event of default under any applicable reimbursement agreement. Reports may be made to the Inspector General’s toll-free hotline, 866-IG-TIPLINE (866-448-4754).

Section 11. Multi-Project Labor Agreement

The City has entered into the Multi-Project Labor Agreement (“PLA”) with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work on City property, as described in the PLA, a copy of which may be found on the City’s website at:

<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-ProjectLaborAgreement-PLAandSignatoryUnions.pdf>

To the extent that Consortium engages in work subject to the PLA, whether or not reimbursed by the City, Consortium acknowledges familiarity with the requirements of the PLA and shall comply with them.

## Section 12. Minimum Wage and Other Labor Laws

Consortium will comply with all applicable federal, state, and local labor laws and regulations, including, without limitation: the Fair Labor Standards Act, 29 U.S.C. § 201; the Occupational Safety and Health Act, 20 CFR Part 1910; and City minimum wage ordinances and executive orders and associated rules and regulations. This includes, without limitation, compliance with the wage requirements set forth in Mayoral Executive Order 2014-1, incorporated by reference, to the extent that the Order would apply to Consortium's activities.

## Section 13. Prohibition on Certain Contributions, Mayoral Executive Order 2011-4

(A) Neither Consortium or any person or entity who directly or indirectly has an ownership or beneficial interest in Consortium of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Consortium's Consortium Contractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Consortium Contractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Consortium and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee (as such term is defined in Municipal Code Chapter 2-156) (a) after execution of this Agreement by Consortium, (b) while this Agreement or another agreement between Consortium and the City (an "Other Contract") is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

(B) From the date the City approached Consortium or the date Consortium approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to the Mayor's political fundraising committee.

(C) Consortium shall not (i) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (ii) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (iii) bundle or solicit others to bundle contributions to the Mayor or to the Mayor's political fundraising committee.

(D) The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this Section 14 or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this Section 14 or Mayoral Executive Order No. 2011-4.

(E) Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 14 or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement and any Other Contract, for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including termination for default) under this Agreement, under any Other Contract, at law and in equity. This Section 14 amends any Other Contract with respect to the matters described herein and supersedes any inconsistent provision contained therein.

#### Section 14. Certification Regarding Lobbying

(A) Consortium certifies by signing and submitting this Agreement, to the best of its knowledge and belief, that:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of Consortium, 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.

ii. 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.

iii. Consortium 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.

(B) 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.

#### Section 15. Distracted Driving

(A) 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.

(B) In support of this initiative, the City encourages Consortium 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. Consortium must include the substance of this Section 16 in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

Exhibit B  
Facilities Lease Agreement



**FACILITIES LEASE AGREEMENT  
AT CHICAGO O'HARE INTERNATIONAL AIRPORT**

**BETWEEN**

**CITY OF CHICAGO**

**AND**

**CHICAGO AIRLINES TERMINAL CONSORTIUM**

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This FACILITIES LEASE AGREEMENT (“Agreement”) is made by and between the City of Chicago (the “City”), a municipal corporation of the State of Illinois, and the Chicago Airlines Terminal Consortium (“Tenant” or “Consortium”), a not-for-profit corporation organized and existing under the laws of the State of Illinois.

## Article 1

### DEFINITIONS

#### 1.1 Definitions

All capitalized terms used in this Agreement, if not defined within this Agreement, shall have the meanings specified in Article 1, “Definitions,” of the Signatory Airline Use and Lease Agreement.

The following words, terms and phrases shall, for purposes of this Agreement, have the following meanings:

“**Agreement**” means this Facilities Lease Agreement, together with its Exhibits, as hereafter amended or supplemented from time to time in accordance with its terms.

“**Applicable Laws**” means, collectively, all applicable present and future federal, state and local laws, rules, regulations, orders and ordinances, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health, sanitation and safety; (ii) the environment, including without limitation the Environmental Laws; (iii) access for persons with disabilities, including without limitation the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; and (iv) airport security, including without limitation the regulations of the Transportation Security Administration, 49 CFR Parts 1540, 1542, 1544 *et seq.* This Agreement does not constitute a waiver by Tenant of whatever rights it may have to challenge a local law, rule, regulation or ordinance on the basis that it is pre-empted by State or Federal law.

“**Assignment**” means to assign, transfer, convey, sell, mortgage, pledge or encumber as described further in Section 4.2.

“**Associated Party(ies)**” means Tenant’s employees, contractors, subcontractors, agents, licensees, vendors, invitees (excluding passengers), and any other party that Tenant expressly authorizes to use its Premises (regardless of whether Tenant enters into a sublease or license with such party), and other parties under Tenant’s direction or control that come onto the Airport arising out of or relating to Tenant’s use or occupancy of the Airport.

“**CATCO**” or “**Chicago Airlines Terminal Consortium**” means the equipment and services consortium operating at the Airport or any successor entity thereto.

“**Chicago Airlines Terminal Consortium**” or “**CATCO**” means the equipment and services consortium operating at the Airport or any successor entity thereto.

**“City-CATCo Agreement”** means the agreement executed between the City and CATCO, with an effective date of May 12, 2018, authorizing CATCO to operate as an equipment and services consortium at the Airport.

**“Claim”** or **“Claims”** means any and all losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards and settlements as described further in Section 13.2.1.

**“Concluding Walk-Through”** means a physical walk-through of Tenant’s Premises or any portion thereof by a representative or consultant of the City and Tenant prior to the date that such Premises are vacated or surrendered pursuant to this Agreement for the purpose of observing the environmental condition of Tenant’s Premises or any portion thereof and Tenant’s compliance with Section 14.10, the findings of which shall be documented in a report prepared by such City representative or consultant in consultation with Tenant.

**“Consortium-Maintained City Equipment”** has the meaning ascribed thereto in the City-CATCo Consortium Agreement.

**“Contractor”** means a person or firm hired by Tenant to act as an agent or independent contractor, whether or not Tenant is reimbursed by the City for costs of hiring such person or firm, as well as subcontractors of any such agent or independent contractor, in connection with or pursuant to the performance of any acts or obligations under this Agreement, the City-CATCO Agreement or the Member Agreement.

**“Effective Date”** means the Effective Date as described in Section 2.1.

**“Environmental Indemnitees”** has the meaning set forth in Section 14.7.

**“Exclusive Use Premises”** means any office space, operation space, storage area, employee break room or other areas in the Terminal Complex designated for Tenant’s exclusive use, subject to Section 4.1.2 and as more fully described in the Premises Notice.

**“Facilities Maintenance Protocols”** means the City’s policies, rules and protocols governing the maintenance of equipment and facilities at the Airport, as they shall be developed and may be amended from time to time by the Commissioner after consultation with the AAAC, which may include a matrix detailing operations and maintenance responsibilities of the City, Tenant, the Equipment and Services Consortium, and any other parties as indicated herein.

**“Fixed Terminal Charges”** means charges calculated under Article 8.

**“Initial Walk-Through”** means a physical walk-through of the Premises by a representative or consultant of the City and Tenant prior to the date Tenant occupies the Premises or conducts operations thereon pursuant to this Agreement for the purpose of observing the environmental condition of Tenant’s Premises and Tenant’s state of compliance with Environmental Laws, the findings of which shall be documented in a report prepared by such City representative or consultant in consultation with Tenant.

**“Main Terminal”** means the terminal buildings, associated concourses and facilities, other than Terminal 5, as all such facilities may be modified, improved, or enlarged during the Term.

**“Member Agreement”** shall have the meaning ascribed thereto in the City-CATCo Agreement.

**“Premises”** means any Exclusive Use Premises assigned to Tenant by the City under this Agreement.

**“Premises Notice”** means the notice described in Section 4.1 and in the form attached as Exhibit B.

**“Release”** or **“Released”** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, Discharging, injecting, escaping, leaching, dumping or Disposing of any Hazardous Substance or Other Regulated Material into the environment.

**“Response”** or **“Respond”** means action taken in compliance with Environmental Laws to correct, remove, remediate, clean-up, prevent, mitigate, treat, monitor, evaluate, investigate, assess or abate the Release of any Hazardous Substance or Other Regulated Material, or to prevent or abate any public nuisance.

**“Securities Exchange Act”** means the Securities Exchange Act of 1934.

**“Signatory Airline”** means an Air Carrier that has executed a Signatory Airline Use and Lease Agreement with the City. A Signatory Airline may be either a Long-Term Signatory Airline or a Short-Term Signatory Airline.

**“Signatory Airline Use and Lease Agreement”** means the “City of Chicago O’Hare International Airport Airline Use and Lease Agreement” executed between the City of Chicago and Signatory Airlines for the use of the Airport and lease of space in the Terminal Area, effective on or after May 12, 2018.

**“T-5”** or **“Terminal 5”** means the terminal buildings, associated concourses and facilities designated as of the Effective Date as Terminal 5 of the Airport, as all such facilities may be modified, improved or enlarged during the Term.

**“Term”** means the lease term of this Agreement as further described in Article 2.

**“Terminal 5”** or **“T-5”** means the terminal buildings, associated concourses and facilities designated as of the Effective Date as Terminal 5 of the Airport, as all such facilities may be modified, improved or enlarged during the Term.

**“Terminal Complex”** means the Main Terminal and Terminal 5.

**“Terminal Space Use Protocols”** means the City’s policies, rules and protocols, as they shall be developed and may be amended from time to time by the Commissioner after consultation with the AAAC, governing priorities, procedures and requirements for the

assignment and use of Common Use Space, Preferential Use Space, and Exclusive Use Space in the Terminal Complex and on the Apron Area, including Gate Space, Check-in Space, and Baggage Systems use, assignment, scheduling and accommodation.

“**VIP Lounge**” means Exclusive Use Premises used by an Air Carrier to provide premium services to its passengers.

“**Waste Sections**” has the meaning set forth in Section 16.12.

## 1.2 Interpretation

The terms “hereby,” “herein,” “hereof,” “hereunder” and any similar terms used in this Agreement refer to this Agreement.

The term “including” shall be construed to mean “including, without limitation.”

All references in this Agreement to Articles, Sections, subsections, clauses, provisions, sentences or Exhibits, unless otherwise expressly stated, are to Articles, Sections, subsections, clauses, provisions, sentences or Exhibits of this Agreement.

Words importing persons shall include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

All references to a number of days mean calendar days, unless otherwise expressly indicated.

## 1.3 Incorporation of Exhibits

The following Exhibits attached hereto are hereby made a part of this Agreement:

Exhibit A Permitted Uses

Exhibit B Premises Notice

Exhibit C Compliance with Laws

Any changes to the Exhibits that occur from time to time consistent with the terms of this Agreement shall be reflected in revised Exhibits provided by the City to Tenant. Such revised

Exhibits shall be deemed to be effective without requiring a formal amendment to this Agreement.

## Article 2

### TERM

#### 2.1 Effective Date

The Effective Date shall be May 12, 2018.

#### 2.2 Term

The City's grant of rights to Tenant under this Agreement shall continue until the earlier of (a) termination of this Agreement by the City in accordance with Section 17.2; (b) expiration or earlier termination of the City-CATCO Agreement; or (c) expiration or earlier termination of the Signatory Airline Use and Lease Agreement with all Signatory Airlines (the "Term").

## Article 3

### RIGHTS AND PRIVILEGES

#### 3.1 Tenant Rights, Privileges, Limitations and Prohibitions on Use of the Premises

Subject to the terms of this Agreement and Airport Rules, including without limitation operating procedures and protocols that may be imposed by the Commissioner from time to time for the safe and secure operation of the Airport, Tenant shall have the right to use the Premises on an exclusive basis. Tenant's use of the Premises shall be limited to the permitted uses described in Exhibit A ("Permitted Uses"). Tenant acknowledges and agrees that the Permitted Uses may be revised by the City and reissued to Tenant from time to time during the Term in accordance with the terms and conditions of this Agreement and the Terminal Space Use Protocols. Tenant shall not use the Premises, and shall not cause or permit its Associated Parties to use the Premises, for any purpose other than as specified in this Agreement.

#### 3.2 Communications Equipment and Antennae

Tenant has no right to install or use any telecommunications equipment or antennae on the roof or exterior of the Terminal Complex, unless (a) the installation and use are directly related to the conduct of Tenant's business at the Premises and are in full compliance with Applicable Laws and Airport Rules, and (b) the installation is effected in compliance with the prior written consent of the City. Tenant will not license, sublease or in any other manner permit any other person to use any telecommunications equipment or antennae installed by Tenant at the Terminal Complex.

### **3.3 Exclusions and Reservations**

3.3.1 The City reserves the right to offer Tenant SET, rubbish removal and other services, including, but not limited to, new technology-related services, as provided in Sections 11.1 and 11.4, and to charge Tenant for such services on a cost-recovery basis.

3.3.2 Tenant shall not, by action or failure to act, knowingly interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications (including Wi-Fi services), fire protection, utility, electrical or other systems installed or located from time to time at the Airport.

3.3.3 Tenant shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Tenant shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, then upon written notice from the City to do so, Tenant shall promptly remedy or commence such actions as necessary to remedy or shall be subject to paying the increase in premiums to the extent caused by such act or failure of Tenant until the issue is remedied.

3.3.4 The City or its duly authorized representative may enter upon the Premises at any and all reasonable times and upon reasonable notice (except in emergency situations) for the purpose of determining whether or not Tenant is complying with the terms and conditions of this Agreement or for any other purpose incidental to the rights of the City; provided that such right of entry does not unreasonably interfere with Tenant's operations. In the case of an emergency, the City shall provide as much notice as reasonably possible in light of the circumstances.

3.3.5 Tenant shall not use the Premises for the operation of any VIP Lounge, passenger club or lounge room.

### **3.4 Safety Management System**

Tenant agrees to cooperate with the City's implementation of a safety management system and safety risk management systems at the Airport including participation in committees, risk identification and assessment processes, training, and safety promotion and communication initiatives.

## **Article 4**

### **TENANT'S PREMISES**

#### **4.1 Rights to Use Premises**

4.1.1 Premises Notice. On or before the Effective Date, the City will issue to Tenant a Premises Notice, attached hereto as Exhibit B, that will designate which areas of the Airport the City will make available for Tenant's use on an exclusive use basis. Tenant acknowledges and agrees that the Premises Notice may be revised by the City and reissued to Tenant from time to time during the Term in accordance with the terms and conditions of this Agreement and the Terminal Space Use Protocols. The City and Tenant agree that, upon issuance by the City, and acknowledgement and acceptance in writing by the Tenant, each revised Premises Notice shall be deemed attached to and incorporated into this Agreement as Exhibits B, and shall supersede and replace the last issued Premises Notice deemed attached to and incorporated into this Agreement as Exhibit B without the need for a written amendment of the Agreement signed by the City and Tenant.

4.1.2 Exclusive Use Premises. The City grants to Tenant, subject to the terms of this Agreement and Airport Rules, the exclusive right to use the Premises identified in the Premises Notice.

4.1.3 Condition of Premises. Except as otherwise expressly provided in this Agreement, including the City's maintenance responsibilities under Section 11.1, Tenant specifically acknowledges and agrees that the City is permitting Tenant's use of the Premises on an "as is with all faults" basis, and that Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City, as to any matters concerning the Premises.

#### 4.2 **Assignment and Subletting**

4.2.1 Tenant covenants that it will not (i) assign, transfer, convey, sell, mortgage, pledge or encumber (any of the foregoing events being referred to as an "Assignment") or (ii) sublet (such event being referred to as "Sublease") the Premises or any part thereof, or any rights of Tenant hereunder or any interest of Tenant in this Agreement, without in each instance having first obtained the prior written consent of the City, to the extent required, as set forth in this Section 4.2.

4.2.2 The consent of the Commissioner on behalf of the City shall be required for any Assignment or Sublease. Consent by the City to any type of Assignment or Sublease described in this Section 4.2 or elsewhere in this Agreement shall not in any way be construed to relieve Tenant from obtaining further authorization from the City for any subsequent Assignment or Sublease of any nature whatsoever.

(a) In the event that Tenant subleases any of its Premises pursuant to this Section 4.2, Tenant shall charge the Sublessee no more than the sum of the following:

(i) Sublessee's pro rata share of Tenant's Fixed Terminal Charges;

(ii) additional amounts sufficient for Tenant to recover its direct costs, if any, of such Sublease, including a reasonable allocation of tenant improvement costs and equipment costs for property and equipment owned by Tenant; and

(iii) an additional administrative fee of up to 15 percent of the combined total of the amounts specified in Sections 4.2.2(a)(i) and (ii).

4.2.3 Notwithstanding any Sublease with or without City consent, Tenant shall remain fully liable for the payment of all of its Fixed Terminal Charges and fully responsible for the performance of all of its other obligations hereunder.

4.2.4 Any and all requests by Tenant requiring consent under Section 4.2 shall be made in writing to the City and shall include copies of the proposed documents of Assignment or Sublease. Said documents of Assignment or Sublease shall fully disclose any and all consideration provided to Tenant for said Assignment or Sublease.

4.2.5 If any Assignment or Sublease shall occur, whether or not prohibited by this Section 4.2, and Tenant is in default of its payment obligations under this Agreement, the City may provide written notice to Tenant of the City's intent to collect assignee's, Sublessee's or other transferee's pro rata share of Fixed Terminal Charges from such assignee or Sublessee or other transferee of Tenant. If Tenant does not cure any such payment default within fifteen (15) business days from the City's notice, the City may collect such amounts for as long as such payment defaults remain outstanding directly from the assignee or Sublessee, and in such event shall apply the amount collected, net of any costs of collection, to the Fixed Terminal Charges due from Tenant hereunder without such action by the City releasing Tenant from this Agreement or any of its obligations hereunder. If any Assignment or Sublease prohibited by this Section 4.2 shall occur without the consent of the City, and the City collects Fixed Terminal Charges from any assignee, Sublessee or other transferee of Tenant and applies the net amount collected in the manner described in the preceding sentence, such actions by the City shall not be deemed to be a waiver of the covenant contained in this Section 4.2 or constitute acceptance by the City of such Assignment, Sublease or transfer.

4.2.6 Any Sublease or Assignment shall require the Sublessee or the assignee to be bound by all of the terms and provisions of this Agreement. For purposes of interpretation of the immediately preceding sentence, in all provisions of this Agreement applicable to the Sublessee or the assignee, including Article 13, requiring that the City Indemnified Parties be indemnified, reference to the "Tenant" shall be deemed to refer to the Sublessee or assignee.

4.2.7 Any Sublease or Assignment under this Section 4.2 must expressly name the City as a third-party beneficiary of the Sublessee's or the assignee's obligations under the Sublease or the Assignment and grant a direct right of enforcement thereunder to the City in the event Tenant fails, after thirty (30) days' written notice from the City, to successfully enforce the obligations of the Sublessee or assignee, as applicable.

4.2.8 Tenant may enter into a license agreement under which Tenant's Contractor is given rights or privileges to utilize portions of Tenant's Premises without seeking the City's consent; provided, however, that Tenant shall deliver to the City, within thirty (30) days following the execution by Tenant and the licensee of such license agreement, written notice of such license, together with copies of all documents, if any, relating to such license. If Tenant terminates any such license earlier than the termination date set forth in the written

notice, Tenant shall provide City written notice thereof within thirty (30) days of such termination.

#### **4.3 City's Right of Entry**

The City, by its officers, employees, agents, representatives, contractors, consultants and furnishers of utilities and other services, shall have the right at all times upon reasonable notice to enter Tenant's Premises for the purpose of inspecting the same, for emergency repairs to utilities systems, and for any other purpose necessary for or incidental to or connected with the performance of the City's obligations hereunder, or in the exercise of its governmental functions or in the City's capacity as Airport owner. The City shall make commercially reasonable efforts to conduct each inspection, repair or other activity in a manner that does not unreasonably interfere with Tenant's operations. The City will provide forty-eight (48) hours' advance notice pursuant to Section 18.3 (which additionally may be provided by telephone, accompanied with or separately by written notice or electronic mail) of any planned inspection or intrusive sampling to Tenant, except in emergencies, when advance notice shall not be required. Tenant shall have the right to accompany the City when any such inspection or sampling is performed, provided that the City is not required to unreasonably delay its inspection or sampling to enable Tenant to be present. The City shall repair any damage to Tenant's Premises caused by such inspection or intrusive sampling and the cost of any repairs shall be an O&M Expense of the Terminal Complex. Notwithstanding the above, the City, its contractors and other agents' right of entry to Tenant's Premises to perform environmental inspections and sampling shall be governed exclusively by Section 14.2 of this Agreement.

#### **4.4 Quiet Enjoyment**

The City covenants, unless otherwise provided by this Agreement, that, if Tenant shall perform all obligations and make all payments as provided herein, Tenant shall peaceably have and enjoy the Premises and all the rights, privileges, appurtenances and facilities granted herein, subject to the exercise of governmental police powers by either the City or any other governmental authority having jurisdiction over the Airport.

#### **4.5 Surrender and Removal of Personal Property**

4.5.1 Tenant covenants and agrees to surrender possession of the Premises (or a portion of the Premises, if applicable) upon:

- (a) the expiration or early termination of this Agreement;
- (b) partial termination of Premises under Section 15.2.2;
- (c) termination of any holdover period

in substantially the same condition as of the Effective Date (or in the case of improvements or alterations made or fixtures installed subsequent thereto, then as of the date of such improvements, alternations, or fixtures were made or installed), reasonable wear and tear, damage from casualty and condemnation as described in Article 15 resulting in the termination of this Agreement, and repairs that are the responsibility of the City, all excepted. No act or

thing done by the City during the term of this Agreement shall be deemed acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing and signed by the City. Tenant's improvements to the Premises, if any, shall be removed unless the City agrees in writing to allow them to be left in place or an agreement between the City and Tenant allows them to be left in place.

4.5.2 In the event of such expiration or earlier termination, Tenant shall have thirty (30) days after such expiration or termination during which to remove personal property and trade fixtures; provided, however, the City shall have the right to assert such lien or liens against said property as the City may by law be permitted. Any damage to the Airport, the structure, the Premises or any fixtures located therein resulting from such removal shall be repaired or paid for by Tenant.

4.5.3 If, upon such expiration or earlier termination, Tenant shall fail to remove any personal property or trade fixtures as required herein, the City may, but without the obligation to do so, (a) remove said personal property and trade fixtures and hold them for the owners thereof, or may place the same in a public warehouse, all at the expense and risk of the Tenant; or (b) deem such property abandoned and keep such property or, after written notice to Tenant and at Tenant's sole risk and expense, remove such property to a public warehouse for deposit, or retain the same in the City's possession and after the expiration of thirty (30) days sell the same, with notice and in accordance with applicable law, the proceeds of which shall be applied first to the expenses of such removal and sale, second to any sum owed by Tenant to the City, and any remaining balance shall be credited to Tenant. If the expenses of such removal, storage, disposal or sale shall exceed the proceeds of sale, Tenant shall pay such excess to the City upon demand. Except where, and to the extent, caused by any willful and wanton act of the City, its agents, employees, contractors, officers or directors, Tenant shall indemnify, defend, release and hold harmless the City from any and all damage, cost and expenses related to said removal, storage, disposal and sale, which obligations shall survive expiration or earlier termination of this Agreement.

#### **4.6 Hold Over**

Tenant acknowledges it is bound to comply with all provisions of this Agreement until Tenant vacates the Premises. If Tenant holds over, refuses, or fails to give up the possession of the Premises or the relevant portion thereof, as applicable, on the expiration or earlier termination of this Agreement without express written consent of the City, no periodic tenancy will be deemed to be created, and the City shall have all rights and remedies under Applicable Laws to recover the Premises and damages, including recovery of interest, attorney's fees and costs. In addition to continuing Fixed Terminal Charges payable, the City shall assess a holdover fee in the amount of twenty-five (25%) percent of the Fixed Terminal Charges payable for such Premises at the time of expiration or termination of this Agreement for the first sixty (60) days of such hold over and fifty percent (50%) of such Fixed Terminal Charges thereafter. Furthermore, if the City so elects, the City may accept payment of Fixed Terminal Charges from Tenant and concurrently commence legal proceedings to regain possession of the Premises. The foregoing provisions shall not serve as permission to Tenant to hold over, nor serve to extend the Term. The provisions of this Section 4.6 shall not operate as a waiver of any right of the City under this Agreement or Applicable Laws to re-enter and take possession of the Premises.

**4.7 No Warranty of Condition or Suitability**

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES SHALL BE SUITABLE FOR TENANT'S PURPOSES OR NEEDS. THE CITY SHALL NOT BE RESPONSIBLE FOR ANY LATENT DEFECT AND TENANT SHALL NOT, UNDER ANY CIRCUMSTANCES, WITHHOLD ANY RENTALS OR OTHER AMOUNTS PAYABLE TO THE CITY HEREUNDER ON ACCOUNT OF ANY DEFECT IN THE PREMISES. BY ITS ENTRY ONTO THE PREMISES, TENANT ACCEPTS THE PREMISES IN ITS "AS IS" CONDITION.

**4.8 City's Title**

The City's title to the Premises and the Airport is and always shall be paramount to the interest of Tenant in the Premises. Nothing herein contained empowers Tenant to commit or engage in any act which can, shall or may encumber the title of the City.

Article 5

**[RESERVED]**

Article 6

**[RESERVED]**

Article 7

**[RESERVED]**

Article 8

**CALCULATION OF RATES AND CHARGES**

Tenant shall pay to the City Fixed Terminal Charges for its lease of the Premises based on the square footage of Exclusive Use Space leased by Tenant, as shown in the Premises Notice, multiplied, for Base Space (if any), by the Base Terminal Rental Rate and, for Discount Space (if any), by the Discount Terminal Rental Rate calculated by the City pursuant to Section 8.3.3 of the Signatory Airline Use and Lease Agreement. The City shall provide at least fifteen (15) days' advance notice of the Terminal Rental Rate effective as of January 1 of each Fiscal Year, and at least ten (10) days' advance notice of any adjusted Terminal Rental Rate pursuant to Section 8.16 of the Signatory Airline Use and Lease Agreement.

## Article 9

### **PAYMENT OF RENTALS, FEES AND CHARGES AND SECURITY DEPOSIT**

#### **9.1 Payment of Rentals, Fees and Charges**

Beginning on the Effective Date, Tenant shall pay to the City, on a monthly basis without invoice, not later than the first (1st) day of each month of each Fiscal Year, the amount of Fixed Terminal Charges based on the Terminal Rental Rates then in effect.

#### **9.2 Place of Payment; Late Payments**

All amounts due from Tenant hereunder shall be paid in lawful money of the United States of America, without deduction or set off, to the City of Chicago at the Office of the City's Comptroller or at such other place as may be hereafter designated by the City. Tenant shall pay all amounts payable by Tenant hereunder by either check, wire transfer or electronic funds transfer ("EFT") or Automatic Clearing House ("ACH"), subject to the City's ability to receive these payments.

Any amount which is not paid within five (5) business days of when due and, if appropriate, when invoiced and such invoice is received by Tenant, shall bear an annualized interest charge from its due date at a rate three percent (3%) higher than the "US Prime Rate" as published in the Wall Street Journal or similar successor index of national recognition as determined by the Commissioner.

#### **9.3 Security Deposits**

##### **9.3.1 Delivery and Use of Security Deposit**

(a) In the event that Tenant fails to timely pay as required pursuant to Section 9.1 within ten (10) calendar days of receiving the City's written notice pursuant to Section 18.3 of late or incomplete payment more than twice within any twelve (12) month consecutive period, Tenant shall provide to the City within sixty (60) days of receiving notice of the third late payment, and the City's written demand, a security deposit equal to Tenant's estimated Fixed Terminal Charges for three (3) months (the "Security Deposit").

(b) The Security Deposit shall be in the form of a surety bond the terms of which are acceptable to the City or a letter of credit meeting the requirements set forth in Section 9.3.2 to secure Tenant's performance and observance of Tenant's obligations under this Agreement.

(c) The City may deduct from the Security Deposit an amount equal to: (i) any sums payable to the City under this Agreement; and (ii) an amount equal to the City's reasonable costs of recovering possession, and any and all other damages legally recoverable by the City, together with reasonable out-of-pocket costs and expenses incurred by the City, upon the termination of this Agreement. In any such event, Tenant shall again meet the Security Deposit requirement set forth in Section 9.3.1(a) above within seven (7) days from its receipt of such written notice; provided that if Tenant does not so meet the Security Deposit requirement in

a timely manner, the City shall be entitled to set-off such Security Deposit against the next ensuing payments by Tenant until such Security Deposit is complete. Once triggered, the Security Deposit requirements of this Section 9.3 shall continue until Tenant demonstrates payment performance by having eighteen (18) consecutive months of on-time payments, at which time Tenant may request the Security Deposit be returned and at such time the Security Deposit requirement shall be waived and any outstanding Security Deposit returned to Tenant.

### 9.3.2 Letter of Credit Requirements

(a) For a Security Deposit in the form of a letter of credit, such letter of credit shall be an irrevocable commercial standby letter of credit for the amount of the Security Deposit in form and substance reasonably acceptable to the City that meets the following criteria:

(i) the letter of credit shall provide for its continuance for at least one (1) year from issuance and for automatic extension for additional periods of at least one (1) year from initial expiry date and each subsequent expiry date, unless the issuer of the letter of credit gives the City notice of its intention not to renew such letter of credit not less than sixty (60) days before such expiry date (a "Nonrenewal Notice");

(ii) the letter of credit shall be payable upon the City's presentation of the original of such letter of credit together with a sight draft to the issuer, accompanied by the City's signed statement that the City is entitled to draw on such letter of credit without further notice to Tenant and hold the proceeds thereof;

(iii) the letter of credit shall be issued by a commercial bank reasonably satisfactory to the City which maintains a branch in Chicago, Illinois, provided that the Commissioner and the City Comptroller may jointly agree to waive the requirement set forth above that such financial institution maintain a branch in Chicago, for presentment for payment:

(1) that is chartered under the laws of the United States or any state thereof, or the District of Columbia;

(2) that is insured by the Federal Deposit Insurance Corporation;

(3) whose long-term, unsecured and unsubordinated debt obligations are rated by at least two of Fitch Ratings Ltd. ("Fitch"), Moody's Investors Service, Inc. ("Moody's) and Standard & Poor's Ratings Services ("S&P") or their respective successors (the "Rating Agencies") with ratings of not less than A- from Fitch, A3 from Moody's and A- from Standard & Poor's (the "Long-Term LC Issuer Requirements"); and

(4) whose short-term rating from at least two Rating Agencies is not less than F2 from Fitch, P-2 from Moody's and A-2 from S&P (the "Short-Term LC Issuer Requirements" and, together with the Long-Term LC Issuer Requirements, the "LC Issuer Requirements").

(iv) If at any time the LC Issuer Requirements are not met, or if the financial condition of such issuer changes in any other materially adverse way, then Tenant shall within ten (10) days of written notice from the City deliver to the City a replacement letter of credit which otherwise meets the requirements of this Agreement and that meets the LC Issuer Requirements.

(b) The letter of credit shall remain in effect until the date which is thirty (30) days after the Term.

(c) The City shall consent to reduce or release such letter of credit when and as this Agreement would entitle Tenant to any reduction or release of the Security Deposit.

### 9.3.3 Use of Letter of Credit

If any of the following occurs, then the City may draw upon the balance of the letter of credit in an amount equal to the aggregate amount of the Security Deposit this Agreement then requires: (A) the issuer delivers a Nonrenewal Notice that such issuer no longer intends to maintain a branch in Chicago, Illinois and Tenant fails to deliver a replacement letter of credit that complies with this Agreement within thirty (30) days after Tenant receives the Nonrenewal Notice (for purposes of which, the parties shall reasonably cooperate to facilitate the simultaneous exchange of the old letter of credit for the new letter of credit); (B) the happening of any instance in which the criteria set forth in Section 9.3.2(a) are not met; or (C) if the remaining term of the letter of credit is at any time less than thirty (30) days, but Tenant has not delivered an extension or renewal of such letter of credit for at least one (1) year.

## Article 10

[RESERVED]

## Article 11

### **ADDITIONAL OBLIGATIONS OF THE TENANT AND THE CITY**

#### **11.1 Operation, Maintenance, Replacement and Repair**

11.1.1 Tenant shall, in accordance with the Facilities Maintenance Protocols, be responsible for and shall perform or cause to be performed, maintenance and repair of its Premises and equipment owned by Tenant at the Airport. Tenant shall, at all times:

(a) keep all fixtures, equipment and personal property in a clean, safe, sanitary and orderly condition and appearance;

(b) maintain all fixtures, equipment and personal property owned by Tenant and its Premises in good condition (reasonable wear and tear excepted) and perform all ordinary repairs, replacements and inside painting, such repairs, replacements and painting by Tenant to be of a quality and class not inferior to the original material and workmanship;

(c) for any equipment installed in or on the Premises that is purchased using the proceeds of any financing sponsored by the City, repair, maintain and replace such equipment as is necessary to assure that at the end of the term hereof the fair market value of such equipment and its remaining useful life will be consistent with, and sufficient to establish for applicable tax and accounting purposes, ownership of such equipment by the City; and

(d) either directly or through a Contractor (which Contractor shall obtain a City permit), dispose of its garbage, debris and other waste materials (excluding snow and ice).

If the performance of any of the foregoing maintenance, repair, replacement or painting obligations of Tenant requires work to be performed near an active taxiway or runway or where safety of Airport operations might be involved, Tenant shall post guards or erect barriers or other safeguards at such locations as required and approved by the City and the FAA. Compliance with such requirements shall not relieve Tenant from its liability for the safe performance of its obligations under this Agreement.

11.1.2 Tenant shall maintain its assets at the Airport and City facilities for which it has responsibility to maintain all in accordance with the Facilities Maintenance Protocols to provide a safe, functional and compliant operating environment, and thereby protect the environment and the health of the traveling public and other users of the Terminal Complex.

## **11.2 Taxes, Licenses and Permits**

11.2.1 Subject to Section 11.2.2, Tenant shall pay or cause to be paid any and all taxes and shall obtain or cause to be obtained any and all licenses, permits, certificates and other authorizations required by any governmental authority in connection with the operations or activities performed by Tenant at the Airport, including any and all taxes and other charges in connection with Tenant's lease, use or occupancy of the Premises. Tenant may contest any such taxes as provided in Section 13.2.2.

11.2.2 The City shall pay as an O&M Expense any and all applicable taxes or special assessments which may be levied or assessed upon the Premises, except, however, any taxes associated with or assessed on any personal property or leasehold interests of Tenant located on such Premises shall be the obligation of Tenant and, as such, shall be paid by Tenant and not by the City.

11.2.3 Tenant shall not permit a lien or encumbrance to attach to the Premises or the Airport by reason of any failure to pay taxes for which it is responsible.

## **11.3 Performance by the City upon Failure of Tenant**

If Tenant or its Contractor (a) fails to perform for a period of thirty (30) days after written notice from the City to Tenant in accordance with Section 18.3 any obligation required under this Article 11; or (b) if the obligation cannot be performed within thirty (30) days and Tenant has failed to initiate corrective action within the thirty (30) days of the City's notice or fails to diligently pursue such corrective action once initiated, then the City may perform such obligation of Tenant (or its Contractor) without further notice and charge Tenant for the costs of its performance plus an administrative fee of fifteen percent (15%); provided, however, that if Tenant's failure to perform any such obligation endangers the health or safety of persons or the safety of operations at the Airport and the City so states in its notice to Tenant, the City may perform such obligation of Tenant (or its Contractor) without waiting thirty (30) days after its notice if Tenant does not take prompt action to address the issue after City has given such notice and charge Tenant for its costs of its performance plus an administrative fee of twenty-five percent (25%). For any notices relating to this Section 11.3, the parties agree that written notice (in the forms provided in Section 18.3) is required but that the City may, at its option, provide supplemental notice by electronic mail to Tenant.

#### **11.4 Utilities**

11.4.1 Tenant shall be solely responsible for paying all utilities provided to Tenant, its Contractors, agents and employees at the Premises.

11.4.2 The City shall provide or cause to be provided the following utility services to the Premises in reasonable amounts and at pressures appropriate for Tenant operations: water, electricity, gas, fire suppression systems, sewage outlets, heating, ventilation and air conditioning. The City shall reasonably determine the points in the Premises where such services will be made available to Tenant, after consultation with Tenant. In the event Tenant desires to change the points of supply by the City, the expense of making such changes or alterations shall be at the sole cost of Tenant. Any additional utility services requested by Tenant and not otherwise provided by the City shall be provided only with the City's approval and shall be subject to separate tariffs imposed, if any, by the applicable utility.

11.4.3 Except where, and to the extent, caused by any willful and wanton act of the City, its agents, employees, contractors, officers, directors or predecessors in interest, Tenant expressly waives any and all claims against the City for damages arising or resulting from failures or interruptions of utility services or any failure of performance by an independent party providing utility services to the Premises, including electricity, gas, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences.

#### **11.5 City Ownership of Airport**

Tenant agrees and irrevocably elects, with respect to itself and any successors in interest under this Agreement it will not claim depreciation or an investment credit for purposes of federal income taxes with respect to any portion of the Airport except an improvement or project that has been solely financed by Tenant.

Article 12

[RESERVED]

Article 13

**INSURANCE AND INDEMNIFICATION**

**13.1 Insurance**

13.1.1 Insurance Coverage Required. Tenant shall procure and maintain at all times, at Tenant's own expense, the types of insurance specified below, with insurance companies having an AM Best rating of A- or better, financial size rating of IV or better; or for those insurance companies not subject to AM Best's rating (a) an equivalent financial strength rating from S&P or (b) a similar nationally or internationally recognized reputation and responsibility as reasonably approved by the City, covering all operations under this Agreement performed by Tenant. The kinds and amounts of insurance required are as follows:

(a) Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance, as prescribed by Applicable Law, covering all employees who are to provide a service under this Agreement with statutory limits. Such insurance shall include Employer's Liability Insurance coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; \$1,000,000 disease-each employee. Coverage shall include other states endorsement, alternate employer and voluntary compensation, when applicable.

(b) Commercial General Liability Insurance (Primary and Umbrella). Commercial General Liability Insurance or equivalent coverage with limits of not less than \$250,000,000 per occurrence for bodily injury (including death, personal injury and property damage liability) and in the aggregate with at least \$25,000,000 for personal injury and \$100,000,000 for war risks and allied peril liability. Such insurance shall include but not be limited to: all premises and operations, products/completed operations, war risk and allied peril liability (including terrorism), liability for any auto (owned, non-owned and hired) including liability for vehicles on the restricted access area of the Airport, mobile equipment, explosion, collapse, underground, separation of insureds, defense, independent contractors (if commercially available), and blanket contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City shall be named as an additional insured on the policy and coverage shall be at least as broad as that afforded the named insured. The additional insured coverage shall not have any limiting endorsement or language under the policy such as but not limited to, Tenant's sole negligence or the City's vicarious liability. Tenant's insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by the City.

To the extent Tenant relies on excess or umbrella insurance to satisfy the requirements of this subsection (b), any such policy shall follow form and be no less broad than the underlying

policy, shall cover the term of underlying policy without interruption, and shall include a drop down provision with no gap in policy limits.

(c) Automobile Liability Insurance (Primary and Umbrella). When any motor vehicles are used in connection with work to be performed by or on behalf of Tenant, Tenant shall provide Automobile Liability Insurance with limits of not less than \$10,000,000 per occurrence combined single limit, for bodily injury and property damage for any auto including owned, non-owned or hired autos; provided, however, that Tenant may reduce the foregoing amount to \$1,000,000 per occurrence combined single limit so long as Tenant's Commercial General Liability Insurance or equivalent coverage includes excess auto liability. The City shall be named as an additional insured on a primary, non-contributory basis.

(d) All Risk Builders Risk Insurance. When Tenant undertakes any construction at the Airport, including improvements, betterments or repairs, Tenant shall provide or cause its Contractor to provide All Risk Blanket Builder's Risk Insurance to cover the materials, equipment, machinery and fixtures that are or will be part of the permanent facility or project. Coverage extensions shall include boiler and machinery, earthquake and flood.

(e) All Risk Property Insurance. All Risk Property Insurance shall be maintained at replacement cost valuation basis covering all loss, damage, or destruction for such premises including improvements and betterments of City property in Tenant's care, custody and control. Coverage shall include but not limited to boiler and machinery, earthquake, flood, sprinkler leakage, debris removal and business interruption and extra expense. The City shall be named as a loss payee, as their interests may appear. Tenant shall be responsible for all loss or damage to personal property owned, rented or used by Tenant.

(f) Professional Liability. When any architects, engineers, project managers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors or omissions shall be maintained by such architects, engineers, project managers, construction managers or other professional consultants with limits of not less than \$2,000,000; provided, however, that design and construction architects, engineers, project managers, construction managers or other professional consultants who perform work with respect to any construction project undertaken by Tenant pursuant to this Agreement the cost of which is in excess of \$50,000,000 shall be maintained with limits of not less than \$5,000,000. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work on the contract. A claims made policy that is not renewed or replaced shall have an extended reporting period of at least two (2) years.

(g) Pollution Liability Insurance. Pollution Liability Insurance shall be provided covering bodily injury, property damage, clean-up and other losses caused by pollution conditions or incidents including any Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material with limits of not less than \$10,000,000 per pollution condition or loss and \$10,000,000 annual aggregate. Coverage shall include but not be limited to: response to and remediation of new, preexisting, known and unknown on-site and off-site pollution conditions and incidents, emergency response costs, repairs, removals, abatement, corrective actions, transportation, contractual liability and defense. When policies are renewed,

the policy retroactive date shall coincide with, or precede, start of work in connection with the Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two (2) years. The City is to be named in the policy as an additional insured.

Coverage shall also include but not be limited to (a) underground and above ground storage tank(s) owned or operated by Tenant or its Associated Parties including any on site integral piping or dispensing equipment at the Airport and (b) any structural controls (above-ground or below-ground) used to treat sanitary sewer waste and storm water runoff operated by Tenant or Associated Parties at the Airport, as set forth in Section 14.1.6 (Environmental Article).

### 13.1.2 Additional Requirements.

(a) Evidence of Insurance. Tenant will furnish the Commissioner with original Certificates of Insurance (or copies thereof) and a copy of the additional insured endorsements, where applicable, evidencing the coverage required to be in force on the date of this Agreement, as well as renewal Certificates of Insurance and additional insured endorsements, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Tenant shall submit evidence prior to the Effective Date. The receipt of a certificate or other insurance evidence does not constitute an agreement by the City that the insurance coverage required in this Agreement have been fully met or the insurance policies indicated on the certificate or other evidence of insurance provided are in compliance with all the Agreement requirements. Failure of the City to obtain certificates or any other insurance evidence from Tenant showing compliance with these requirements of the Agreement is not a waiver by the City of any requirements for Tenant to obtain and maintain the specified coverages. Tenant shall advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Tenant for liabilities that may arise from or relate to the Agreement. The City reserves the right to inspect complete, certified policy copies (or electronic copies thereof) of any required insurance at a mutually agreed location within the State of Illinois within ten (10) days of the City's written request.

(b) Failure to Maintain Insurance. The insurance hereinbefore specified shall be carried during the term of this Agreement. Failure to carry or keep such insurance in force shall constitute a violation of the Agreement and an Event of Default under Section 17.1. To the extent there is such a failure, the City shall provide written notice thereof and Tenant shall have fifteen (15) business days to cure such failure, after which the City may exercise any remedy in Article 17 or any other remedies under this Agreement until proper evidence of insurance is provided.

(c) Notice of Cancellation, Material Change and Non-Renewal. Tenant shall provide for thirty (30) days' advance notice to the City in the event coverage required in this Agreement (except coverage for war and allied peril risk for which Tenant shall provide seven (7) days' advance notice or such other period as may be agreed by the parties) has substantially changed, canceled, or non-renewed. Upon the earlier of Tenant's receipt of a cancellation notice for non-payment of premium or Tenant's knowledge thereof, Tenant shall provide immediate notice to the City of such cancellation or impending cancellation with

Tenant's written plan for curing such non-payment and preventing non-payment of premiums thereafter.

(d) Insurance Required of Contractors and subcontractors. In each contract with any Contractor or subcontractor, Tenant shall require such Contractor or subcontractor to obtain insurance coverages to adequately cover risks associated with any such contractor or subcontractor that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract and standard in the industry within which such contractor's or subcontractor's practices. Such coverages shall insure the interests of the City, its employees, elected officials, agents and representatives including naming the City of Chicago as an additional insured on an additional insured form acceptable to the City. Tenant is also responsible for ensuring that each Contractor and subcontractor has complied the required coverage and terms and conditions outlined in this Section 13.1.2. When requested by the City, Tenant shall provide, or cause to be provided, to the City certificates of insurance and copies of additional insured endorsements or such other evidence of insurance, acceptable in form and content to the City. The City reserves the right to inspect complete, certified policy copies (or electronic copies thereof) of any required insurance at a mutually agreed to location within the State of Illinois within ten (10) days of the City's written request. Failure of the Contractors or subcontractors to comply with required coverage and terms and condition outlined herein will not limit Tenant's liability or responsibility hereunder.

(e) No Limitation as to Tenant's Liabilities. Tenant expressly understands and agrees that any insurance coverages and limits furnished by Tenant shall in no way limit Tenant's liabilities and responsibilities specified within this Agreement or by Applicable Law.

(f) Waiver of Subrogation. Tenant waives and shall cause its insurers to waive, and Tenant shall cause each Contractors and subcontractors insurers to waive, their respective rights of subrogation against the City Indemnified Parties for recovery of damages to the extent these damages are covered by the following insurance obtained by Tenant pursuant to this Agreement: (1) Workers' Compensation and Employer's Liability Insurance; (2) Commercial General/ Liability Insurance (primary and umbrella); (3) Automobile Liability Insurance; (4) All Risk Blanket Builder's Risk Insurance; and (5) all Risk Property Insurance. With respect to the waiver of subrogation for Worker's Compensation and Employer's Liability Insurance, Tenant shall obtain an endorsement equivalent to WC 00 03 13 to effect such waiver.

In the event the insurers of Tenant, or the insurers of any Contractor, should seek to pursue contribution or a subrogation claim against the City, Tenant shall be responsible to pay all cost of defending such claims, including actual attorney's fees of counsel of the City's choosing, subject to Section 13.2.7.

(g) Tenant Insurance Primary. Tenant expressly understands and agrees that any insurance or self-insurance programs maintained by the City shall apply in excess of and not contribute with insurance provided by Tenant under this Agreement. All insurance policies required of Tenant under this Agreement shall be endorsed to state that Tenant's insurance policy is primary and not contributory with any insurance carried by the City.

(h) Insurance Limits maintained by Tenant. If Tenant maintains higher limits than the minimum required herein, the City requires and shall be entitled to coverage for the higher limits maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City, as its interest may appear.

(i) Joint Venture or Limited Liability Company. If Tenant is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

(j) Other Insurance obtained by Tenant. If Tenant desires additional coverages, Tenant shall be responsible for the acquisition and cost.

(k) Self-Insurance of Tenant. Tenant may not self-insure any portion of any limit of primary coverage required hereunder unless specifically permitted under this Section 13.1.1 or otherwise permitted by the City in extraordinary circumstances. It is understood that in any instance in which Tenant is permitted to and chooses to self-insure a portion of the limit of primary coverage required hereunder, Tenant, as a self-insurer, has the same duties and obligations to the City (i.e. obligation to provide a defense for covered claims) and to the City's liability insurer(s) as a primary liability insurer has to excess insureds and excess insurers under a standard ISO policy form even though Tenant's self-insurance is not on a standard ISO form. For purposes of this subsection, self-insurance shall not be construed to include deductibles that apply on a per-occurrence basis.

(l) City's Right to Modify. The City maintains the right, based on commercially reasonable standards, to modify, delete, alter or change the requirements set forth under this Section 9.1 with thirty (30) days prior written notice to Tenant.

13.1.3 City's Insurance. The City shall maintain in force during the Term the insurance it is required to maintain pursuant to the Signatory Airline Use and Lease Agreements.

## 13.2 Indemnification

13.2.1 Tenant agrees to defend, indemnify and hold harmless the City Indemnified Parties to the maximum extent allowed by applicable statutes and case law, from and against any and all Claims, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property, arising out of or relating to:

- (a) the tortious acts or omissions of Tenant or its Associated Parties;
- (b) Tenant's or its Associated Party's use or occupancy of the Airport and the Premises;
- (c) the violation by Tenant of this Agreement or of any law, ordinance, regulation or court order affecting the Airport; or

(d) suits of whatever kind or nature alleging violations of any federal or state laws as a result of any actions taken by Tenant or its Associated Parties, or Tenant's failure to comply with obligations imposed upon Tenant or its Associated Parties, pursuant to this Agreement;

and Tenant will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. To the extent City Indemnified Parties reasonably expend any cost and expense, including attorney fees, in investigating or responding to such claims, demands and suits, Tenant will reimburse the City Indemnified Parties for all such costs and expense, subject to Section 13.2.7.

13.2.2 Without limiting the foregoing, Tenant also agrees to defend, indemnify and hold harmless the City Indemnified Parties:

(a) from and against any and all claims or liability for compensation under any workers' compensation statute arising out of the injury or death of any employee of Tenant. Tenant shall cause its licensees and Contractors to maintain in effect at all times workers' compensation insurance as required by law; and

(b) from, and to assume all liability for, and to pay, all taxes and assessments for payment of which the City may become liable and which by law may be levied or assessed on the Premises occupied by Tenant pursuant to this Agreement (excluding those taxes which are City's responsibility pursuant to Section 11.2.2), or which arise out of the operations of Tenant. However, Tenant may, at its own risk, cost and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Tenant to contest or appeal the same. Tenant shall be responsible for obtaining bills for all of said taxes and assessments for which Tenant is responsible directly from the taxing authority and shall promptly deliver to the City copies of receipts of payment. In the event the City receives any tax billings, it will forward said billings to Tenant as soon as practicable.

13.2.3 Without limiting the foregoing, Tenant shall cause any Contractor to agree to protect, defend, indemnify and hold the City Indemnified Parties free and harmless from and against any and all Claims including claims of property damage, injury or death, in consequence of granting the relevant Contract or arising out of or being in any way connected with the Contractor's performance under this Agreement except for matters shown by final judgment to have been caused by or attributable to the negligence of any City Indemnified Party to the extent prohibited by 740 ILCS 35/1 et seq. The indemnification provided herein shall be effective to the maximum extent permitted by applicable statutes. To the extent Contractor fails to defend any and all claims, demands or suits against the City Indemnified Parties including claims by any employee, Contractors, agents or servants of Contractor even though the claimant may allege that a City Indemnified Parties is or was in charge of the work or that there was negligence on the part of a City Indemnified Party, Tenant shall be responsible for such defense. To the extent City Indemnified Parties reasonably expend any cost and expense, including attorney fees, in investigating or responding to such claims, demands and suits, Tenant will reimburse the City Indemnified Parties for all such costs and expense, subject to Section 13.2.7.

“Injury” or “damage,” as such words are used in this Section 13.2 shall be construed to include injury, death or damage consequent upon the failure of or use or misuse by Contractor, its subcontractors, agents, servants or employees, of any scaffolding, hoist, cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by the City. Notwithstanding Tenant’s obligation to cause any Contractor to agree to the requirements set forth in this Section 13.2.3, Tenant’s failure to cause Contractor to do so shall not constitute a breach hereof, provided that Tenant performs all such actions Contractor would have been required to perform under this Section 13.2.3, including indemnifying and defending the City, itself.

13.2.4 The City shall notify Tenant as soon as practicable of each Claim in respect of which indemnity may be sought by the City against Tenant hereunder, setting forth the particulars of such Claim, and shall furnish Tenant with a copy of all judicial filings and legal process and any correspondence received by the City related thereto.

13.2.5 The City shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings related to any Claim against the City, provided that the City shall bear the costs of its participation to the extent such participation is not in furtherance of the City’s defense of any such Claim. The City shall approve the terms of any settlement which requires the City to perform or refrain from performing any action, provided that such approval will not be unreasonably withheld if a settlement includes a full and unconditional release for City Indemnified Parties.

13.2.6 Without limiting the generality of any other provision hereof, Tenant shall reimburse the City for the cost of any and all reasonable attorney’s fees and investigation expenses and any other reasonable costs incurred by the City in the investigation defense and handling of said suits and claims and in enforcing the provisions of this Agreement.

13.2.7 Notwithstanding the provisions of this Section 13.2, in the event that the City and Tenant mutually agree or a court of competent jurisdiction determines by a final order that (a) a City Indemnified Party’s negligence is at least fifty-one (51%), or (b) a City Indemnified Party’s willful and wanton misconduct is any percentage, of the total fault which proximately caused the Claims, Tenant’s obligation to indemnify the City for amounts to be paid in connection with the Claims shall be limited to the amount attributable to Tenant’s and its Associated Parties’ proportionate share of the total fault which proximately caused the Claims. The City and Tenant agree, however, that this Section 13.2.7 is not intended to obviate or lessen in any way Tenant’s duty to defend the City Indemnified Parties; provided, however, that to the extent the City and Tenant mutually agree or a court of competent jurisdiction rules that the Claims were the result of the sole negligent act or omission or the willful and wanton misconduct of a City Indemnified Party, the City shall reimburse Tenant for its proportionate share of the costs of defense, including, but not limited to, attorneys’ fees and court costs. For the avoidance of doubt, the City shall reimburse Tenant for all defense costs Tenant incurred with respect to defending the City Indemnified Parties against Claims to the extent that the City and Tenant mutually agree or a court of competent jurisdiction rules that such Claims were the result of the sole negligent act or omission of a City Indemnified Party.

13.2.8 Notwithstanding the provisions of this Section 13.2, Tenant's indemnification obligations for Environmental Claims are set forth in Section 14.7.

13.2.9 The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City or a City Indemnified Party that would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement.

13.2.10 Subject to Section 13.2.7, Tenant shall be liable for any loss or damage to any personal property or equipment of Tenant, its agents, servants, employees, officials, or independent contractors.

13.2.11 Subject to Section 13.2.7, Tenant waives the right of contribution against the City Indemnified Parties and subrogation against the City Indemnified Parties.

13.2.12 This Section 13.2 shall survive expiration or early termination of this Agreement. Tenant understands and agrees that any insurance protection furnished by Tenant pursuant to Section 13.1 shall in no way limit Tenant's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

## Article 14

### **ENVIRONMENTAL MATTERS**

#### **14.1 Tenant Representations, Warranties, and Covenants**

Tenant represents, warrants, and covenants the following with respect to its use of the Airport pursuant to this Agreement:

14.1.1 Tenant has obtained and throughout the term of this Agreement shall regularly maintain and timely update all applicable licenses, permits, registrations and other authorizations and approvals required under Environmental Laws, and shall provide any notices required under Environmental Laws (as defined in the Signatory Airline Use and Lease Agreements), for conducting its operations at the Airport during the term of this Agreement; provided, however, that for the purposes of this Agreement, "Environmental Laws" will also include, where applicable, the rules and regulations of the United States Department of Agriculture Animal and Plant Health Inspection Service, including 7 C.F.R. 330.400-403 and 9 C.F.R. 94.5. Tenant shall ensure that its Associated Parties obtain, maintain and update all applicable licenses, permits, registrations and other authorizations required by Environmental Law pertaining to its and their use of and operations at the Airport.

14.1.2 Tenant shall comply and shall ensure that its Associated Parties comply, with all applicable Environmental Laws pertaining to its and their use of and operations at the Airport.

14.1.3 Tenant shall not conduct its operations at the Airport during the Term of this Agreement in such a manner so as to cause, unlawfully allow or contribute to, and shall ensure that its Associated Parties do not cause, unlawfully allow or contribute to:

(a) any Release, Discharge or Disposal of any Hazardous Substance or Other Regulated Material at the Airport, unless authorized by an Environmental Law;

(b) any violation of any applicable Environmental Law as a result, in whole or in part, of the use by or operations of Tenant or its Associated Parties at the Airport;

(c) any Release, Discharge or Disposal in violation of any applicable Environmental Law which is a contributing cause of the City exceeding any terms, conditions or effluent limits of any NPDES permit or individual storm water discharge permit issued to the City, Multi-Sector General Permit, Municipal Separate Storm Sewer System permit, or any applicable federal or State of Illinois effluent limitation guideline, or standard of the MWRD;

(d) any Release, Discharge or Disposal to soil or Waters at, underlying, or adjacent to the Airport in violation of any applicable Environmental Law; or

(e) any emissions to the air in violation of any applicable Environmental Law that results in an exceedance of an applicable emission standard at the Airport or, if applicable, any terms or conditions of any of Tenant's air permits.

14.1.4 Tenant shall, and shall ensure that its Associated Parties, handle, use, store, Dispose of, transport, or otherwise manage, any Hazardous Substance or Other Regulated Material at the Airport during the Term of this Agreement in a lawful manner. Without limiting the foregoing and as applicable, Tenant shall not conduct and shall ensure that its Associated Parties do not conduct any operations or activities involving the use or application of ethylene glycol, propylene glycol, or any other substance in de-icing or anti-icing at any location at the Airport except in accordance with all applicable Environmental Laws and, as applicable, in compliance with any de-icing policies and practices as may be adopted by the City in consultation with Tenant.

14.1.5 Tenant shall be, and shall ensure that its Associated Parties are, responsible for the proper transportation and Disposal of all Hazardous Substances or Other Regulated Material generated by Tenant or its Associated Parties, or resulting from Tenant's use, activities, and operations, at the Airport during the term of this Agreement, including those activities and operations conducted by its Associated Parties. In such cases, in the event a signature as "Generator" is required on waste manifests, waste profile sheets or generator's certifications of non-special waste, Tenant shall ensure that either Tenant or its appropriate Associated Party(ies) signs such documents. Tenant shall be responsible for the proper removal, transportation, and Disposal of Hazardous Substances or Other Regulated Material confiscated by the Transportation Security Agency ("TSA") or the City, but only with respect to the Premises.

14.1.6 Tenant shall be, and shall ensure that its Associated Parties are, responsible for the maintenance of any structural controls (above-ground or below-ground), as defined below, used to treat sanitary sewer waste and storm water runoff operated by Tenant or

its Associated Parties on the Premises during the term of this Agreement. Maintenance frequencies for any such structural controls shall be established by Tenant in a reasonable manner in accordance with industry standards and applicable Environmental Law to ensure effective operation of such controls and to prevent failures of such controls that could result in the Discharge, Release or Disposal of pollutants in violation of any applicable Environmental Law. Tenant shall ensure that environmental records required to be kept by applicable law, including the O'Hare SWPPP, are maintained on-site for a period of three (3) years, unless a different document retention requirement is provided by applicable law. Structural controls to be maintained by Tenant shall include, but not be limited to: oil/water separators (both storm and sanitary sewer), grease traps, sand traps, diversion valves, shut-off valves, storm sewer drain filters, trench drains, catch basins, rain gardens, and retention/holding ponds and any other structural controls. Tenant shall remove and properly Dispose of any Waste in said designated structural controls maintained by Tenant prior to vacating the Premises.

14.1.7 Tenant shall be, and shall ensure that its Associated Parties are, responsible for the maintenance of any air pollution control equipment required by any applicable Environmental Law operated by Tenant or its Associated Parties on the Premises during the term of this Agreement. Maintenance frequencies for any such air pollution control equipment shall be established by Tenant in a reasonable manner in accordance with industry standards, the provisions of applicable air permits and applicable Environmental Law to ensure effective operation of such equipment and to prevent failures of such equipment that could result in the emission of pollutants in violation of any applicable Environmental Law. Tenant shall ensure that environmental records required to be kept by applicable law are maintained on-site for a period of three (3) years, unless a different document retention requirement is provided by applicable law. The air pollution control equipment units to be maintained by Tenant shall include, but are not limited to: scrubbers, filters, absorbers, condensers, precipitators, and other equipment, in each case to the extent such equipment is specifically listed on Exhibit A to this Agreement as the maintenance responsibility of Tenant. Tenant shall remove and properly Dispose of any Waste in said designated air pollution control equipment operated by Tenant prior to vacating the Premises.

14.1.8 If Tenant or its Associated Parties cause, unlawfully allow or contribute to a Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material at the Airport in violation of any applicable Environmental Law that is above any applicable reportable quantity, emission standard or effluent guideline set forth in any applicable Environmental Law including the O'Hare Spill Response Guide, Tenant shall report such Release, Discharge or Disposal to the appropriate governmental authorities in compliance with applicable Environmental Law, including the O'Hare Spill Response Guide. Tenant shall ensure that its Associated Parties report any Release or Discharge in violation of any applicable Environmental Law to the appropriate governmental authorities, in compliance with applicable Environmental Law, if the operations of said third party cause, unlawfully allow or contribute to a Discharge or Release of a Hazardous Substance or Other Regulated Material in violation of any applicable Environmental Law that is above any reportable quantity set forth in any applicable Environmental Law.

14.1.9 Tenant acknowledges that the City is subject to certain NPDES permits, state and federal storm water regulations, federal and state effluent limitation guidelines, and

MWRD standards for operations at the Airport. Tenant shall conduct operations and activities at the Airport, including but not limited to de-icing, anti-icing, and construction, and shall ensure that its Associated Parties conduct operations and activities at the Airport in compliance with applicable Environmental Laws. Tenant acknowledges that its reasonable cooperation is necessary to ensure Airport's compliance with any applicable NPDES storm water permits and effluent limitation guidelines under Environmental Laws. Tenant shall minimize the exposure to storm water of materials generated, stored, handled, or used by Tenant or its Associated Parties at the Airport including Hazardous Substances or Other Regulated Material, by implementing and requiring implementation of certain written "Best Management Practices" as defined by and required under Environmental Laws, and shall make them available to the City upon reasonable request. Tenant further acknowledges that any effluent limitation guidelines in any NPDES storm water discharge permit issued to the City and timely provided to Tenant applicable to Tenant are incorporated by reference into this Agreement to the extent affecting Tenant's operations at or use of the Airport or operations or activities conducted on its behalf at the Airport, or necessitating Tenant's reasonable cooperation to assure the City's compliance therewith. The City shall provide advance notice to Tenant of and a reasonable opportunity to comment on, and shall otherwise endeavor to negotiate reasonable and cost effective terms and conditions of, any permits issued to the City which may affect Tenant's operations at or use of the Airport or operations or activities conducted on its behalf at the Airport, or which may necessitate Tenant's reasonable cooperation to assure the City's compliance therewith.

14.1.10 Tenant or its Associated Parties shall cooperate with the City, as reasonably requested from time to time by the City, to ensure that Tenant's operations at or use of the Airport will not unreasonably interfere with the City's implementation of its Chicago O'Hare International Airport Wildlife Hazard Management Plan to reduce wildlife hazards at the Airport.

14.1.11 Tenant, prior to vacating or surrendering any portion of its Premises for any reason, shall:

(a) remove and Dispose of any and all trash, debris, or Waste generated by Tenant or its Associated Parties;

(b) remove any and all above-ground containers and non-permanent structural controls owned by Tenant or its Associated Parties, including, but not limited to, removable filters, grates and above-ground tanks located on Tenant's Premises, unless Tenant and the City agree otherwise; and

(c) comply with applicable Environmental Laws regarding the closing or removal from service of any underground or aboveground tanks, vessels, and containers operated or owned by Tenant or its Associated Parties and located on Tenant's Premises, provided, however, that Tenant shall have no such obligation with respect to any airport hydrant fuel system maintained by an airport fueling consortium.

14.1.12 Tenant understands and acknowledges that certain of its and the City's future capital projects at the Airport may require review or approval by the FAA, the United States Environmental Protection Agency ("USEPA"), or the Illinois Environmental Protection

Agency (“IEPA”), pursuant to requirements imposed upon the Airport or the City. If requested by the City, Tenant shall reasonably cooperate with the City in its preparation of such submittals as are required of the City by FAA, USEPA, or IEPA, or their successor agencies, in connection with Tenant’s future capital projects or in connection with the City capital projects at the Airport which benefit Tenant.

14.1.13 Tenant shall, and shall ensure that its Associated Parties, dispose of Hazardous Substances or Other Regulated Material in accordance with applicable Environmental Laws. Tenant shall, and shall ensure that its Associated Parties, employ properly permitted disposal facilities. Upon the City’s reasonable request, the Tenant shall make available for City inspection documents relating to disposal activities of Tenant or its Associated Parties and/or the disposal facilities employed.

## **14.2 Right of Entry to Perform Environmental Inspections and Sampling**

14.2.1 The City and its contractors and other agents shall have the full right to enter any part of the Premises, at all reasonable times and in the City's sole discretion, for the purpose of conducting an inspection, assessment, investigation, regular inspection, or regulatory compliance audit of Tenant’s operations thereon, or any other party’s use and operations, including operations of Tenant’s Associated Parties. The City and its authorized agents may take samples and perform tests as needed, including but not limited to soil borings, ground water monitoring, and collection of samples of air, soil, water, groundwater, Hazardous Substances or Other Regulated Material Releases, and Discharges, at the City's expense. The City will provide seventy-two (72) hours’ advance written notice of any City inspection, assessment, investigation, regular inspection, or regulatory compliance audit of Tenant’s operations thereon, or any other party’s use and operations, including operations of Tenant’s Associated Parties or intrusive City sampling to Tenant, except in emergencies, when advance notice shall not be required. Tenant shall have the right to accompany the City when any such inspection or sampling is performed, provided that the City is not required to unreasonably delay its inspection or sampling to enable Tenant to be present. Tenant shall have the right to obtain, at Tenant’s expense, split samples and City shall promptly provide copies of all analytical results of such sampling, including any non-privileged reports.

14.2.2 Tenant shall cooperate, and shall ensure that its Associated Parties cooperate, in allowing prompt, reasonable access to the City to conduct such inspection, assessment, audit, sampling, or tests. In the exercise of its rights under this Section, the City shall not unreasonably interfere with the authorized use and occupancy of the Premises by Tenant or Tenant’s Associated Parties. Tenant remains solely responsible for its environmental, health, and safety compliance, notwithstanding any City inspection, audit, or assessment.

## **14.3 Information to be Provided to the City**

14.3.1 If Tenant receives any written notice, citation, order, warning, complaint, claim or demand regarding Tenant’s use of, or operations at, the Premises during the term of this Agreement or other property at the Airport used by Tenant pursuant to this Agreement that is not legally privileged, made confidential by applicable law, or protected as trade secrets:

(a) concerning any alleged Release, Discharge or Disposal of a Hazardous Substance or Other Regulated Material by Tenant or by its Associated Parties; or

(b) alleging that Tenant or any of its Associated Parties is the subject of an Environmental Claim or alleging that Tenant or any Associated Party is, or may be, in violation of any Environmental Laws; or

(c) asserting that Tenant or any such third party as identified in Section (i) and (ii) above is liable for the cost of investigation or remediation of a Release or Discharge;

Tenant shall promptly, but not later than five (5) business days after Tenant's receipt, inform the City in writing of same, including a copy of such notice received by Tenant.

14.3.2 Tenant shall simultaneously provide to the City copies of its submittals of any non-privileged reports or notices required under Environmental Laws to any governmental agency regarding:

(a) Tenant's or its Associated Parties' alleged failure to comply with any Environmental Laws at the Premises or other property at the Airport used by Tenant pursuant to this Agreement, or

(b) any Release or Discharge arising out of the past or present operations at or use of the Premises or other property at the Airport used by Tenant or its Associated Parties pursuant to this Agreement.

14.3.3 In connection with any matter arising under Section 14.3.1 above, Tenant shall make available, within ten (10) business days of Tenant's receipt of the City's written request, subject to document retention requirements provided by applicable law, the non-privileged documents that Tenant has submitted to any governmental agency pertaining to the environmental compliance status of Tenant's operations at or use of the Premises or other property at Airport used pursuant to this Agreement by Tenant, including without limitation any and all non-privileged records, permits, permit applications, test results, sample results, written or electronic documentation, studies, or other documentation regarding environmental conditions or relating to the presence, use, storage, control, Disposal, or treatment of any Hazardous Substance or Other Regulated Material by Tenant or its Associated Parties at the Premises or other property at the Airport used by Tenant pursuant to this Agreement.

#### **14.4 Environmental Response and Compliance Obligations**

14.4.1 Without limiting the indemnity obligations of Section 14.7, if, during the term of this Agreement, Tenant or any of its Associated Parties causes, unlawfully allows or contributes to a Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material (including, but not limited to those which contaminate or pollute any air, soil, Waters, storm sewer, detention basin, other stormwater infrastructure, or conveyance system) in violation of any applicable Environmental Law that is above any applicable reportable quantity, emission standard or effluent guideline set forth in an applicable Environmental Law including the O'Hare Spill Response Guide, at any portion of the Airport or adjacent Waters, in connection with their

operations at the Premises or at other property at the Airport used by Tenant pursuant to this Agreement, Tenant shall perform or shall cause to be performed, consistent with the provisions of Section 14.5, the following:

(a) notify the O'Hare Communications Center ("OCC") of such Release, Discharge, or Disposal as required by and in accordance with the O'Hare Spill Response Guide and applicable Environmental Laws;

(b) report such Release, Discharge, or Disposal to appropriate governmental agencies as required by and in accordance with applicable Environmental Laws;

(c) promptly Respond to the Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material, as required by applicable Environmental Laws;

(d) promptly take all further actions required under Environmental Laws to abate any threat to human health or the environment;

(e) promptly undertake any further removals, remediation, or corrective actions as are required by Environmental Laws or a governmental agency exercising its authorized regulatory jurisdiction under Environmental Laws, to remedy any such Release, Discharge or Disposal of a Hazardous Substance or Other Regulated Material, and any resulting impacts; and

(f) promptly obtain documentation of the approval of the closure of such Release, Discharge, or Disposal from the governmental agency(ies) with regulatory jurisdiction as such may be issued under Environmental Laws, and provide such documentation to the City.

14.4.2 Any remedial or other activity undertaken by Tenant under this Article shall not be construed to impair Tenant's rights, if any, to seek contribution or indemnity from any person, consistent with the terms and limitations of this Agreement, including Section 14.7, below.

#### **14.5 Investigation, Remediation, or Corrective Action Process**

Before commencing any subsurface soil, surface water, stormwater, or groundwater investigations, removals, remediation, or corrective actions that Tenant or Tenant's Associated Parties are required to perform at the Airport under this Agreement, including any such actions mandated in Section 14.4, and except for immediate removal actions required by Environmental Laws and otherwise undertaken pursuant to Section 14.4, Tenant shall promptly provide any proposed plans for such investigations, removals, remediation, or corrective actions to the City for approval in accordance with applicable Environmental Laws, which shall not be unreasonably withheld or conditioned. The work shall be performed in a diligent manner consistent with the time(s) prescribed by Environmental Laws and relevant governmental authorities and at Tenant's expense, and the City shall have the right to review and inspect all such work at any time using consultants and representatives of the City's choice, at the City's expense. Specific cleanup levels for any environmental removals, remediation or corrective

actions shall comply with applicable Environmental Laws, with commercial and industrial remediation standards being applied to such actions consistent with the use of the Airport for such purposes. Tenant may also utilize institutional controls and other engineered barriers as part of any removals, remediation or corrective actions to the extent authorized by Environmental Laws and approved by the City in writing, which shall not be unreasonably withheld. In the event deed recordation by the City is necessary for the utilization of commercial and industrial remediation standards or other controls as part of any removals, remediation or corrective actions or any other costs and expenses are incurred in connection with the use of such standards or controls Tenant shall reimburse the City for all deed recordation fees and reasonable attorneys' fees incurred in connection with such recordation. Tenant shall, at Tenant's own cost and expense, have all tests performed, and reports and studies prepared, and shall provide such information to any governmental agency as may be required by applicable Environmental Laws, with a copy simultaneously provided to the City. This obligation includes but is not limited to any requirements for a site characterization, site assessment, remediation objectives report, remedial action plan, and remedial action completion report that may be necessary to comply with applicable Environmental Laws.

#### **14.6 The City's Rights to Ensure Tenant's Compliance with Environmental Response and Compliance Obligations**

14.6.1 If, as is reasonably determined by the City, Tenant, Tenant's Associated Parties or their Associated Parties:

(a) do not take appropriate Response actions required by applicable Environmental Laws in response to a Release, Discharge or Disposal for which it is responsible under Section 14.4, within the time(s) prescribed by such Environmental Law(s) and relevant governmental authorities; or

(b) do not perform or complete reporting, notifications, investigations, removals, remediation, corrective actions, or closure actions for which it is required under Section 14.4 within the time(s) prescribed by applicable Environmental Laws and relevant governmental authorities, or within the time reasonably necessary to enable the City to meet its obligations under Environmental Laws (subject to the condition that, in the case of both Sections 14.6.1(a) above and this Section 14.6.1(b), the City must first provide reasonable advance written notice to Tenant of Tenant's failure to comply with such obligations and a reasonable opportunity for Tenant to cure such failure to comply by Tenant initiating or recommencing any such actions consistent with required schedules (including exercising its legal right to reasonably and in good faith challenge such alleged obligation to comply), but in any event not to exceed forty-five (45) days, except in emergency circumstances in which such advance notice is not possible), then the City or its authorized contractor, in addition to its rights and remedies described elsewhere in this Agreement and otherwise available at law, in equity, or otherwise, may, at its election, upon reasonable notice, enter the affected area, and take whatever action the City reasonably deems necessary to meet Tenant's obligations under Environmental Laws, within the time required under such Environmental Laws, consistent with the requirements of Section 14.4. In addition to notice and opportunity to cure as set forth in this Section 14.6.1(b), the City shall provide Tenant with its plan to perform such work for Tenant's review and comment at least seven (7) business days before the commencement of such work, which

comments shall be reasonably considered by the City, except in emergency circumstances where such advance notice is not possible. Such action taken by the City consistent with the requirements of this Agreement shall be at Tenant's expense plus administrative expenses of the greater of Five Hundred Dollars (\$500.00) or 25% of all costs incurred by the City, including but not limited to reasonable attorneys' and consultants' fees and expenses, monetary fines and penalties, litigation costs or costs incurred in anticipation of litigation, expert witness fees, and expenses of investigation, removal, remediation, or other required plan, report, or Response action performed in accordance with applicable Environmental Laws.

14.6.2 Except as set forth in Section 14.6.3, below, if the City cannot identify with commercially reasonable effort any of the parties causing, unlawfully allowing, contributing to or responsible for a Release, Discharge, or Disposal at or from the Airport requiring the completion of appropriate Response actions as provided in Section 14.4.1, then City shall provide reasonable advance written notice to Tenant of its intention to take actions, to the extent of Tenant's obligations for such actions as provided in Section 14.4.1, to report, repair, contain, investigate, remove, correct or remediate such Release, Discharge, or Disposal consistent with the requirements of Section 14.4. Tenant shall thereafter be afforded a reasonable opportunity (not to exceed forty-five (45) days) to commence such actions or provide the City with information on the identity of the party or parties causing, contributing to, or responsible for such Release, Discharge, or Disposal, which information shall be considered in good faith by the City and, as appropriate, shall provide a basis for the City's pursuit of any responsible parties consistent with the provisions of Section 14.6.1. In addition to the above written notice, the City shall provide Tenant with its plan to perform such actions for Tenant's review and comment at least seven (7) business days before the commencement of any work (except in emergency circumstances in which such advance notice is not possible), which comments shall be reasonably considered by the City, after which the costs of such actions, if implemented by the City, shall be allocated by the City to the Terminal Cost Center.

14.6.3 Nothing in this Section 14.6 is intended or shall be construed so as to prevent the City or Tenant from exercising, in their reasonable discretion, any rights granted or available elsewhere in this Article, in this Agreement, or by law.

#### **14.7 Environmental Indemnification and Reimbursement**

14.7.1 Notwithstanding any other provision to the contrary, Tenant agrees to indemnify, defend, and hold harmless the City, its past and present elected and appointed officials, officers, agents and employees ("Environmental Indemnitees"), from and against any and all Environmental Claims resulting from:

(a) the breach by Tenant of any representation or warranty made in this Article; or

(b) the failure of Tenant to meet its obligations under this Article, whether caused or unlawfully allowed by Tenant or any third party under Tenant's direction or control; or

(c) documented loss by any Environmental Indemnitee(s) from any Environmental Claim, to the extent caused, unlawfully allowed or contributed to by the unauthorized Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material by Tenant or by its Associated Parties or the failure of Tenant or any Associated Party to comply with applicable Environmental Laws in connection with the operations of Tenant or its Associated Parties at the Premises or at other property at the Airport used by Tenant pursuant to this Agreement, during the term of this Agreement;

14.7.2 Notwithstanding the provisions of this Section 14.7, in the event that the City and Tenant mutually agree or a court of competent jurisdiction determines by a final order that an Environmental Indemnitee's negligence or willful and wanton misconduct is at least fifty-one (51%) of the total fault which proximately caused the Environmental Claims, Tenant's obligation to indemnify the Environmental Indemnitee for amounts to be paid in connection with the Environmental Claims shall be limited to the amount attributable to Tenant's and its Associated Parties' proportionate share of the total fault which proximately caused the Environmental Claims. The City and Tenant agree, however, that this Section 14.7.2 is not intended to obviate or lessen in any way Tenant's duty to defend the Environmental Indemnitees; provided, however, that to the extent the City and Tenant mutually agree or a court of competent jurisdiction rules that the Environmental Claims were the result of the sole negligent act or omission or the willful and wanton misconduct of an Environmental Indemnitee, the City shall reimburse Tenant for its proportionate share of the costs of defense, including, but not limited to, attorneys' fees and court costs. For the avoidance of doubt, the City shall reimburse Tenant for all defense costs Tenant incurred with respect to defending the City Indemnified Parties against Claims to the extent that the City and Tenant mutually agree or a court of competent jurisdiction rules that such Claims were the result of the sole negligent act or omission of a City Indemnified Party.

14.7.3 The City shall provide Tenant with prompt notice of any Environmental Claims to allow Tenant the opportunity to properly and effectively respond to or otherwise defend such Environmental Claims. Tenant shall, at its own cost and expense, defend all Environmental Claims whether frivolous or not. In the event the City undertakes any action, including but not limited to investigations, removals, remediation, or corrective actions with respect to any Environmental Claims in response to the failure of Tenant to defend such Environmental Claims as Tenant deems appropriate in its reasonable judgment, Tenant shall reimburse the City, upon written demand by the City, for all reasonable and documented costs that the City incurs in association with such action, including but not limited to consultants' fees, contractors' fees, reasonable attorneys' fees and expenses of investigation, removal, Response, remediation, or corrective action.

14.7.4 Except to the extent set forth in Section 14.7.2, above, Tenant waives the right of contribution and subrogation against the Environmental Indemnitees in connection with Environmental Claims set forth in Sections 14.7.2 and 14.7.3, above.

14.7.5 Regardless of the date of termination of this Agreement, the indemnifying party's representations, obligations and liabilities under this Article shall continue as long as the indemnified party bears any liability or responsibility under this Article or the Environmental Laws.

14.7.6 Any claims for environmental matters shall be subject to this Section 12.7 and shall not be subject to the General Indemnity provision of Section 13.2 in this Agreement.

#### **14.8 Limitations**

Except pursuant to Sections 14.6.2 and 14.6.3, Tenant's obligations under this Article shall not apply to: (a) any Release, Discharge or Disposal, or Hazardous Substances or Other Regulated Materials that existed at the Airport prior to Tenant's or its corporate predecessor(s)'s initial occupancy or operations at such area(s) of Release, Discharge or Disposal, or Hazardous Substances or Other Regulated Materials at the Airport, provided that neither Tenant or its corporate predecessor(s) nor any other party under Tenant's or its corporate predecessor(s)'s direction or control, or conducting operations or activities on its or their behalf caused, unlawfully allowed or contributed to such Release, Discharge or Disposal, or Hazardous Substances or Other Regulated Materials, or caused, unlawfully allowed or contributed to a subsequent Release, Discharge or Disposal of such pre-existing Hazardous Substances or Other Regulated Materials; or (b) Releases, Discharges, or Disposal that migrate onto, into, or from the Premises or the Airport and that were not caused, unlawfully allowed or contributed to by Tenant or its corporate predecessor(s) or third parties under Tenant's or its corporate predecessor(s)'s direction or control or conducting operations or activities on its or their behalf; or (c) Releases, Discharges, or Disposal on, at, or from the Airport not caused, unlawfully allowed or contributed to by Tenant or its corporate predecessor(s) or by its or their Associated Parties, or any other party under Tenant's or its corporate predecessor(s)'s direction or control.

#### **14.9 Baseline Environmental Site Inspection**

Prior to Tenant's initial occupancy of, use of, or operations at, the Premises, the City shall have the opportunity to perform, at its own expense, an Initial Walk-Through of the Premises regarding the environmental condition of the Premises and their state of compliance with Environmental Laws and produce an Initial Walk-Through report. The City shall provide Tenant with an opportunity to participate in the walk-through and review and comment upon the conclusions and findings of the Initial Walk-Through report. In the event pre-existing environmental conditions are encountered, the provisions of Section 14.4 shall apply, except that the provision in Section 14.4 limiting Tenant's obligations to incidents during the term of this Agreement shall not apply.

#### **14.10 Concluding Environmental Site Inspection**

At least sixty (60) days prior to vacating or surrendering the Premises or any portion of them for any reason, Tenant shall provide the City with access to perform a Concluding Walk-Through in order to determine the environmental condition of the Premises or that part of the Premises being vacated, and their state of compliance with the requirements of Section 14.1.11. City shall provide Tenant with an opportunity to participate in the walk-through. If the Concluding Walk-Through reveals that Tenant has not removed all trash, containers, tanks, structures, debris, residue, and other items, materials and Waste for which Tenant or anyone operating on its behalf is responsible as required by Section 14.1.11, or has otherwise failed to comply with the requirements of Section 14.1.11, the City will share its Concluding Walk-

Through report and any relevant photographs with Tenant. Tenant will remove or correct any items to the extent not in compliance with the requirements of Section 14.1.11 within five (5) business days of receipt of said report and photographs or such longer period of time as reasonably requested by Tenant to perform the corrective actions. Tenant shall leave facilities and equipment being surrendered or vacated by Tenant in a state of good repair. However, tanks, structures and other items and materials owned by Tenant may revert to the City upon agreement of Tenant with the City accepting such tanks, structures and other items and materials in an "as is, where is" condition.

#### **14.11 Tenant's Hazardous Substance-Related Equipment and Fixtures**

Any fixed tanks, pumps, chemical or Hazardous Substance or Other Regulated Material containers, pipelines, lines, and equipment or other such fixtures installed by or on behalf of Tenant shall at all times remain the property of Tenant, and ownership of or responsibility for such equipment shall not pass to the City by virtue of such equipment being installed at the Premises, except pursuant to the agreement of the City and Tenant. No such equipment shall be installed without the written consent of the City.

#### **14.12 Waiver**

Any waiver of any provision of this Article, or any delay by the City in the enforcement of any right hereunder, shall neither be construed as a waiver, nor create an expectation of non-enforcement of that or any other provision or right. In order to be effective, any waiver of any right, benefit, or power hereunder must be in writing and signed by an authorized representative of the City, it being intended that no waiver shall be implied by the City's conduct or failure to act. Any specific written waiver shall be applicable only to the particular facts and circumstances thereby addressed and shall not be of any effect with respect to future events, even if any of said future events involve substantially similar circumstances. Any remedies provided for in this Article shall be cumulative and in addition to, and not in lieu of, any other remedies available to the City elsewhere in this Agreement, at law, in equity, or otherwise.

#### **14.13 Notice for Environmental Matters**

With respect to those provisions of this Article 12 which expressly require the City to provide written notice to Tenant, electronic mail to the designated Tenant representative will satisfy such requirement. Tenant's representative for receiving environmental notices is designated in the general Notices provisions in Section 18.3.

#### **14.14 Survival of Environmental Provisions**

Unless specifically stated elsewhere herein, the provisions of this Article, including the representations, warranties, covenants and indemnities of Tenant, are intended to and shall survive termination of this Agreement.

## Article 15

### **DAMAGE, DESTRUCTION AND CONDEMNATION**

#### **15.1 Damage to, Destruction or Condemnation of Airport**

If the Airport or any portion thereof shall be damaged or destroyed or is taken as a result of an eminent domain proceeding, all insurance proceeds or proceeds resulting from eminent domain proceedings, as the case may be, shall be applied as provided below:

15.1.1 The City may, at its option, replace, repair, rebuild or restore such portion of the Airport to substantially the same condition as that which existed prior to such damage, destruction or taking, with any alterations and additions as the City may determine; or

15.1.2 The City may, at its option, apply such proceeds to redeem any outstanding GARBs; provided, however, that GARBs may be redeemed only if such damage, destruction or condemnation is of property the acquisition of which was funded with the proceeds of GARBs, and if: (i) the Airport has been restored to substantially the same condition as it had been prior to such damage, destruction or taking; or (ii) the City has determined, in its reasonable discretion, that the portion of the Airport damaged, destroyed or taken is not necessary to the operation of the Airport.

The City shall use reasonable efforts to notify Tenant of the City's determination whether to proceed pursuant to Section 15.1.1 or Section 15.1.2 within six (6) months of the date of such damage, destruction or taking. Notwithstanding anything in this Section 15.1 to the contrary, proceeds resulting from such damage, destruction or taking will be applied consistent with the Bond Indenture.

#### **15.2 Untenantable Conditions**

15.2.1 If the Premises occupied by Tenant hereunder, or any substantial portion thereof, are damaged, destroyed or taken as result of an eminent domain proceeding and thereby rendered untenantable, then, after consultation with Tenant, the City shall replace, repair, rebuild or restore such Premises to substantially the same condition as that which existed prior to such damage, destruction or taking, with any alterations and additions as the City and Tenant determine, in all cases subject to the City's right to operate the Airport.

15.2.2 In addition, if the Premises occupied by Tenant hereunder, or any substantial portion thereof, are damaged, destroyed or taken as result of an eminent domain proceeding and thereby rendered untenantable, then, unless the City provides Tenant with alternative Premises reasonably satisfactory to Tenant, (a) Tenant shall not be obligated to pay Fixed Terminal Charges for such untenantable portion during such time as it remains untenantable, and (b) if such untenantable portion remains untenantable for more than one (1) year, Tenant shall be entitled, upon forty-five (45) days' prior written notice to the City, to delete such untenantable portion from its Premises Notice; provided that there shall be no abatement or reduction of Fixed Terminal Charges or deletion from its Premises Notice at any time where the untenantable condition is caused by the willful or negligent act or omission of Tenant or its Associated Parties.

## Article 16

### **COMPLIANCE WITH LAWS AND RULES**

#### **16.1 Airport Rules**

Tenant shall comply, and, to the maximum extent Tenant has the legal power to do so, shall cause its agents, employees, guests, invitees and Contractors to comply, with all Airport Rules.

#### **16.2 Observance and Compliance with Laws**

16.2.1 Tenant shall comply, and to the maximum extent Tenant has legal power to do so, shall cause its agents, employees, Contractors and licensees to, observe and comply with, and pay all taxes and obtain all licenses, permits, certificates and other authorizations required by, all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, including all rules, regulations and directives of the Federal Aviation Administration. Tenant agrees to make a part of and incorporate into this Agreement, by reference or by setting forth at length, at the option of the City, any and all statutes, rules and regulations and any assurances and covenants required pursuant thereto which may now or hereafter be required by the Federal Aviation Administration or other federal, state, county or municipal agency. To the extent applicable, Tenant shall comply with the provisions of Exhibit C, "Compliance with Laws," which may be amended by the Commissioner.

16.2.2 The City shall operate and maintain the Airport in a reasonably prudent manner and in accordance with Applicable Laws.

16.2.3 Tenant shall operate and maintain the Premises in a reasonably prudent manner and in accordance with Applicable Laws; provided, however, that this provision shall not be construed as a waiver by Tenant to challenge a local law, rule, regulation or ordinance that is pre-empted by State or Federal law.

16.2.4 Notwithstanding anything herein to the contrary, references herein to a statute or law shall be deemed to be a reference to (i) such statute or law as may be amended from time to time, (ii) all regulations, rules, executive orders, policies and instructions pertaining to or promulgated pursuant to such statute or law, and (iii) all future statutes, laws, regulations, rules, executive orders, policies and instructions pertaining to the same or similar subject matter.

#### **16.3 Subordination to Sponsor's Assurance Agreement**

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

#### **16.4 Agreements with the United States**

This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United States, the terms and execution of which have been or may be required to enable or permit the transfer of rights or property to the City for airport purposes, or the expenditure of federal grant funds for Airport improvement, maintenance or development. Tenant shall reasonably abide by the requirements of agreements entered into between the City and the United States, as applicable to Tenant, and shall consent to amendments and modifications of this Agreement if required by such agreements or if required as a condition of the City's entry into such agreements.

## **16.5 Security and Payment of Fines for Violation of Federal Regulations**

16.5.1 Tenant acknowledges that security is of primary importance at the Airport and that security requirements are likely to change during the Term. Tenant, its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, shall comply with security measures (a) required of Tenant by the FAA or the TSA or by the City in accordance with applicable requirements of the FAA or the TSA or their authorized successor(s) or (b) contained in any Airport master security plan approved by the FAA or the TSA or their authorized successor(s). Tenant shall comply, at its own expense, with the TSA's security requirements applicable to Tenant at the Airport including, but not limited to, employee security training, badging, criminal background checks, access control, screening and inspections. Tenant shall cooperate with the TSA on all security matters.

16.5.2 Compliance with such security measures and requirements shall not relieve Tenant of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Tenant's obligations with respect to all applicable federal laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at and around the Premises. To comply with TSA requirements, Tenant hereby agrees to execute a reasonable exclusive area agreement pursuant to 49 C.F.R. 1542.111 with the City in form and substance which is reasonably acceptable to the parties. Tenant accepts security responsibility to use best efforts to prevent unauthorized access to the Premises. Tenant shall be responsible for preventing unauthorized persons from gaining access to the restricted areas of the Airport through the Premises during times and to the extent that Tenant has control of the Premises.

16.5.3 Tenant understands and agrees that security requirements may affect Tenant's operations and costs. Tenant shall be strictly liable for the payment of any fines assessed by the City or the payment of (or reimbursement of City for any payments of) any civil penalties assessed against City or Tenant relating to security and resulting from the negligence or intentional acts of omission or commission of Tenant's officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, and Tenant shall be solely and fully responsible for any and all breaches of security and the consequences thereof resulting from the negligence or intentional acts of omission or commission of its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control.

16.5.4 The City may impose and Tenant agrees to pay a reasonable non-discriminatory cost-based user fee, if any, for the privilege of using identification cards or badges to gain access to the Airport security access control system.

#### **16.6 No Exclusive Rights**

Nothing contained in this Agreement shall be deemed to grant to Tenant any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) with respect to activity at the Airport, except that, subject to the terms and provisions of this Agreement, Tenant shall have the right to exclusive possession of any Exclusive Use Premises made available to Tenant under this Agreement.

#### **16.7 Anti-Scofflaw**

Tenant hereby represents and warrants and shall cause each of its Contractors to represent and warrant, that Tenant or such Contractors, as the case may be, is not in violation of Section 2-92-380 of the Municipal Code, and further agrees that, in the event of any such violation, the City shall be entitled to set off from those amounts invoiced by Tenant an amount equal to the amount of any fines or penalties owed to the City, subject to those exceptions stated in the Municipal Code.

#### **16.8 Ethics**

Tenant hereby represents and warrants and shall cause each of its Contractors to represent and warrant that Tenant or such Contractors, as the case may be, is not in violation of Chapter 2-156 of the Municipal Code.

#### **16.9 Inspector General**

Tenant understands and will abide by the provisions of Chapter 2-56 of the Municipal Code. Tenant acknowledges and agrees that it shall be the duty of Tenant and its sub-licensees, Contractors and all their officers, directors, agents, partners and employees to cooperate with the Inspector General of the City in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. All contracts and other agreements must inform the parties of this provision and require understanding and compliance with it.

#### **16.10 Business Relationships With Elected Officials, Municipal Code Section 2-156-030(b)**

Tenant understands and will abide by the provisions of Section 2-156-030 of the Municipal Code, as applicable. Pursuant to Municipal Code Section 2-156-030(b), it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months or to participate in any discussion in any city council committee

hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. Violation of Municipal Code Section 2-156-030(b) by any elected official with respect to this Agreement at the request or direction of Tenant will be grounds for termination of this Agreement. The term “financial interest” is defined as set forth in Municipal Code Section 2-156-010(l).

Municipal Code Section 2-156-010(l) defines a “financial interest” as an interest held by an official or employee that is valued or capable of valuation in monetary terms with a current value of more than \$1,000.00, provided that such interest shall not include: (1) the authorized compensation paid to an official or employee for any office or employment; or (2) a time or demand deposit in a financial institution; or (3) an endowment or insurance policy or annuity contract purchased from an insurance company; or (4) any ownership through purchase at fair market value or inheritance of the shares of a mutual fund corporation, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; or (5) any ownership through purchase at fair market value or inheritance of not more than one-half of one percent of the outstanding common stock of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended.

#### **16.11 City of Chicago Hiring Plan (Shakman Accord)**

The City is subject to the May 31, 2007 Order entitled “Agreed Settlement Order and Accord” and the June 16, 2014 “City of Chicago Hiring Plan” (the “2014 City Hiring Plan”) entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Agreed Settlement Order and Accord and the 2014 City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

Tenant is aware that City policy prohibits City employees from directing any individual to apply for a position with Tenant, either as an employee or as a contractor, and from directing Tenant to hire an individual as an employee or as a contractor. Accordingly, Tenant must follow its own hiring and contracting procedures, without being influenced by City employees.

#### **16.12 No Waste Disposal in Public Way, Municipal Code Section 11-4-1600(E)**

Tenant warrants and represents that it has not violated and is not in violation of the following sections of the Municipal Code (collectively, the “Waste Sections”):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory, Tenant's violation of the Waste Sections, whether or not relating to this Agreement, constitutes a breach of this Agreement. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

This Section 16.12 does not limit Tenant's duty to comply with Applicable Law.

### **16.13 Visual Artists Rights Act Waiver**

Tenant shall not install any object in the Tenant's Premises or elsewhere in the Airport that constitutes a work of visual art as defined in 17 U.S.C. § 101 (the "Artwork") unless and until Tenant has both (a) obtained prior written approval of the Commissioner to install the Artwork and (b) provided the City with a written waiver from the author of the Artwork, in form and substance reasonably satisfactory to City, waiving any and all rights in the Artwork that may be granted or conferred under 17 U.S.C. § 106A and 17 U.S.C. § 113(d). Tenant covenants that it will obtain a written waiver of all rights under 17 U.S.C. § 106A and 17 U.S.C. § 113(d) as necessary from any employees, contractors, subcontractors, subtenants or artists.

## Article 17

### **DEFAULT, TERMINATION AND CHANGE OF LEASE TERM**

#### **17.1 Events of Default**

Each of the following shall be an "Event of Default" under this Agreement:

17.1.1 Tenant shall become insolvent (as such term is defined under Section 101 of the Federal Bankruptcy Code); or shall fail to pay its debts generally as they mature; or shall take the benefit of any present or future federal or state insolvency statute; or shall make a general assignment for the benefit of creditors.

17.1.2 Tenant shall file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Federal Bankruptcy Code or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property; or an order for relief shall be entered by or against Tenant under any chapter of the Federal Bankruptcy Code.

17.1.3 By order or decree of a court, Tenant shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the restructuring of its indebtedness under the Federal Bankruptcy Code or under any other law or statute of the United States or any state thereof and such order or decree shall not be stayed or vacated within sixty (60) days of its issuance.

17.1.4 A petition under any chapter of the Federal Bankruptcy Code or an action under any federal or state insolvency law or statute shall be filed against Tenant and shall not be dismissed or stayed within sixty (60) days after the filing thereof.

17.1.5 By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator or other similar official shall take possession or control of all or substantially all of the property of Tenant and such possession or control shall continue in effect for a period of sixty (60) days.

17.1.6 Tenant shall become a corporation in dissolution.

17.1.7 The letting, license or other interest of or rights of Tenant hereunder shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Sections 17.1.1 through 17.1.5.

17.1.8 Tenant shall fail to duly and punctually pay any Fixed Terminal Charges required to be paid hereunder or shall fail to make payment of any other sum required to be paid to the City pursuant to this Agreement on or prior to the date such payment is due and shall continue to remain unpaid ten (10) business days after written notice has been provided to Tenant by the City or, with respect to any amount for which no payment date is provided herein, then ten (10) business days after written notice of the amount of such payment has been given to Tenant or an invoice for such payment has been submitted to Tenant.

17.1.9 Tenant shall fail to keep, perform and observe any promise, covenant or other provision of this Agreement for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Tenant by the City; provided, however, that any such failure which can be remedied, but which cannot with due diligence be remedied within such thirty (30) day period, shall not give rise to the City's right to exercise remedies under this Agreement if corrective action is instituted by Tenant within such thirty (30) day period and diligently pursued until the failure is remedied.

17.1.10 Any lien shall be filed against the Premises or any portion thereof resulting from any act or omission of Tenant, and shall not be discharged or bonded over within thirty (30) days after written notice from the City, unless Tenant shall within the aforesaid thirty (30) days furnish the City such security as the Commissioner in his or her reasonable discretion determines to be adequate to protect the interests of the City.

17.1.11 Other than during a time of force majeure, Tenant shall cease using or abandon substantially all of its Premises for a period of thirty (30) days, and Tenant has not commenced use or re-occupied its Premises within thirty (30) days after notice from the City.

17.1.12 Tenant shall make any purported Assignment or Sublease without the consent of the City (to the extent required), as set forth in Section 4.2, and which has not been remedied within thirty (30) days after notice from the City to Tenant.

17.1.13 Tenant shall fail to maintain its corporate existence or to remain duly qualified to do business in the State of Illinois or Tenant shall dissolve or otherwise dispose of all or substantially all of its assets or shall consolidate with or merge into another corporation.

17.1.14 To the extent applicable, Tenant shall fail to meet any of Tenant's security deposit requirements set forth in Section 9.3.

17.1.15 Tenant shall violate the Waste Sections of the Municipal Code or MCC 2-156-018, "Duty to report corrupt or unlawful activity" as set forth in Article 16 and Exhibit C; provided, however, that the Commissioner may provide for a reasonable cure period appropriate to the violation.

17.1.16 Tenant shall fail to maintain insurance as required by this Agreement, including the cure period provided in Section 13.1.2(b).

## **17.2 Termination by the City**

Whenever an Event of Default has occurred and is continuing, the City may, at its option, upon thirty (30) days' prior written notice of such Event of Default:

(a) terminate this Agreement and the lettings, licenses and other rights of Tenant hereunder, without discharging any of Tenant's obligations hereunder, including but not limited to Tenant's payment of Fixed Terminal Charges, and, at the City's further option, exclude Tenant from its Premises;

(b) without terminating this Agreement, exclude Tenant from its Premises and use commercially reasonable efforts to lease such Premises to another tenant for the account of Tenant, holding Tenant liable for all Fixed Terminal Charges and other payments due hereunder up to the effective date of such leasing and for the excess, if any, of Fixed Terminal Charges and other amounts payable by Tenant under this Agreement for the remainder of the term of this Agreement over the rentals and other amounts which are paid by such new tenant under such new agreement.

17.2.2 In addition, the City may, from time to time, take whatever action at law or in equity appears necessary or desirable to collect Fixed Terminal Charges and any other amounts payable by Tenant hereunder then due and thereafter to become due, and to enforce the performance and observance of any obligation, agreement or covenant of Tenant under this Agreement. For the avoidance of doubt, the City may seek an order for specific performance by Tenant of any obligation pursuant to this Agreement, perform said obligations itself or take other

actions to mitigate losses that may result from Tenant's failure to perform and, if the City takes such actions, City may charge Tenant for the City's costs plus a 15% administrative fee.

17.2.3 All rights and remedies given to the City in this Agreement and all rights and remedies given to the City by law, shall be cumulative and concurrent. No termination of this Agreement or the taking or recovering of the Premises shall deprive the City of any of the City's remedies or actions against Tenant for Fixed Terminal Charges or for damages or for the breach of any covenant herein contained, nor shall the bringing of any action for Fixed Terminal Charges or breach of covenant, or the resort to any other remedy herein provided for the recovery of Fixed Terminal Charges be construed as a waiver of the right to obtain possession of the Premises.

17.2.4 In no event shall this Agreement or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings.

17.2.5 To the extent consistent with and permitted under the United States Bankruptcy Code or similar debtor relief laws, if Tenant seeks protection under the United States Bankruptcy Code or similar debtor relief laws, or is currently operating under the protection of the United States Bankruptcy Code or other similar debtor relief laws, Tenant will comply with every provision of this Agreement as and when required under this Agreement, including without limitation performing any required remediation relating to any environmental matter pursuant to Tenant's obligations under Article 14 which arose prior to or arises during the course of Tenant's bankruptcy case. No tenant will be allowed to assume this Agreement without performing any required remediation as part of the cure of any Event of Default under this Agreement.

### **17.3 Change of Lease Term**

17.3.1 Notwithstanding the provisions of Section 2.2, upon the occurrence of an Event of Default described in Sections 17.1.1, 17.1.10, 17.1.11, 17.1.12, 17.1.13 or 17.1.14, the City may notify Tenant that the term of this Agreement shall convert to month-to-month, commencing five (5) days after such notice and terminating upon thirty (30) days' written notice from the City to Tenant, or from Tenant to the City.

17.3.2 The conversion of the term of this Agreement pursuant to this Section 17.3 shall not discharge any of Tenant's obligations hereunder nor affect any of the City's other remedies set forth herein.

### **17.4 Agreement to Pay Attorneys' Fees and Expenses**

In the event Tenant defaults under this Agreement and the City employs attorneys or incurs other expenses for the collection of Fixed Terminal Charges or any other amounts due hereunder, or for the enforcement or performance or observance of any obligation or agreement on the part of Tenant herein contained, Tenant shall, on demand, pay to the City the reasonable fees and expenses of such attorneys and any such other reasonable expenses incurred by the City as a result of such default.

## **17.5 Force Majeure**

17.5.1 If either party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor disputes (all of which shall be subject to Section 18.14), inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, terrorism, war, fire or other casualty, or other reason of a similar nature beyond the reasonable control of the party delayed in performing work or doing acts required under this Agreement, performance of such act shall be excused for the period of the actual delay attributable to such causes, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay, an "Unavoidable Delay"). This Section 17.5.1 shall not be applicable to Tenant's obligations to procure insurance or to pay Fixed Terminal Charges, or any other sums, moneys, costs, charges or expenses required to be paid by Tenant. If any provision of this Agreement negates or limits the period of any force majeure or Unavoidable Delay extension, such provision shall override this Section 17.5.1 and Tenant shall give the City notice of any Unavoidable Delay within a reasonable time (not to exceed one (1) year) following the occurrence of the delaying event.

17.5.2 The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any Applicable Laws.

## **Article 18**

### **GENERAL PROVISIONS**

#### **18.1 No Partnership or Agency**

Nothing herein contained is intended or shall be construed to in any respect create or establish any relationship other than that of licensor and licensee or lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Tenant the general representative or agent of the City for any purpose whatsoever.

#### **18.2 No Personal Liability**

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

#### **18.3 Notices**

Except as otherwise expressly provided hereunder, all notices and other communications provided for under this Agreement shall be in writing and shall be: (a) mailed; (b) personally delivered, including via overnight courier; or (c) to the extent expressly permitted elsewhere in this Agreement for a specific notice or as mutually agreed by parties, sent by electronic mail with electronic receipt, to the City and Tenant at the following addresses:

If to the City, to:

Commissioner  
Chicago Department of Aviation  
Chicago O'Hare International Airport  
10510 West Zemke Road  
Chicago, IL 60666  
[CDACommissioner@cityofchicago.org

With a copy to:

General Counsel  
Chicago Department of Aviation  
Chicago O'Hare International Airport  
10510 West Zemke Road  
Chicago, IL 60666  
CDAGeneralCounsel@cityofchicago.org

If to Tenant for all notices, except pursuant to Sections 4.3 (City's Right of Entry), 11.3 (Performance by City upon Failure of Tenant), 14.13 (Notice for Environmental Matters), or 18.7 (Service of Process) of this Agreement, to:

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

If to Tenant for notices on environmental matters pursuant to Section 14.13 (Notice for Environmental Matters) of this Agreement, to:

\_\_\_\_\_  
[cc: Tenant general contact] \_\_\_\_\_  
[Non-individual Electronic Mail Address]

If to Tenant pursuant to Section 4.3 (City's Right of Entry) or Section 11.3 (Performance by City upon Failure of Tenant) of this Agreement, to:

\_\_\_\_\_  
\_\_\_\_\_  
[cc: Tenant general contact] \_\_\_\_\_  
[Non-individual Electronic Mail Address]

Or, with respect to any notice given pursuant to this Section 18.3, to such other person or address as either the City or Tenant may hereafter designate by written notice to the other in accordance with this Notices section. Except as otherwise expressly provided hereunder, any notice or communication under this Agreement shall be deemed to have been given or made: (a) if a

messenger or courier service is used, when delivered to the addressee; (b) if sent by mail (certified or by other method with tracking and confirmation receipt), upon receipt, or upon attempted delivery where delivery is refused or mail is unclaimed five (5) days after being deposited in the mails, postage prepaid and properly addressed; and (c) if sent by electronic mail, upon receipt by either party of a written reply or electronic receipt). Tenant agrees to provide City with any changes to its notice information, including electronic mail addresses, within five (5) business days of such change.

With respect to Section 18.7 (Service of Process) of this Agreement, Tenant hereby designates as its agent in Chicago, Illinois;

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

**18.4 Entire Agreement**

This Agreement, including the attached Exhibits and endorsements, constitutes the entire agreement of the parties on the subject matter hereof. The parties intend that this Agreement shall be the final expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever (including prior drafts of the Agreement) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

**18.5 Amendment**

Except as otherwise expressly provided herein, the provisions of this Agreement may be amended only by a written agreement signed by the City and Tenant.

**18.6 Applicable Law**

This Agreement shall be deemed to have been made in, and shall be construed in accordance with, the laws of the State of Illinois.

**18.7 Authorization to Operate; Consent to Service of Process and Jurisdiction**

18.7.1 Tenant represents that it is a corporation organized and existing under the laws of the state shown on the signature page hereof. Tenant warrants that it is, and throughout the term of this Agreement it will continue to be, duly qualified to do business in the State of Illinois.

18.7.2 All judicial proceedings brought by the City against Tenant with respect to this Agreement may be brought in any court of competent jurisdiction having situs within the boundaries of the federal court district of the Northern District of Illinois including

any of the courts within Cook County, and by execution and delivery of this Agreement, Tenant accepts, for itself and in connection with its properties, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. Tenant hereby designates and appoints the representative designated in Section 18.3 as its agent in Chicago, Illinois to receive on its behalf service of all process in any such proceedings in any such court (which representative shall be available to receive such service during regular business hours), such service being hereby acknowledged by such representative to be effective and binding service in every respect. Said agent may be changed only upon the giving of written notice by Tenant to the City of the name and address of a new Agent for Service of Process that works within the geographical boundaries of the State of Illinois and is employed by or contracted with Tenant. Tenant irrevocably waives any objection (including any objection of the laying of venue or based on the grounds of forum non conveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Agreement in the jurisdiction set forth above. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of the City to bring proceedings against Tenant in the courts of any other jurisdiction.

#### **18.8 Severability**

If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

#### **18.9 Representatives**

The City and Tenant shall each designate a representative who, except as otherwise provided hereunder, shall be authorized to act for the City and Tenant, respectively, with respect to any actions to be taken by either of them under the terms of this Agreement. Except as specifically set forth herein, for the purposes of actions to be taken by it or by the Commissioner, the City's representative shall be the Commissioner. Tenant's representative shall be designated in a written notice delivered to the City. Any party hereto may change its designated representative by notice to the other party.

#### **18.10 Successors and Assigns**

All of the covenants, stipulations and agreements herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

### **18.11 No Third Party Beneficiaries**

Unless otherwise provided in this Agreement, this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

### **18.12 No Waiver**

No failure by a party to insist upon the strict performance of any obligation of the other party under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, prior to the expiration of the Term, shall constitute a waiver of such breach or of the non-defaulting party's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Agreement.

No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed or operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party.

### **18.13 No Exclusive Right or Remedy**

All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties hereunder or at law or in equity.

### **18.14 Labor Disputes**

Tenant agrees to use commercially reasonable efforts to avoid disruption to the City, its tenants, or members of the public arising from labor disputes involving Tenant, and in the event of a strike, picketing, demonstration or other labor difficulty involving Tenant, to use its good offices, including the utilization of available legal remedies Tenant deems appropriate, to minimize or eliminate any disruption to the City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

### **18.15 Action or Exercise of Power by the City**

Any provision in this Agreement that requires action or an exercise of power by the City may be performed by the Commissioner or her or his designee, unless otherwise specified in this Agreement.

### **18.16 Conflicts**

In the event of conflicts between this Agreement and the City-CATCO Agreement, the City-CATCO Agreement shall control.

### **18.17 Headings**

The headings of the several sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions, or the interpretation or construction, of this Agreement.

**18.18 Counterparts**

This Agreement may be executed in one or more counterparts.

*[Rest of page intentionally left blank]*

IN WITNESS WHEREOF, the parties intending to be legally bound have executed this Facilities Lease Agreement this \_\_\_\_ day of \_\_\_\_\_ 2018.

Attest:

CITY OF CHICAGO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Recommended by:  
DEPARTMENT OF AVIATION

\_\_\_\_\_  
Commissioner

Approved as to form and legality:

\_\_\_\_\_  
Chief Assistant Corporation Counsel

CHICAGO AIRLINES TERMINAL  
CONSORTIUM,  
an Illinois not-for-profit corporation

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

## **EXHIBIT A**

### **Permitted Uses**

Chicago O'Hare International Airport

**CHICAGO AIRLINES TERMINAL CONSORTIUM**

Effective:

May 12, 2018

The Permitted Uses for the Premises are limited to:

- Office space
- Operation space
- Storage area(s)
- Employee break room(s)

## EXHIBIT B

### Premises Notice

Chicago O'Hare International Airport

### CHICAGO AIRLINES TERMINAL CONSORTIUM

Effective: May 12, 2018

Prepared: March 23, 2018

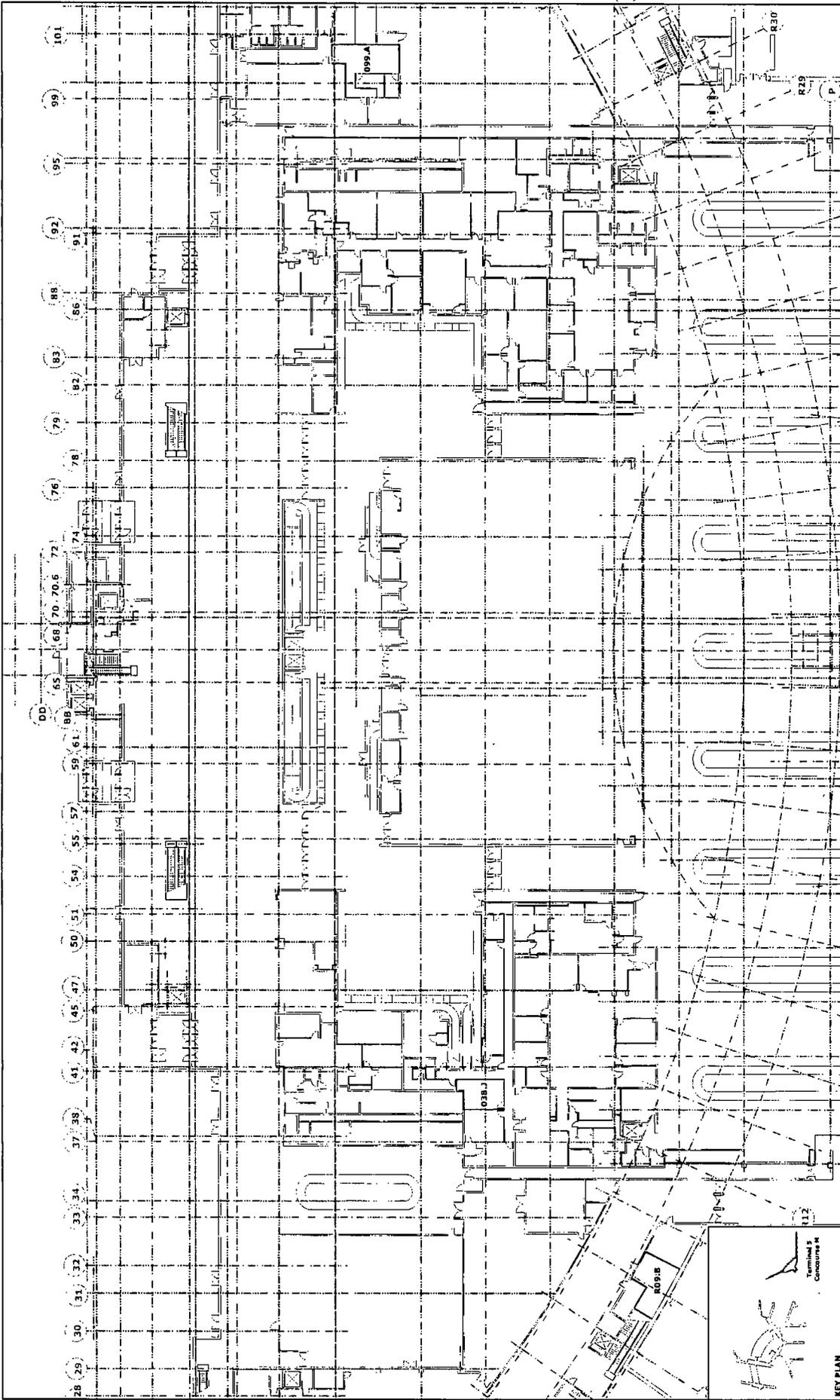
Room ID	Terminal	Concourse	Level	Square Footage	Type of Space	Exhibit Number
001.A	5	M	Lower	838	Airline Operations	CT.5.02
016.B	5	M	Lower	580	Airline Operations	CT.5.02
024.B	5	M	Lower	441	Airline Operations	CT.5.03
024.F	5	M	Upper	108	Airline Operations	CT.5.04
024.G	5	M	Upper	86	Airline Operations	CT.5.04
025.E	5	M	Lower	39	Airline Operations	CT.5.03
025.F1	5	M	Lower	50	Airline Operations	CT.5.03
025.H	5	M	Lower	218	Airline Operations	CT.5.03
038.H	5	M	Upper	233	Airline Operations	CT.5.04
038.J	5	M	Basement	280	Airline Operations	CT.5.01
055.A	5	M	Mezzanine	835	Airline Operations	CT.5.06
055.E	5	M	Mezzanine	155	Airline Operations	CT.5.06
055.F	5	M	Mezzanine	183	Airline Operations	CT.5.06
055.G	5	M	Mezzanine	193	Airline Operations	CT.5.06
059.A	5	M	Mezzanine	251	Airline Operations	CT.5.06
059.E	5	M	Mezzanine	192	Airline Operations	CT.5.06
079.A	5	M	Lower	459	Airline Operations	CT.5.03
079.A1	5	M	Lower	147	Airline Operations	CT.5.03
083.E	5	M	Lower	275	Airline Operations	CT.5.03
088.F	5	M	Lower	390	Airline Operations	CT.5.03
092.G	5	M	Lower	1,234	Airline Operations	CT.5.03
099.A	5	M	Basement	485	Airline Operations	CT.5.01
108.A	5	M	Upper	231	Airline Operations	CT.5.05
65.A	5	M	Penthouse	219	Airline Operations	CT.5.06
65.A1	5	M	Penthouse	21	Airline Operations	CT.5.06
R01.A	5	M	Lower	272	Airline Operations	CT.5.03
R01.A1	5	M	Upper	297	Airline Operations	CT.5.04
R01.A2	5	M	Upper	160	Airline Operations	CT.5.04
R03.C	5	M	Lower	243	Airline Operations	CT.5.03
R08.B	5	M	Upper	21	Airline Operations	CT.5.04
R09.B	5	M	Basement	366	Airline Operations	CT.5.01
R09.D	5	M	Lower	774	Airline Operations	CT.5.03
R38.B	5	M	Upper	21	Airline Operations	CT.5.05

Total Sq. Footage 10,297

#### Included Exhibits:

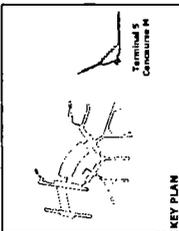
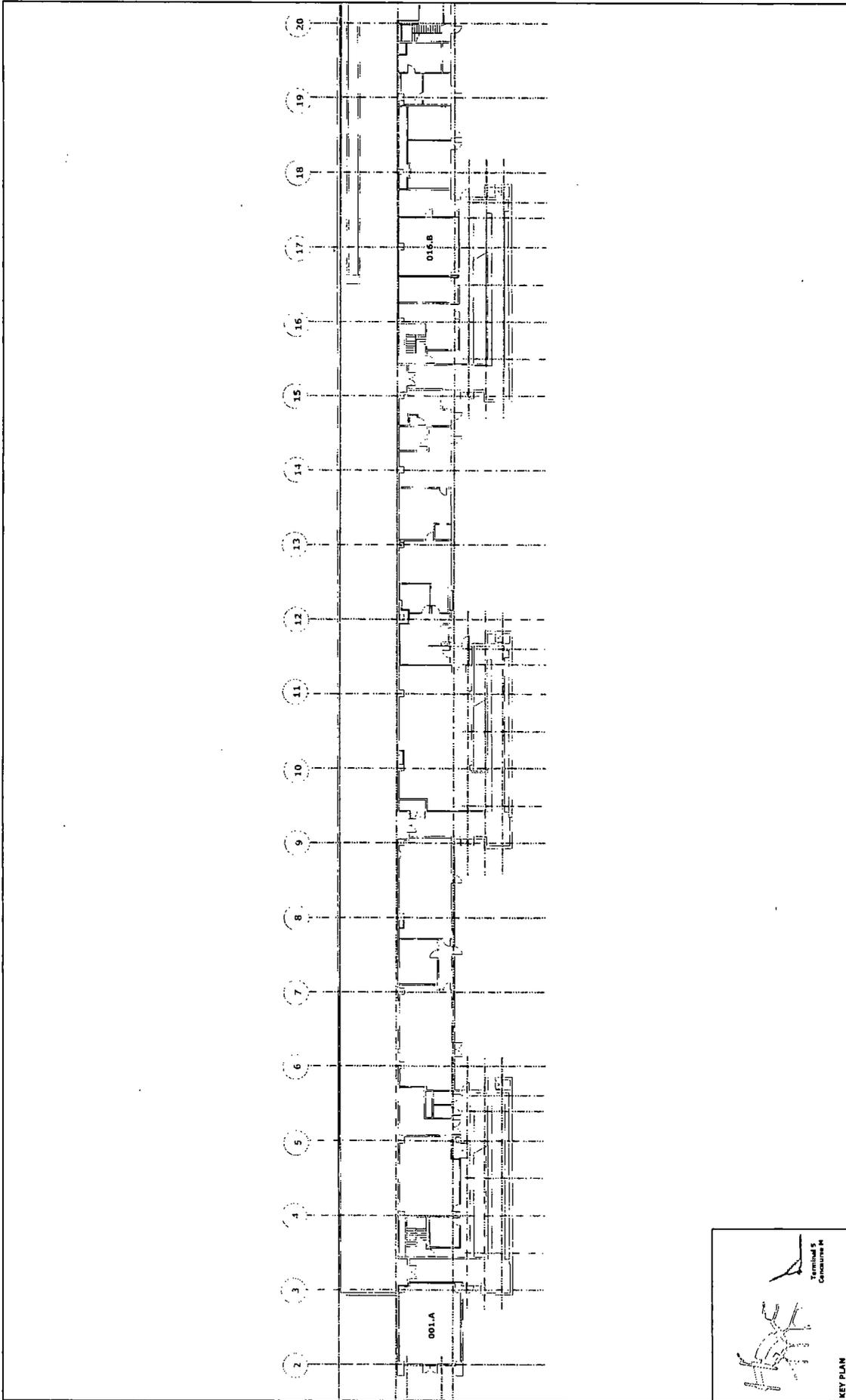
- 1) Exhibit CT.5.01
- 2) Exhibit CT.5.02
- 3) Exhibit CT.5.03
- 4) Exhibit CT.5.04
- 5) Exhibit CT.5.05
- 6) Exhibit CT.5.06

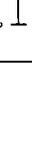


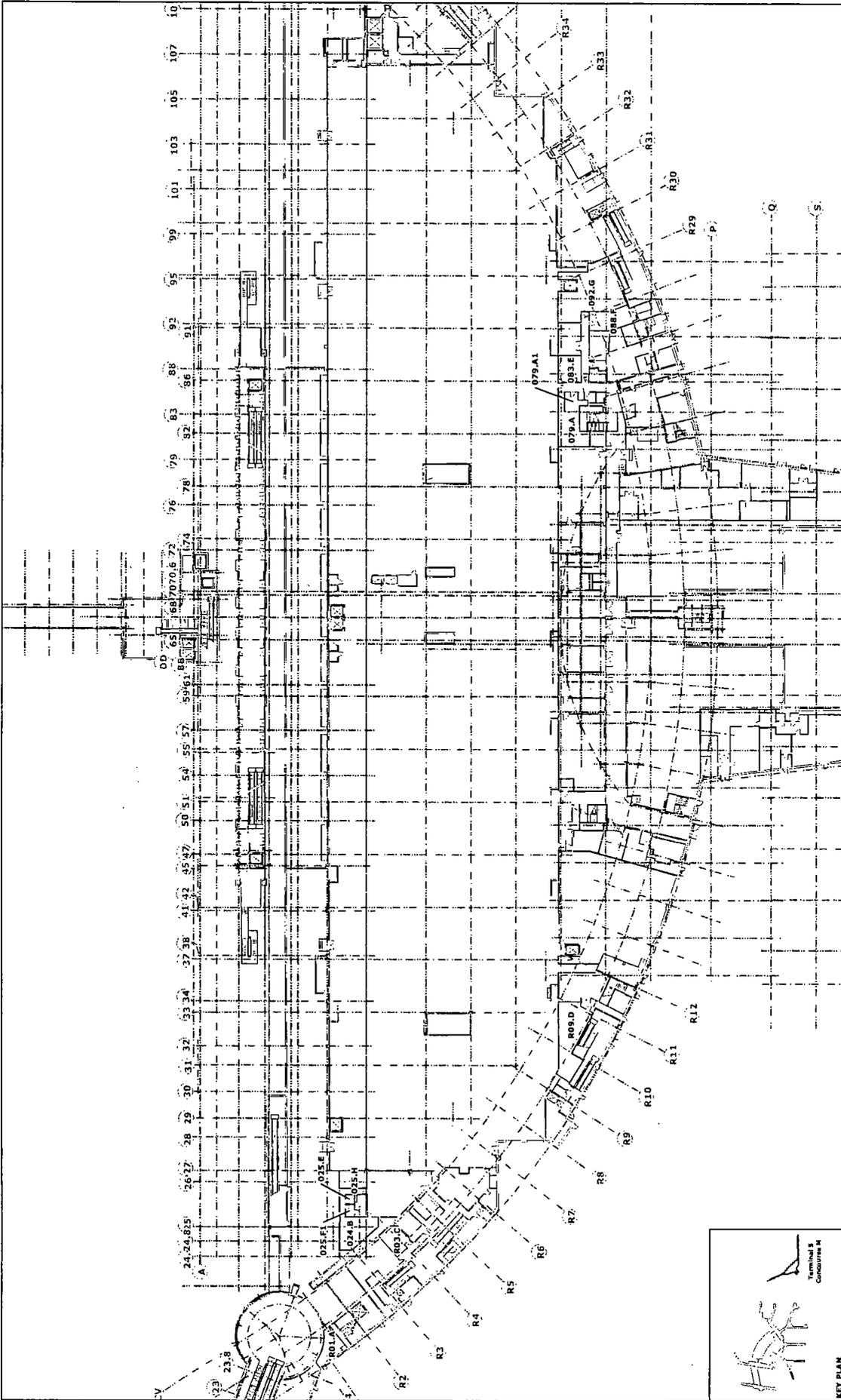


<p>Chicago O'Hare International Airport</p> <p>City of Chicago Rahm Emanuel Mayor</p>	<p>Department of Aviation</p> 	<p>Terminal 5 - Main Concourse - Basement Effective May 12, 2018</p>	<p>CICA TEC</p>	<p>Exhibit CT-5.01</p> <p>DATE: 01/15/2018</p>
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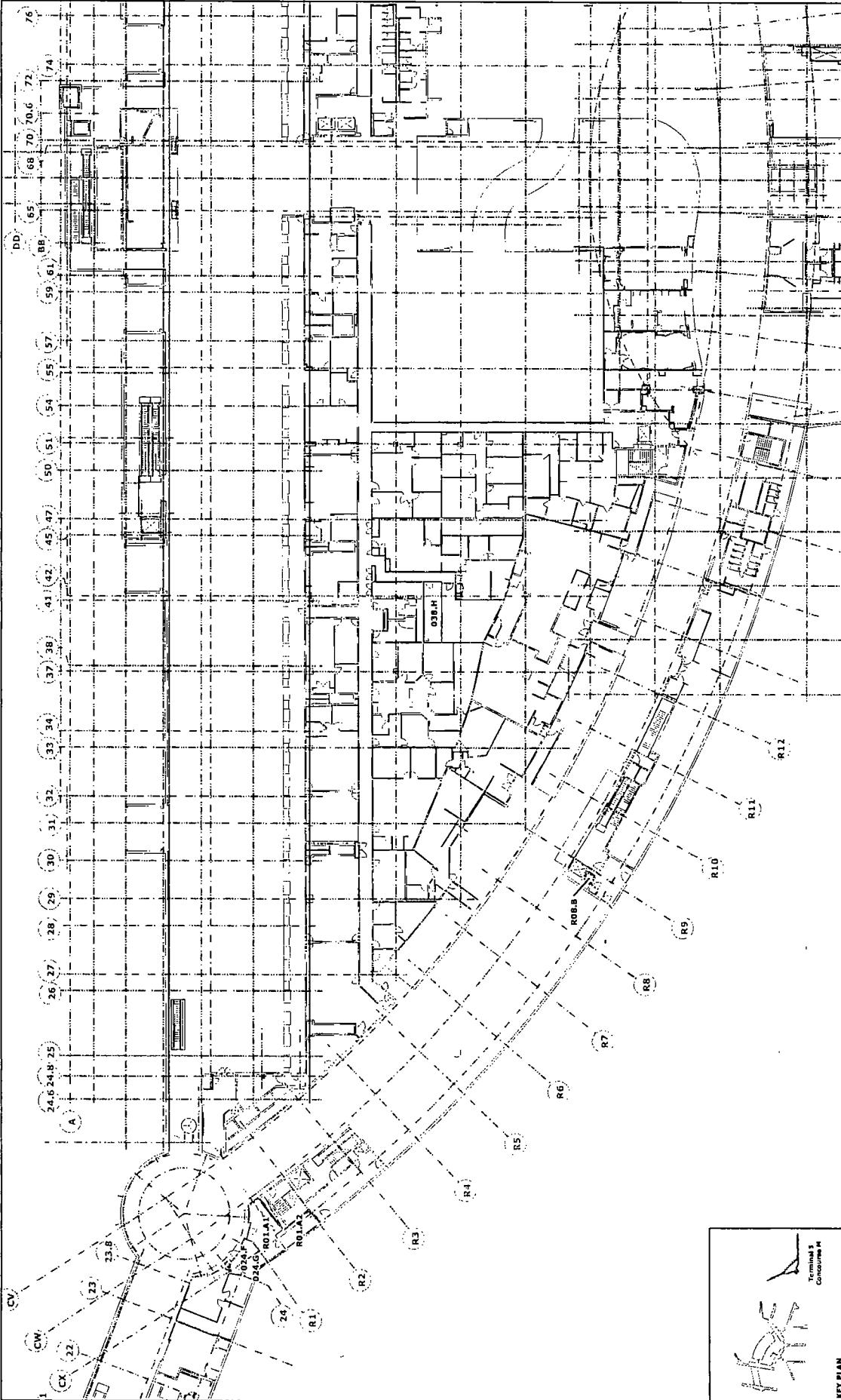
KEY PLAN

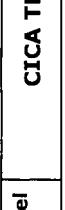


<p>Chicago O'Hare International Airport</p>	<p>City of Chicago Rahm Emanuel Mayor</p>	<p>Department of Aviation</p> 	<p>Terminal 5 - Main Concourse - Lower Level Effective May 12, 2018</p>	<p>CICA TEC</p>	<p>Exhibit CT.5.02</p>	<p>As of 3/24/2018 Rev. Per: C27161.1.mxd</p>
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<p>Chicago O'Hare International Airport</p>	<p>City of Chicago Rahm Emanuel Mayor</p>	<p>Department of Aviation</p>	<p>Terminal 5 Concourse 5</p>	<p>Terminal 5 - Main Concourse - Lower Level Effective May 12, 2018</p>	<p>CICA TEC</p>	<p>Exhibit CT.5.03</p> <p>As of 3/27/2018 File: CT5-142.rvt</p>
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	<p>City of Chicago Rahm Emanuel Mayor</p>	<p>Department of Aviation</p>		<p>Terminal 5 - Main Concourse - Upper Level Effective May 12, 2018</p>	<p>CICA TEC</p>	<p>0 50 100 Feet</p>	<p>80 North</p>	<p>Exhibit CT.5.04</p>
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As of 7/27/2018  
Rev. No. CICA 1361.mxd

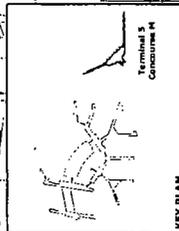
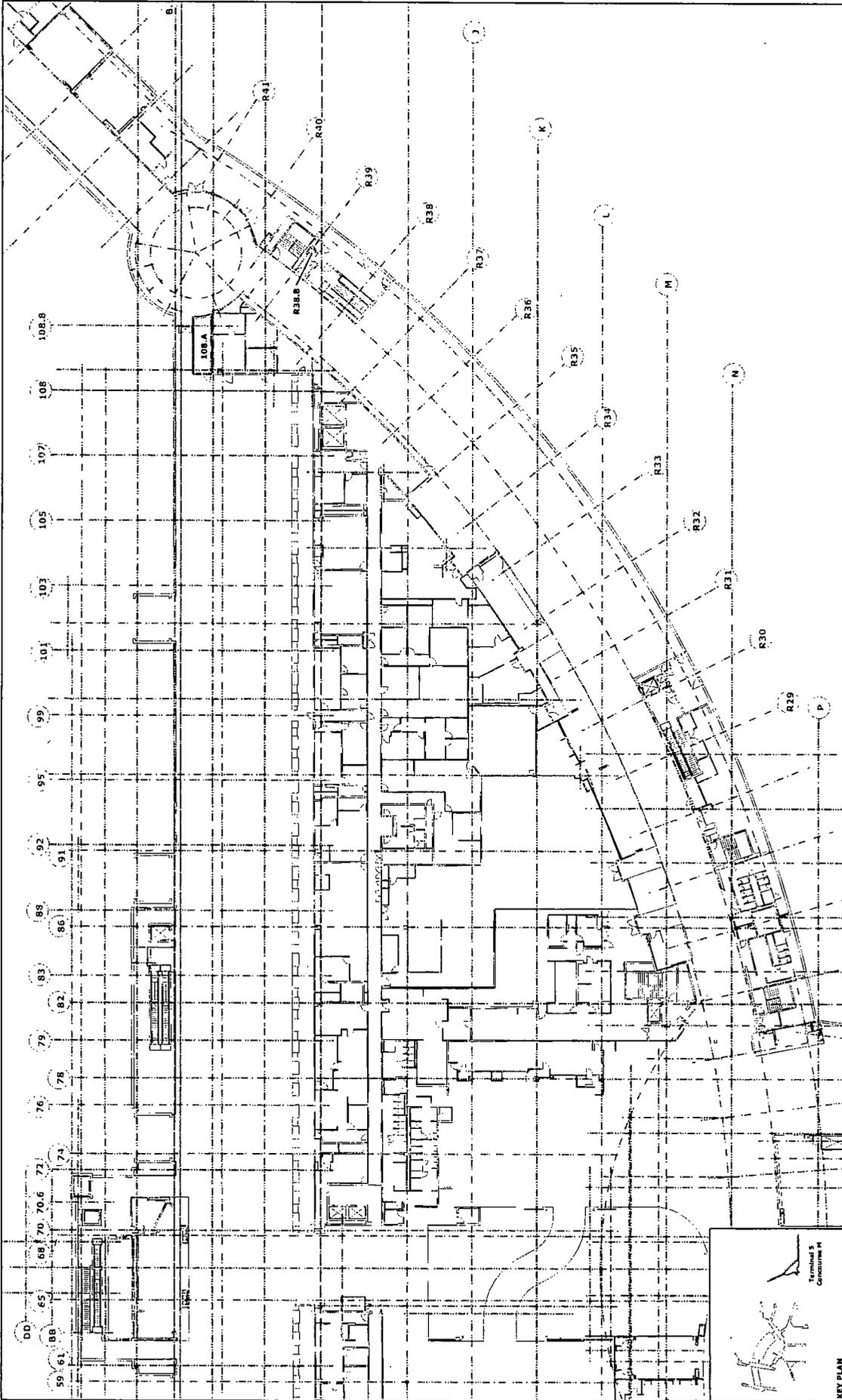


Exhibit <b>CT.5.05</b> <small>As of 3/13/2018          Rev. # CT.5.05.001</small>	 	<b>CICA TEC</b>	<b>Terminal 5 - Main Concourse - Upper Level</b> Effective May 12, 2018	 <b>Department of Aviation</b>	City of Chicago Rahm Emanuel Mayor	<b>Chicago O'Hare International Airport</b>
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## EXHIBIT C

### COMPLIANCE WITH LAWS

#### Section 1. General Provisions

(A) Tenant shall comply, and shall include in all of its agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement (regardless of whether they are reimbursed by the City) a requirement that its Contractors comply, with all applicable federal, state, and local laws, codes, regulations, ordinances, executive orders, rules, and orders.

(B) Tenant agrees that all of the applicable provisions set forth in this Exhibit will be incorporated in all of its agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement.

(C) Further, Tenant shall execute, and shall include in all of its agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement a requirement that its Contractors execute, such affidavits and certifications as shall be required by the City setting forth Tenant's and its Contractor's, as applicable, agreement to comply with all applicable federal, state, and local laws, codes, regulations, ordinances, executive orders, rules, and orders. Such certifications shall be attached and incorporated by reference in the applicable agreements.

(D) In the event that any Contractor is a partnership or joint venture, Tenant shall also include provisions in its agreement with Contractor insuring that the entities comprising such partnership or joint venture shall be jointly and severally liable for its obligations thereunder.

(E) The City may unilaterally revise this Exhibit from time to time.

#### Section 2. Federal Nondiscrimination Requirements

(A) Tenant acknowledges that the City has given to the United States of America, acting by and through the FAA, certain assurances with respect to nondiscrimination required by Title VI of the Civil Rights Act 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252), 49 CFR Part 21, 49 U.S.C. § 47123, 28 CFR § 50.3 and other acts and regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation ("DOT") (collectively, and including all amendments thereto, the "Title VI Pertinent Nondiscrimination Acts and Authorities," and listed below) as a condition precedent to receiving Federal financial assistance from FAA for certain Airport programs and activities. The City is required under the Acts and Regulations to include in this Agreement, and Tenant agrees to be bound by, the following covenants and requirements:

i. Tenant, for itself, its assignees and successors in interest, covenants and 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 program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA. In the event of Tenant's breach of any of the above Nondiscrimination covenants, the City shall have the right to terminate this Agreement.

ii. Tenant, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities.

iii. In the event of Tenant's breach of any of the Nondiscrimination covenants described in subsection (ii), above, the City shall have the right to terminate this Agreement, and to enter, re-enter and repossess the Premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This subparagraph (iii) shall not become effective until the procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

iv. Tenant shall include these subsections (i) through (iv), inclusive, in Tenant's licenses, permits and other instruments relating to the Premises, and shall require that its licensees, permittees and others similarly include these statements in their licenses, permits and other instruments relating to the Premises.

(B) Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, Tenant, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination 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 (Nondiscrimination 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 contractors, 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 Nondiscrimination 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 nondiscrimination 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.*).

(C) Nondiscrimination in Contracting Activities

i. Tenant, with regard to any contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. Any contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations.

ii. In all solicitations, either by competitive bidding, or negotiation made by Tenant or its contractor for work to be performed under a contract or subcontract, including procurements of materials, or leases of equipment, each potential contractor, subcontractor or

supplier will be notified by the contractor of Tenant and contractor's obligations under the Acts and Regulations relative to non-discrimination on the grounds of race, color, or national origin.

Section 3. State Nondiscrimination Requirements

Tenant must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, as amended and any rules and regulations promulgated in accordance therewith, including the Equal Employment Opportunity Clause, 445 Ill. Admin. Code 750, Appendix A. Tenant must also comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*, as amended; the Environmental Barriers Act, 410 ILCS 25/1 *et seq.*; and all other applicable state laws, rules, regulations and executive orders.

Section 4. City Nondiscrimination Requirements

(A) Tenant must comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code; and all other applicable Municipal Code provisions, rules, regulations and executive orders.

(B) Further, Tenant must furnish, or cause each of its Contractors to furnish, such reports and information as requested by the Chicago Commission of Human Relations.

Section 5. Affirmative Action

Tenant assures that: (a) it shall undertake an affirmative action program as required by all federal, state and local laws, rules and regulations pertaining to Civil Rights (and any and all amendments thereto), including, without limitation, 49 CFR Part 21 and 49 U.S.C. § 47123, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the benefits of the program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section 5 in Tenant's contracts and other applicable documents under this Agreement, and shall require that its contractors and others similarly include these statements in their subcontracts and applicable documents.

Section 6. Safety and Security

(A) Tenant expressly acknowledges its responsibility to provide security at the Airport in accordance with 49 U.S.C. sec. 449 and 49 CFR Part 1542, "Airport Security," as such may be amended from time to time, including any applicable rules and regulations promulgated thereunder, and with all rules and regulations of the City concerning security procedures, including the Airport's approved security program. Tenant expressly acknowledges its responsibility to provide security with respect to airplane operations in accordance with 49 CFR

Part 1544, "Aircraft Operator Security," as such may be amended from time to time, and with the rules and regulations of the City concerning security procedures, including the Airport's approved security program.

(B) All employees providing services at the Airport must be badged by the City, as provided below in Section 7, "Airport Security Badges." Tenant, Contractors, and the respective employees of each are subject to such employment investigations, including criminal history record checks, as the Administrator of the Federal Aviation Administration ("FAA"), the Under Secretary of the Transportation Security Administration ("TSA"), and the City may deem necessary. Tenant, its Contractors, their respective employees, invitees and all other persons under the control of Tenant must comply strictly and faithfully with any and all rules, regulations and directions which the Commissioner, the FAA, or the TSA may issue from time to time during the life of this Agreement with regard to security, safety, maintenance and operation of the Airport and must promptly report any information regarding suspected violations in accordance with those rules and regulations.

(C) All gates and doors that permit entry into restricted areas at the Airport must be kept locked at all times when not in use or under constant security surveillance. Tenant shall ensure that such gates and doors within its Premises are kept locked at all times when not in use or under Tenant's constant security surveillance. Any gate or door malfunctions discovered by Tenant must be reported to the Commissioner without delay and must be kept under constant surveillance, in the case of malfunctions within its Premises, until the malfunction is remedied, or in the case of other malfunctions, until relieved by a responsible party.

(D) Tenant shall ensure that the following provision is inserted in all contracts entered into with any Contractors and with any labor organizations who furnish skilled, unskilled and craft union skilled labor, or who may provide any materials, labor or services in connection with this Agreement:

"Aviation Security: This Agreement is subject to the airport security requirements of 49 U.S.C. chapter 449, as amended, the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations in 49 C.F.R. Part 1542 and all other applicable rules and regulations promulgated thereunder. In the event that Tenant, or any individual employed by Tenant, in the performance of this Agreement, has (i) unescorted access to aircraft located on or at the Airport (ii) unescorted access to secured areas or (iii) capability to allow others to have unescorted access to such aircraft or secured area, Tenant shall be subject to, and further shall conduct with respect to its Contractors and their respective employees, such employment investigations, including criminal history record checks, as the Administrator of the Federal Aviation Administration, the Under Secretary of the Transportation Security Administration and City may deem necessary. Further, in the event this Agreement involves the construction, reconstruction, demolition or alteration of facilities to be located at or on the Airport, Tenant shall, notwithstanding anything

contained herein, at no cost to City, perform all obligations hereunder in compliance with those guidelines developed by City, the Transportation Security Administration and the Federal Aviation Administration, and in effect as of the Effective Date with the objective of maximum security enhancement. In the event the Agreement involves the design of facilities or equipment, the drawings, plans, and specifications to be provided under the Agreement shall comply with those guidelines developed by City, the Transportation Security Administration and the Federal Aviation Administration and in effect at the time of the submittal of such drawings, plans, and specifications.”

Section 7. Airport Security Badges

(A) As part of Airport operations and security, Tenant must obtain from the Airport badging office Airport Security Badges for each of its employees, subcontractors, material men, invitees or any person(s) over whom Tenant has control, which must be visibly displayed at all times while at the Airport. No person will be allowed beyond security checkpoints without a valid Airport Security Badge. Each such person must submit signed and properly completed application forms to receive an Airport Security Badge. Additional forms and tests may be required to obtain Airport Driver’s Certification and Vehicle Permits. The application forms will solicit such information as the Commissioner may require in his or her discretion, including but not limited to name, address, date of birth (and for vehicles, driver’s license and appropriate stickers). Tenant is responsible for requesting and completing the form for each employee and subcontractor employee who will be working at the Airport and all vehicles to be used on the job site. Upon signed approval of the application by the Commissioner or his or her designee, the employee will be required to attend a presentation regarding Airport security and have his or her photo taken for the badge. The Commissioner may grant or deny the application in his or her sole discretion. Tenant must make available to the Commissioner, within one day of request, the personnel file of any employee who will be working under this Agreement.

(B) As provided in Section 6 above, in order for a person to have an Airport Security Badge that allows access to the airfield or aircraft, a criminal history record check (“CHRC”) conducted by the Department of Aviation will also be required. The CHRC will typically include a fingerprint analysis by the Federal Bureau of Investigation and such other procedures as may be required by the TSA.

(C) Airport Security Badges, Vehicle Permits and Driver’s Licenses will only be issued based upon properly completed application forms. Employees or vehicles without proper credentials may be removed from the secured area and may be subject to fine or arrest. Tenant will be jointly and severally liable for any fines imposed on its employees or its Contractors’ employees at the Airport by the City.

(D) In addition to other rules and regulations, the following rules related to Airport Security Badges, Vehicle Permits and Driver’s Licenses must be adhered to:

i. Each person must wear and display his or her Airport Security Badge on their outer apparel at all times while at the Airport.

ii. All individuals operating a vehicle on the Aircraft Operations Area (“AOA”) must be familiar and comply with motor driving regulations and procedures of the State of Illinois, City of Chicago and the Department of Aviation. The operator must be in possession of a valid, State-issued Motor Vehicle Operator’s Driver’s License. All individuals operating a vehicle on the AOA without an escort must also be in possession of a valid Aviation-issued Airport Driver’s Permit.

iii. All operating equipment must have an Airport Vehicle Access Permit affixed to the vehicle at all times while operating on the Airport. All required City stickers and State Vehicle Inspection stickers must be valid.

iv. Individuals must remain within their assigned area and haul routes unless otherwise instructed by the Department of Aviation.

v. Tenant’s personnel who function as supervisors, and those that escort Tenant’s equipment/operators to their designated work sites, may be required to obtain an added multi-area access designation on their personnel Airport Security Badge which must also be displayed while on the AOA.

#### Section 8. Confidentiality of Airport Security Data

Tenant has an ongoing duty to protect confidential information, including but not limited to any information exempt from disclosure under the Illinois Freedom of Information Act, such as information affecting security of the airport (“Airport Security Data”). Airport Security Data includes any Sensitive Security Information as defined by 49 CFR Part 1520. Tenant acknowledges that information provided to, generated by, or encountered by Tenant may include Airport Security Data. If Tenant fails to safeguard the confidentiality of Airport Security Data, Tenant is liable for the reasonable costs of actions taken by the City, the Federal Aviation Administration (“FAA”), or the Transportation Security Administration (“TSA”) that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements, procurement and installation of security devices, and posting of guards. All agreements entered into in connection with or pursuant to the performance of any acts or obligations under this Agreement by Tenant must contain the language of this section. If Tenant fails to incorporate the required language in all such agreements, the provisions of this section are deemed incorporated in all such agreements.

#### Section 9. Americans with Disabilities Act and Air Carrier Access Act

(A) Tenant shall be solely and fully responsible for ensuring that Tenant’s operations, wherever they may occur at the Airport, and any improvements made by Tenant pursuant to this Agreement, shall comply with Title II (to the extent applicable) and III of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., as amended from time to time (“ADA”), and the Air Carrier Access Act, 49 U.S.C. § 41705, as amended from time to time (“ACAA”), including

without limitation any obligation to provide boarding and deplaning assistance at the Airport. In the event of a violation of or non-compliance with Title II (to the extent applicable) or III of the ADA or the ACAA, Tenant shall develop a work plan to correct such violation or non-compliance. The City's approval of or acceptance of any aspect of Tenant's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA or the ACAA. Tenant agrees to indemnify, defend, and hold the City harmless from any and all costs incurred by the City with respect to Tenant's failure to comply with the ADA or the ACAA for Tenant's operations or any improvements made by Tenant at the Airport. The City shall comply with the ADA and the ACAA as applicable to any facilities constructed by the City and any improvements made by the City at the Airport.

(B) Tenant shall ensure that the appropriate provision set forth below is inserted in all contracts entered into with any design professional or with any Contractors and any labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with this Agreement:

#### Designs

“The Consultant warrants that all design documents produced for the City under this Agreement shall comply with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq.; 41 C.F.R. part 60 et seq.; the Uniform Federal Accessibility Standards (“UFAS”) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (“ADAAG”); the Air Carrier Access Act, 49 U.S.C. § 41705, et seq. (“ACAA”); the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq., and the regulations promulgated thereto at 71 Ill. Adm. Code ch. 1, Sec. 400.110 et seq.; and all other applicable statutes, rules, regulations and executive orders. In the event that the above cited standards are inconsistent, the Consultant shall comply with the standards providing greater accessibility.”

#### Construction Contracts

“All construction or alteration undertaken by Contractor under this contract shall be performed in compliance with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq.; 41 C.F.R. part 60 et seq.; the Uniform Federal Accessibility Standards (“UFAS”) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (“ADAG”); the Air Carrier Access Act, 49 U.S.C. § 41705, et seq. (“ACAA”); the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq., and the regulations promulgated thereto at 71

Ill. Adm. Code ch. 1, Sec. 400.110; and all other applicable statutes, rules, regulations and executive orders. The Contractor shall, prior to construction, review the plans and specifications and notify Tenant and the City in the event that the plans and specifications are not in compliance with the above referenced standards.”

#### Section 10. Inspector General

Pursuant to Article 16 of this Agreement, Tenant shall ensure that the provision set forth below is inserted in all contracts or agreements entered into with any contractors, subtenants or licensees/sub-licensees, and any work or service providers providing any materials, labor, or services in connection with this Agreement, including but not limited to design professionals and Project Contractors and any labor organizations which furnish skilled, unskilled and craft union skilled labor:

“[Contractor/Subtenant] and all of its [subcontractors/subtenants] have a duty to cooperate with the Inspector General of the City of Chicago in any investigation or hearing, if applicable, undertaken pursuant to Chapter 2-56 of the Municipal Code of Chicago. [Contractor/Subtenant] understands and will abide by all provisions of that chapter. All [subcontracts/subtenant agreements] must inform [contractors/subtenants] of this provision and require understanding and compliance with it.”

Additionally, with respect to any work or services to be paid by the City, pursuant to MCC 2-156-018 it is the duty of Tenant, and any of its Project Contractors, to report to the Inspector General, directly and without undue delay, any and all information concerning conduct which it knows to involve corrupt activity. “Corrupt activity” means any conduct set forth in Subparagraph (a)(1), (2) or (3) of Section 1-23-020 of the MCC. Knowing failure to make such a report will be an event of default under any applicable reimbursement agreement. Reports may be made to the Inspector General’s toll-free hotline, 866-IG-TIPLINE (866-448-4754).

#### Section 11. Multi-Project Labor Agreement

The City has entered into the Multi-Project Labor Agreement (“PLA”) with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work on City property, as described in the PLA, a copy of which may be found on the City’s website at:

<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-ProjectLaborAgreement-PLAandSignatoryUnions.pdf>

To the extent that Tenant engages in work subject to the PLA, whether or not reimbursed by the City, Tenant acknowledges familiarity with the requirements of the PLA and shall comply with them.

#### Section 12. Minimum Wage and Other Labor Laws

Tenant will comply with all applicable federal, state, and local labor laws and regulations, including, without limitation: the Fair Labor Standards Act, 29 U.S.C. § 201; the Occupational Safety and Health Act, 20 CFR Part 1910; and City minimum wage ordinances and executive orders and associated rules and regulations. This includes, without limitation, compliance with the wage requirements set forth in Mayoral Executive Order 2014-1, incorporated by reference, to the extent that the Order would apply to Tenant's activities.

Section 13. Prohibition on Certain Contributions, Mayoral Executive Order 2011-4

(A) Neither Tenant or any person or entity who directly or indirectly has an ownership or beneficial interest in Tenant of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Tenant's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Tenant and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee (as such term is defined in Municipal Code Chapter 2-156) (a) after execution of this Agreement by Tenant, (b) while this Agreement or another agreement between Tenant and the City (an "Other Contract") is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

(B) From the date the City approached Tenant or the date Tenant approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to the Mayor's political fundraising committee.

(C) Tenant shall not (i) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (ii) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (iii) bundle or solicit others to bundle contributions to the Mayor or to the Mayor's political fundraising committee.

(D) The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this Section 13 or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this Section 13 or Mayoral Executive Order No. 2011-4.

(E) Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 13 or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement and any Other Contract, for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including termination for default) under this Agreement, under any Other Contract, at law and in equity. This Section 13 amends any Other Contract with respect to the matters described herein and supersedes any inconsistent provision contained therein.

Section 14. Certification Regarding Lobbying

(A) Tenant certifies by signing and submitting this Agreement, to the best of its knowledge and belief, that:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of Tenant, 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.

ii. 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.

iii. Tenant 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.

(B) 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.

#### Section 15. Distracted Driving

(A) 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.

(B) In support of this initiative, the City encourages Tenant 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. Tenant must include the substance of this Section 15 in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

## Exhibit C

# East Airport Employee Parking Lot Lease

GROUND LEASE

between

CITY OF CHICAGO

and

CHICAGO AIRLINES TERMINAL CORPORATION

for

EAST AIRPORT EMPLOYEE  
PARKING PREMISES

Dated as of \_\_\_\_\_, 20\_\_

## DEFINED TERMS

The following terms are defined in this Lease at the Sections indicated below:

Acts and Regulations	Section 16.1
Additional Rent	Section 4.2
Airport	Recitals
Airport Rules	Section 8.5
Alterations	Section 6.2(a)
Approved Tenant Work	Section 4.8
Associated Parties	Section 7.2(a)(i)(2)
Beneficial Interest	Section 4.3(d)(ii)
Beneficiary	Section 4.3(d)(iii)
CDA	Section 18.25
City	Introduction and Section 18.25
City Indemnified Parties	Section 7.2(a)
City's Award	Section 10.2(c)
Claim	Section 7.2(a)
Concluding Environmental Walk-Through	Section 13.1(c)
Concluding Walk-Through	Section 13.1(c)
Consolidated Parking Structure	Recitals
Construction Contracts	Section 3.9
Contaminant	Section 13.1(d)
Debt	Section 4.3(d)(iv)
Default Rate	Section 4.6
Discharge	Section 13.1(e)
Disposal	Section 13.1(f)
DOT	Section 16.1
Effective Date	Introduction
Environmental Claim	Section 13.1(g)
Environmental Indemnitees	Section 13.1(h) and 13.8
Environmental Law(s)	Section 13.1(i)
Event of Default	Section 15.2
Evidence of Approval	Section 3.6
Evidence of Insurance	Section 7.1(b)
FAA	Section 1.3(a)
Financing	Section 4.3(d)(v)
Fitch	Section 14.2(a)(iii)(3)
Five-Year Period	Section 4.1(d)
Fixed Rent	Section 4.1(a)
Force Majeure Event	Section 18.21
Gross Proceeds	Section 4.3(d)(vi)
Gross Revenues	Section 4.4(d)
Hazardous Substance	Section 13.1(j)
IEPA	Section 13.2(l)
Impositions	Section 5.1

Infrastructure	Section 1.1
Initial Environmental	
Conditions Walk-Through	Section 13.1(b)
Initial Walk-Through	Section 13.1(b)
Land	Section 1.1
LC Issuer Requirements	Section 14.2(a)(iii)(4)
Laws	Section 17.1
Lease	Introduction
Leasehold Mortgage	Section 4.3(c)(vi)
Lease Year	Section 4.4(c)
Legal Requirements	Section 8.5
Long-Term LC Issuer Requirements	Section 14.2(a)(iii)(3)
Moody's	Section 14.2(a)(iii)(3)
MWRD	Section 13.1(i)
Nonrenewal Notice	Section 14.2
NPDES	Section 13.1(k)
O & M Fund	Section 4.5(b)
Original Lease	Recitals
Other Regulated Material	Section 13.1(l)
Payment and Performance Bond	Section 3.8
Percentage Rent	Section 4.4(a)
Permitted Exceptions	Section 1.3(a)
Permitted Uses	Section 8.1
PPI	Section 4.1(b)(ii)
PPI Adjustment	Section 4.1(b)(i)
Premises	Section 1.1
Proceeds Rent	Section 4.3(a)
Prohibited Uses	Section 8.2
Rating Agency	Section 14.2(a)(iii)(3)
Release	Section 13.1(m)
Rent	Section 4.2
Response	Section 13.1(n)
Respond	Section 13.1(n)
Required Approvals	Section 3.6
Required Permits	Section 3.6
Sale	Section 4.3(d)(viii)
S&P	Section 14.2(a)(iii)(3)
Security Deposit	Section 14.1
Short-Term LC Issuer Requirements	Section 14.2(a)(iii)(4)
Substantial Alterations	Section 6.2(a)
Substantial Completion	Section 3.1
Taking	Section 10.1
Tenant	Introduction
Tenant's Award	Section 10.2(b)
Tenant's Contractor	Section 3.9
Tenant Work	Section 3.1(b)

Term	Section 2.1
Term Commencement Date	Section 2.1
Termination Date	Section 15.1
USEPA	Section 13.2(l)
Utility Charges	Section 5.4
Waste	Section 13.1(o)
Waters	Section 13.1(p)

## **EXHIBITS**

The following Exhibits are attached to this Lease:

**Exhibit A** - Description of Premises

**Exhibit B** - Permitted Exceptions

**Exhibit C** - Form of Estoppel Certificate

**Exhibit D** - Minority and Women Owned Business Enterprises Commitment

**Exhibit E** - Structural Controls

**Exhibit F** - Design, Renovation and Construction Tenant Projects Standard Operating Procedure

## GROUND LEASE

This ground lease (the "Lease") is entered into as of this \_\_\_ day of \_\_\_\_\_, 2018, (the "Effective Date") by and between the **CITY OF CHICAGO**, a municipal corporation and home rule unit of local government organized and existing under Article VII, Sections 1 and 6(a), respectively, of the 1970 Constitution of the State of Illinois (the "City"), and **CHICAGO AIRLINES TERMINAL CORPORATION**, a not-for-profit corporation organized and existing under the laws of the State of Illinois ("Tenant").

### RECITALS:

1. The City owns and operates that certain airport located within the City and commonly known as Chicago O'Hare International Airport (the "Airport").

2. The City is vested with the authority to make provisions for the needs of aviation, commerce, shipping, and travel in, to and around the Airport to promote and develop the Airport, and in the exercise of such power, to enter into any lease of City-owned properties in the Airport area, upon such terms and conditions as the corporate authorities of the City shall prescribe.

3. The Tenant desires to lease the Premises (as hereinafter defined) on an interim basis until a consolidated employee vehicular parking structure at the Airport (the "Consolidated Parking Structure") has been completed by the City for use by non-City employees working at the Airport and the City has decided to close the east Airport employee parking lot on which the Premises is located, with the understanding that it is the City's intention to require employees of all airline carriers to relocate to the Consolidated Parking Structure (with the exception of parking located at the terminal, cargo, hangar or maintenance facilities which parking supports the functions located in such applicable facilities); and the City is willing to lease the Premises to the Tenant in order to relocate employee vehicular parking to the Premises on an interim basis until the completion date of the Consolidated Parking Structure and the City decides to close the east Airport employee parking lot, upon the terms, provisions and conditions provided in this Lease.

4. The City and Tenant acknowledge that the continued operation of the Airport as a safe, convenient and attractive facility is vital to the economic health and welfare of the City, and that the City's right to monitor the Tenant's performance pursuant to the terms of this Lease is a valuable right incapable of quantification.

5. Pursuant to an Ordinance of the City, adopted \_\_\_\_\_, 2018, and set forth in the Journal of Proceedings of the City Council of the City at pages \_\_\_\_\_ through \_\_\_\_\_, the City has authorized the execution and delivery of this Lease between the City and the Tenant.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Tenant agree as follows:

## ARTICLE I

### PREMISES

1.1 Lease of Premises. The City hereby leases to Tenant, and Tenant hereby leases from the City, for the Term upon the terms and conditions set forth herein, that certain real property comprising a portion of the Airport outside of the airfield secure area and consisting of approximately four hundred eleven thousand, two hundred fifty-three (411,253) square feet, as further described in Exhibit A (the "Land"), together with all other existing and to-be constructed improvements, paving and structures located or to-be-located therein and thereon, including without limitation infrastructure improvements such as paving, lighting, fencing, and related improvements (collectively, the "Infrastructure"). The Land and the Infrastructure are referred to hereinafter collectively as the "Premises".

1.2 Condition of the Premises. The Tenant acknowledges, understands, covenants and agrees (without any representation or warranty of, or recourse to, the City) as of both the Effective Date (excluding clause (e) below) and the Term Commencement Date, as follows:

(a) the Tenant, by its execution of this Lease, accepts the Premises in "AS IS" CONDITION, WITH ALL FAULTS, without the benefit of any representation or warranty of, or recourse to, the City;

(b) the Tenant has inspected the Premises and is aware of the physical, structural and geological condition of the Premises, and the suitability of the Premises for the Tenant's proposed use thereof, and the Tenant accepts all of the risks relating to the foregoing;

(c) the Tenant acknowledges that the City has made no representations or warranties regarding the physical, structural or geological condition of the Premises or the suitability of the foregoing for the Tenant's proposed use of the Premises;

(d) except as otherwise expressly set forth in this Lease, and except for the provision of normal or typical municipal services, such as the provision of water, the maintenance of sewers and delivery of police and fire department services, the City shall not be required to construct any improvements, furnish any services or facilities, perform any maintenance or make any repairs or alterations in or to the Premises, or build any infrastructure necessary to service the Premises during the Term of this Lease;

(e) except for obligations of the City set forth herein, the Tenant hereby assumes the full and sole responsibility for (i) the Infrastructure; (ii) the condition, repair and maintenance of the Infrastructure; and (iii) the performance of, and/or compliance with, all covenants, conditions and restrictions of record encumbering the Premises from time to time; and

(f) the Tenant assumes all risks relating to compliance of the Premises with all applicable zoning and building codes and such other applicable laws, statutes, ordinances and regulations relating to the Premises and all such applicable covenants, conditions and restrictions of record when repairing, maintaining, renovating and operating at the Premises.

(g) Without limiting the Tenant's acknowledgements, understandings, covenants and agreements set forth in this Section 1.2 above, except for any express representations, warranties or obligations of the City herein; the Tenant understands, acknowledges, covenants and agrees that: (i) THE CITY MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES, WHETHER THE PREMISES ARE SUITABLE FOR THE TENANT'S USES, PURPOSES OR NEEDS OR REGARDING ANY OF THE MATTERS DESCRIBED IN PARAGRAPHS (a) THROUGH (f) OF THIS SECTION 1.2 ABOVE; (ii) THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE ENVIRONMENTAL CONDITION OF THE PREMISES; AND (iii) THE TENANT WAIVES ANY AND ALL CLAIMS AGAINST THE CITY AND THE CITY'S REPRESENTATIVES WHICH MAY CURRENTLY EXIST OR WHICH MAY ARISE IN THE FUTURE, AT COMMON LAW, IN EQUITY, OR UNDER STATUTE, NOW, OR AT ANY TIME, IN EFFECT AND RELATING TO THE PHYSICAL CONDITION OF THE PREMISES.

### 1.3 Easements and Utilities.

(a) The Tenant's leasing of the Premises shall be subject to any and all easements, licenses, and any exceptions which encumber title to the Premises as of the Effective Date as described in Exhibit B of this Lease, as the same may be updated by the City prior to the Term Commencement Date provided such easements, licenses and any exceptions do not unreasonably interfere with Tenant's Permitted Uses of the Premises (the "Permitted Exceptions"), and other rights with respect to the Premises now existing or hereafter granted to or vested in any governmental entities or agencies, including, without limitation, the Federal Aviation Administration ("FAA").

(b) The Tenant acknowledges that there may currently exist, and that the City may grant in the future, easements and rights on, over or under the Premises for the benefit of suppliers or owners of utilities that service the Airport, and the Tenant hereby consents to any such utility easements; provided, however that such future easements and rights granted by the City shall not unreasonably interfere with or disturb Tenant's quiet enjoyment and Permitted Uses of the Premises.

(c) Tenant, its officers, directors, employees, patrons, customers, invitees, guests, contractors, agents, and suppliers of materials or furnishers of services shall have the right of ingress to and egress from the Premises twenty-four (24) hours per day, seven (7) days per week, over publicly accessible Airport roadways, subject to such non-discriminatory and reasonable rules and regulations as may be established by the City and other governing jurisdictions with respect to such use, and subject to applicable Law. Tenant shall have the right, upon demonstration of need, and coordination with, the City, to tap into utility and sewer infrastructure adjacent to the Premises for the provision of such services at the Premises in accordance with Section 5.4 hereof.

1.4 City's Reserved Rights in the Premises. The following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors, or designees) are hereby reserved by the City:

(a) rights to air or space above the top level of the Infrastructure for purposes of aircraft flyover and passage, and for such other aviation easements as the City may require, including, for the use and benefit of the public, a right of flight for passage of aircraft in the airspace above such Infrastructure on the Premises, which public right shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport;

(b) to exhibit the Premises to prospective tenants during the last six (6) months of the Term at reasonable hours upon the giving of reasonable notice, and to remodel, repair, alter, or otherwise prepare the Premises for reoccupancy at any time after Tenant surrenders or abandons the Premises;

(c) to maintain, replace, repair, alter, construct, or reconstruct existing and future utility, mechanical, electrical, and other systems or portions thereof on the Premises to the extent the City is obligated to do so hereunder or has the right to do so pursuant to another provision of this Lease, including, without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewerage, drainage, and communication service, including all related lines, pipes, mains, wires, conduits, and equipment; provided, however, such work by the City shall not materially reduce the square footage of the Premises, nor shall such work by the City unreasonably interfere with Tenant's use of the Premises for the purposes permitted under this Lease, including vehicular access in connection therewith, or impair Tenant's systems or facilities located on the Premises. If the City is performing any such activity on the Premises, the City shall provide reasonable advance notice to Tenant (except in the event of an emergency). In the exercise of such rights, the City shall not unreasonably interfere with the business conducted by Tenant in the Premises;

(d) to exercise such other rights as may be granted to the City elsewhere in this Lease; including, without limitation, the City's rights in the case of an Event of Default or to cure defaults hereunder;

(e) upon the giving of reasonable notice and at reasonable times (it being understood and agreed that Tenant shall be permitted to have a representative of Tenant accompany the City so long as the City is not delayed, other than to a de minimis extent, entry due to the unavailability of any such Tenant representative), Tenant shall allow the City, and its officials, officers, agents, employees, and contractors reasonable access to the Premises for the purpose of inspecting the same, or for examining the same to ascertain if Tenant is performing its obligations under this Lease, and for conducting tests and inspections for any other reason deemed reasonably necessary by the City under this Lease. In the exercise of such rights, the City shall not unreasonably interfere with the operations conducted by the Tenant at the Premises unless there is an emergency or threat to civil aviation, human health or the environment; and

(f) any and all rights and privileges not specifically granted to Tenant for its use of and operations on or at the Premises pursuant to this Lease.

## ARTICLE II

### TERM

2.1 Term. The term of this Lease shall begin on July 1, 2018 (“Term Commencement Date”) and end at 11:59 p.m. Chicago Time on the earlier of (a) the ninetieth (90th) day following notice to Tenant that the City has secured the issuance of the certificate of occupancy for the Consolidated Parking Structure and has decided to close the east Airport employee parking lot on which the Premises is located, (b) December 31, 2033, (c) the date which is the end of the term as set forth in Section 5.1 of the Agreement by and between the City of Chicago and Chicago Airlines Terminal Consortium, or (d) the Termination Date as provided in this Lease (the “Term”), subject in each instance to all of the terms and conditions of this Lease.

## ARTICLE III

### TENANT IMPROVEMENTS

3.1 Tenant Work. Any construction, additions, changes, Alterations or improvements to the Infrastructure in excess of \$25,000 (collectively, “Tenant Work”) are subject to Tenant’s full compliance with the terms and provisions of this Lease, including without limitation this Article 3 and Section 6.2, as applicable. Tenant shall complete the Tenant Work at its sole cost and expense. As used in this Lease, “Substantial Completion” will be deemed to have occurred upon (i) the substantial completion of the Tenant Work in accordance with the plans and specifications therefor approved by the City and readiness of the same for the purposes for which they are intended to be used, and (ii) the issuance of a certificate of occupancy, or the equivalent thereof, by the applicable governmental authority for the Tenant Work, as necessary.

3.2 No Obligation of the City. Except as expressly provided to the contrary in this Lease, the City shall not be required to perform any work or construct any improvements, furnish any services or facilities, perform any maintenance, make any repairs or alterations, or perform any environmental remediation or clean-up in or to the Premises, or any portion thereof, at any time during the Term, with the exception of environmental remediation, the need for which is caused by the willful misconduct or sole negligence of the City. The City does not warrant the accuracy of any of the information provided by the City or third parties as part of the Premises, the Tenant Work, or any drawings, plans, or specifications prepared in connection therewith, and shall have no liability arising out of any inaccurate information provided by the City or third parties as a part thereof, except to the extent such inaccuracy is due to the willful misconduct or fraud of the City. The City's approval of any Tenant Work, or any drawings, plans, or specifications prepared in connection therewith, or any portion thereof, shall not impose upon the City or its officials, officers, employees, or agents any liability or obligation with respect to the design or completion of the Tenant Work, or the compliance of the Tenant Work with any Legal Requirement.

3.3 Design and Construction Requirements. In connection with any Tenant Work, Tenant shall comply with the applicable requirements of **Exhibit D** and **Exhibit F**. Tenant shall pay for all design and construction when and as required by the parties Tenant engages to

perform such design and construction. All Tenant Work (other than trade fixtures, furniture, personal property and equipment of Tenant) shall become part of the Premises.

3.4 Excavation and Shoring. If any excavation shall be made or authorized to be made upon land adjacent to or nearby the Premises, Tenant shall afford the person or persons causing or authorized to cause such excavation, at reasonable times and upon reasonable notice, the right to enter upon the Premises for the purpose of doing work as such person or persons shall consider to be necessary to preserve any of the walls or structures of the Infrastructure on the Premises from injury or damage and to support the same by proper foundations, provided that such work shall be carried out at such person's or persons' sole cost and expense, shall not unreasonably interfere with Tenant's operation, and shall be completed in accordance with plans and specifications approved by City, such approval not to be unreasonably withheld or delayed.

3.5 Construction Representatives. For all Tenant Work, the City and Tenant shall each designate in writing a construction representative, as necessary. Thereafter, and until such designation is changed or withdrawn, such construction representative shall deliver and receive all notices, approvals, communications, plans, specifications or other materials required or permitted to be delivered or received under this Article III.

3.6 Required Approvals. Tenant represents and warrants that Tenant will obtain, at its sole cost and expense, all required permits and licenses from governmental authorities (collectively, "Required Permits") for all Tenant Work, and shall provide the City a copy of each permit and license before beginning any Tenant Work. The City shall reasonably cooperate with Tenant to obtain such permits and licenses. During the Term, Tenant shall submit as soon as practicable to the City for its review and written approval, not to be unreasonably withheld or delayed, not less than thirty (30) days prior to Tenant's intended filing date for the related Tenant Work, copies of all permit applications and filings (including any and all amendments or modifications) intended to be made by Tenant in connection with FAA determinations, environmental, building code, construction, or demolition matters, or use and occupancy. As soon as practicable and not less than ten (10) days prior to such filing date (which date may be within the thirty (30) day review period), Tenant shall submit to the City copies of such applications and filings in final form marked to show changes from the drafts previously submitted by Tenant to the City. If such applications and filings in final form are substantially or materially different from the drafts, the review process described above shall restart. The City's approval of any such application or filing shall be for purposes of this Section 3.6 only, and shall not limit any of the City's other property or regulatory rights with respect to such application or filing. Upon full or partial completion of any Tenant Work, and prior to occupying any part of the Premises for any purpose other than performing Tenant Work, and upon completion of any other Tenant Work, Tenant shall obtain from each authority granting the Required Permits such evidence of approval, if any ("Evidence of Approval" and, together with Required Permits, collectively, "Required Approvals") as may be necessary to permit such part of the Premises to be used and occupied for the Permitted Uses.

3.7 Construction Compliance. All Tenant Work, including but not limited to Tenant's use and operation of the Premises in accordance with Article VIII, shall be performed in compliance with all Legal Requirements.

3.8 Payment and Performance Bonds. Prior to commencement of any Tenant Work in excess of \$250,000, Tenant shall deliver, or cause Tenant's Contractor to deliver, to the City, in form and substance reasonably satisfactory to the City, payment and performance bonds of a surety company licensed to do business in the State of Illinois, naming the City as co-obligee, (a "Payment and Performance Bond"), to be in the amount of the entire contract sum of Tenant's contract with Tenant's Contractor for the Tenant Work in question. Tenant's obligation to provide Payment and Performance Bond(s) as required under this Section 3.8 shall apply for the duration of construction of the Tenant Work in question, including all design services and construction work associated with such Tenant Work, if any.

3.9 Tenant's Contractor . Tenant's Contractor ("Tenant's Contractor"), as necessary for the Tenant Work, shall be subject to prior written approval by the City, such approval not to be unreasonably withheld. Tenant will give the City the opportunity to review and reasonably approve the agreements between Tenant and Tenant's Contractor (and, if Tenant has entered into other contracts for the Tenant Work that would normally be included within a single construction contract for the completion of all of the Tenant Work, such other contracts) (collectively, the "Construction Contracts") (which Construction Contracts shall, in any event, include guaranteed maximum prices that, in the aggregate, are equivalent to what would be an appropriate guaranteed maximum price under a single construction contract for the completion of the Tenant Work), which review and approval is solely for the purposes of assuring that the Construction Contracts are consistent with the terms of this Lease and include provisions with respect to insurance and suretyship reasonably satisfactory to the City for the protection of the City, laborers, suppliers, subcontractors and the public. During the Term, the Tenant's Contractor shall not use any subcontractor that at the time such subcontractor would be hired is debarred by, or ineligible to do business with, the City.

3.10 Ownership. During the Term, subject to the following sentence, title to the Infrastructure and of any Tenant Work shall be vested in City and nothing herein shall grant the Tenant title or ownership interests in the Premises. Tenant's equipment, signs, trade and light fixtures and other personal property shall be owned and maintained by Tenant. Upon expiration or earlier termination of this Lease, Tenant shall remove all such personal property located on the Premises, and the Premises shall be surrendered to the City in accordance with Section 15.1.

3.11 Reproducible Drawings; Survey. Upon Substantial Completion of any Tenant Work which, once completed, increases the square footage of the Premises, or any portion thereof, Tenant shall prepare at its expense and deliver to the City one reproducible set in an agreed upon format and one set in digital format of each of the following: (i) as-built plans showing the Tenant Work in question, or such portion thereof, and (ii) an ALTA/ACSM survey by a State of Illinois registered land surveyor showing the location of all such Tenant Work on the Land.

3.12 Covenant Against Liens.

(a) No party, including the Tenant, shall have any right to file any non-consensual or consensual liens against the Land, the Infrastructure, or any property of the City, and the Tenant shall keep the Land, the Infrastructure and the leasehold estate created hereunder in and to the Premises free and clear of liens or claims of liens in any way arising out of the construction,

renovation and/or improvement or use thereof by the Tenant. The Tenant shall promptly take such steps as are necessary to release any claim for lien or attempted claim for lien from the Land, the Infrastructure, or any property of the City, including for those for liens as set forth in Section 3.12(b) below; provided, however, that notwithstanding the above provisions of this Section 3.12(a) and any other provisions in this Lease to the contrary, the Tenant will be permitted to grant a Leasehold Mortgage against the Tenant's leasehold interest in the Premises created under this Lease for the purpose of securing any construction and/or permanent loans for the Infrastructure or Alterations from a lender or lenders reasonably acceptable to the City in accordance with Section 11.2 of this Lease.

(b) If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, for or under Tenant, Tenant, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the City may, if such lien shall continue for fifteen (15) days after notice from the City to Tenant, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding or otherwise, and in any such event, the City shall be entitled, if the City so elects upon another fifteen (15) days' notice from the City to Tenant, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by the City and all costs and expenses incurred by the City in connection therewith, together with interest at the Default Rate from the respective dates of the City's making of the payment or incurring of the cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to the City on demand.

3.13 No Consent. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

## ARTICLE IV

### RENT

4.1 Rent. During the Term, Tenant shall pay to the City, which shall be calculated (and adjusted pursuant to Section 4.1(b) below) as follows:

(a) For the period commencing on the Term Commencement Date through December 31<sup>st</sup> following the fifth (5<sup>th</sup>) anniversary of the Term Commencement Date, the rent for the Premises shall be \$2.00 per square foot per year for four hundred eleven thousand, two hundred fifty-three (411,253) square feet, representing the total square footage of the Premises (the "Fixed Rent"); and

(b) For the five-year period beginning on January 1<sup>st</sup> next following the fifth (5<sup>th</sup>) anniversary of the Term Commencement Date and every five years thereafter, Fixed Rent shall be adjusted pursuant to the PPI Adjustment. The City shall calculate and invoice the Tenant for the amount of such adjustment of Fixed Rent pursuant to the PPI Adjustment thirty (30) days prior to such PPI Adjustment taking effect.

(i) The "PPI Adjustment" shall be a fraction (rounded to two decimal places), the numerator of which shall be the "PPI" for the month of the fifth (5<sup>th</sup>) anniversary of the Term Commencement Date and every five years thereafter, and the denominator of which shall be the PPI for the month in which the Term Commencement Date occurs, with respect to the PPI Adjustment on any such fifth (5<sup>th</sup>) anniversary of the Term Commencement Date and every five years thereafter.

(ii) "PPI" means "The Producer Price Index – All Commodities" as published by the Bureau of Labor Statistics of the United States Department of Labor or if the same is discontinued, a replacement index published by the Department of Labor or other applicable Governmental Authority, appropriately adjusted.

4.2 Additional Rent. During the Term, Tenant shall also pay, as additional rent, all sums, Impositions, costs, expenses, late charges, and payments of every kind and nature that Tenant in any of the provisions of this Lease assumes or agrees to pay, whether payable initially to the City or a third party pursuant to the terms of this Lease (collectively, "Additional Rent"). In the event of any non-payment of Additional Rent by Tenant, the City shall have (in addition to all other rights and remedies) all of the rights and remedies provided for herein or by law in the case of non-payment of Fixed Rent. (Fixed Rent and Additional Rent are referred to hereinafter, collectively, as the "Rent").

4.3 Proceeds Rent. In addition to Fixed Rent and all other Rent payable by the Tenant under this Lease, the Tenant covenants and agrees to pay during the Term, as Additional Rent hereunder, an amount equal to three percent (3%) of any Gross Proceeds (as hereinafter defined) from a Financing (as hereinafter defined) or Sale (as hereinafter defined) of the Tenant's leasehold interest in the Premises, or any portion thereof, as the case may be, at the times and in the manner hereinafter set forth (the "Proceeds Rent").

(a) Payments of the Proceeds Rent shall be made promptly upon a Sale or Financing, as follows: upon payment of such portion of the purchase price in a Sale and each funding of Debt in a Financing, accompanied by a certificate of the chief financial officer of the Tenant, or authorized designee, as to the amount of Gross Proceeds of the Sale or Financing. At the election of the City, the City and the Tenant shall coordinate payment of the Proceeds Rent through an escrow.

(b) The Tenant shall, at the time of each Sale or Financing, deliver to the City a statement certifying the amount of the Gross Proceeds for such Sale or Financing and the amount of the Proceeds Rent due and payable to the City. Such statement shall set forth in detail reasonably satisfactory to the City the computation of Gross Proceeds, and Proceeds Rent therefor, together with such other information as the City may deem reasonably necessary for the determination of the Proceeds Rent. Except for such changes as are necessary to calculate the

Gross Proceeds from the Sale or Financing, as the case may be, the statements required above shall be prepared in accordance with generally accepted accounting principles on the accrual basis consistently applied and otherwise in such manner as the City shall have approved in writing.

(c) Capitalized terms set forth below shall have the meanings ascribed to them below.

(i) "Beneficial Interest" shall mean the interest of the Beneficiary in any trust of which it is beneficiary, if the Tenant is ever a land trust.

(ii) "Beneficiary" shall mean the beneficiary under a trust which at any time the Tenant is a trustee under a land trust.

(iii) "Debt" shall mean the principal amount of indebtedness of the Tenant for borrowed money secured by a Leasehold Mortgage, any rights, title or interest in the Tenant's interest under this Lease or a Beneficial Interest.

(iv) "Financing" shall mean the placement and funding during the Term of any Debt.

(v) "Gross Proceeds" shall mean (A) the purchase price in a Sale (including, without limitation, (I) the principal and interest of any Debt to which the Sale is subject or which is assumed, and (II) the fair market value of any consideration consisting of property other than cash, and (B) the amount of the Debt in the case of a Financing, less the amount of Gross Proceeds on which the Tenant has previously paid Proceeds Rent to the City in connection with a Financing pursuant to this Section 4.3.

(vi) "Leasehold Mortgage" shall mean any mortgage or deed of trust of the leasehold estate or any right, title or interest in the Tenant's interest under this Lease or a Beneficial Interest.

(vii) "Sale" shall mean (A) a sale, assignment, transfer or other conveyance of any portion of the Tenant's interest under this Lease (including an assumption and assignment of the Lease by the Tenant as debtor or debtor in possession or by a trustee in bankruptcy acting on behalf of the Tenant) and/or in the Premises or any portion thereof; or (B) execution and delivery of a contract to convey any portion of the Tenant's interest under this Lease upon payment of part or all of the purchase price which is accompanied by a transfer of possession and the risks and benefits of ownership to the purchaser.

(d) The Tenant shall keep complete and accurate accounts, records and books of all rents, income, receipts, revenues, issues and profits received from the Premises and all expenses, costs and expenditures for the Premises and other information necessary or pertinent to verify and calculate the amount of Proceeds Rent, including any records prepared for electronic data processing and all records prepared as a result of such processing, and such records shall be kept by the Tenant at its local office or at the management office for the Premises for at least three (3) years after each annual financial statement has been delivered to the City.

(e) The Tenant's books of account and records that are required to be kept in accordance with paragraph (d) of this Section 4.3 shall be made available for review to the City and its agents (or copies shall be furnished at the City's request) at all times, on not less than five (5) business days' notice, during regular business hours for examination and audit. If such books and records are located outside the City, the Tenant shall make them available to the City. If the results of such examination by the City establish a deficiency in Proceeds Rent payable to the City, the Tenant shall within ten (10) business days pay to the City the deficiency. In the event that a deficiency in such Proceeds Rent of five percent (5%) or more is established for any calendar year, the Tenant shall pay the reasonable cost of any examination requested by the City and shall also pay interest on said deficiency in Proceeds Rent from the time it should have been paid until the date said at the Default Rate. The inspection on behalf of the City may be made by an officer, employee or other designee of the City.

(f) The City shall not, as a result of the rights granted herein to receive Proceeds Rent, be considered as a co-owner, co-partner or co-adventurer with the Tenant in the Premises.

(g) For the avoidance of doubt, if there is ever an instance in which amounts received by Tenant could meet the definition of Gross Proceeds as well as Gross Revenues, the Additional Rent owed in such an instance shall be either Proceeds Rent or Percentage Rent, but not both. In any such circumstance, the Tenant shall make the determination, in consultation with the City as desired, whether to categorize such amounts received as Gross Proceeds or Gross Revenues.

#### 4.4 Percentage Rent.

(a) In addition to the Fixed Rent and all other Rent payable by the Tenant under this Lease, the Tenant covenants and agrees to pay during the Term, as Additional Rent hereunder, an amount equal to three percent (3%) of any Gross Revenue generated by the Premises during each calendar quarter and in the manner hereinafter set forth (the "Percentage Rent").

(b) Payments of Percentage Rent shall be paid quarterly and shall be due and payable quarterly each year (i) on May 1 of each year for the preceding calendar quarter ending on March 31 of each year during the Term, (ii) on August 1 of each year for the preceding calendar quarter ending on June 30 of each year during the Term, (iii) on November 1 of each year for the preceding calendar quarter ending on September 30 of each year during the Term, and (iv) on February 1 of each year for the preceding calendar quarter ending on December 30 of each year during the Term. Each payment of Percentage Rent shall be accompanied by a certificate of the chief financial officer or authorized designee of the Tenant as to the amount and method of calculation of Gross Revenue and Percentage Rent, setting forth all of the components of the Gross Revenue for such calendar quarter and including the financial statement required below.

Percentage Rent shall also be payable by the Tenant for the final calendar quarter of the Term on a prorated basis if the Term ends prior to the end of such calendar quarter.

(c) In addition to the quarterly certificates required under Section 4.4(b) above, the Tenant shall deliver to the City on or before July 1<sup>st</sup> of each calendar year an annual financial statement for the immediately preceding Lease Year certifying the amount of the Gross Revenue for such Lease Year, if applicable. Such statement shall set forth in detail reasonably satisfactory

to the City the computation of the Gross Revenue (including all components thereof and showing de minimus amounts received but excluded from the computation), and Percentage Rent for such Lease Year, together with such other information as the City may deem reasonably necessary for the determination of the Percentage Rent. The statements required above shall be prepared in accordance with generally accepted accounting principles on the accrual basis consistently applied and otherwise in such manner as the City shall have approved in writing. "Lease Year" shall mean the year period beginning and ending on the anniversary of the Term Commencement Date.

(d) For purposes of this Lease, "Gross Revenue" shall mean, with respect to each calendar quarter or each Lease Year, as applicable, all payments from parties constituting (A) Fixed Rent, or other non-de minimis amounts in lieu of Fixed Rent received by, or on behalf of, the Tenant under all subleases, licenses and other use agreements of the Premises; (B) amounts, if any, paid in lieu of Fixed Rent under any business interruption insurance or loss of rents or insurance policy relating to the Premises and covering subleases, licenses and other use agreements of the Premises; (C) termination fees paid by any subtenants or licensees; and (D) damages in lieu of Fixed Rent, if any, payable by subtenants or licensees on account of a default; provided, however, "Gross Revenue" shall not include amounts collected pursuant to ground handling arrangements at the Premises.

(e) The Tenant shall keep complete and accurate accounts, records and books of all Gross Revenue and other information necessary or pertinent to calculate and verify the amount of Percentage Rent, including any records prepared for electronic data processing and all records prepared as a result of such processing, and such records shall be kept by the Tenant at its local office or at the Tenant's management office for the Premises for at least three (3) years after each annual financial statement has been delivered to the City.

(f) The Tenant's books of account and records that are required to be kept in accordance with paragraph (e) of this Section 4.4 shall be made available for review to the City and its agents (or copies shall be furnished at the City's request) at all times, on not less than five (5) business days' notice, during regular business hours for examination and audit. If such books and records are located outside the City, the Tenant shall make them available to the City within the City. If the results of such examination by the City establish a deficiency in Percentage Rent payable to the City, the Tenant shall within thirty (30) days' pay to the City the deficiency. In the event that a deficiency in such Percentage Rent of five percent (5%) or more is established for any calendar year, the Tenant shall pay the reasonable cost of any examination requested by the City and shall also pay interest on said deficiency in Percentage Rent from the time it should have been paid until the date said at the Default Rate. The inspection on behalf of the City may be made by an officer, employee or other designee of the City.

(g) The City shall not, as a result of the rights granted herein to receive Percentage Rent, be considered as a co-owner, co-partner or co-venturer with the Tenant in the Premises.

#### 4.5 Intentionally Omitted.

4.6 Payments; Late Charges.(a) Commencing on the Term Commencement Date and each month thereafter, Tenant shall pay all Fixed Rent in equal monthly installments on the

first day of each calendar month. All Fixed Rent (as such Fixed Rent is adjusted in accordance with Section 4.1(b) hereof), Proceeds Rent and Percentage Rent due and owing under this Lease shall be paid by Tenant to the City without notice, demand, abatement, deduction or offset.

(b) Except where this Lease specifically provides otherwise (including but not limited to payments by Tenant of Percentage Rent in accordance with Section 4.4), Tenant shall pay all Additional Rent within thirty (30) days after receipt of an invoice and reasonable backup documentation. All Rent shall be paid by Tenant to the City or at the City's direction without abatement, deduction or offset.

(c) Until Tenant shall have been given notice otherwise by the City, Tenant shall pay all Rent to the Comptroller of the City at his/her office in at 121 North LaSalle Street, City Hall 7<sup>th</sup> Floor, Chicago, Illinois, 60602 or such other place as may be designated in writing by the City. Rent for the first and last months of this Lease shall be prorated, if necessary.

(d) During the Term there shall be no abatement, diminution or reduction of Rent or charges claimed by or allowed to Tenant, or any person claiming under Tenant, whether for inconvenience, discomfort, interruption of business, or the like, arising from any cause or reason. Tenant's default in the due and punctual payment of Rent or other sums due and payable under this Lease when and as the same shall become due and payable (including, any increase in the Fixed Rent pursuant to Section 4.1(b) hereof), shall obligate Tenant to pay interest on such amounts at a rate of twelve percent (12%) per annum calculated on a daily basis (unless a lesser interest rate shall then be the maximum rate permissible by Law with respect thereto) (the "Default Rate") from the date such payment was due and payable.

(e) No payment by Tenant or receipt by the City of a lesser amount of Rent shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or any letter accompanying any such payment be deemed an accord and satisfaction, and the City may accept such check or payment without prejudice to the City's right to recover the balance of such Rent.

4.7 Net Lease. It is the purpose and intent of the City and Tenant that this is a net lease, and that all Rent shall, except as herein expressly otherwise provided, be absolutely net to the City. Tenant agrees that, except as otherwise expressly set forth in this Lease, Tenant shall pay all costs, charges and expenses of every kind and nature whatsoever against or in connection with the use and operation of the Premises that may arise or become due during the Term.

#### 4.8 Credit of Fixed Rent for Certain Capital Improvements

For Tenant Work that has received prior written approval in accordance with this Section 4.8 ("Approved Tenant Work"), Tenant shall be entitled to a credit against one half of the amount of Fixed Rent owed pursuant to Section 4.1 for such Approved Tenant Work as provided for in this Section.

(a) Tenant shall provide to the City a written request that it is seeking a credit pursuant to this Section 4.8 for Tenant Work that Tenant intends to undertake at the Premises prior to undertaking any such Tenant Work and shall include with such request documentation to the satisfaction of the City to describe the nature and cost of the proposed Tenant Work.

(b) *Fixed Rent Credit*: For Approved Tenant Work, Tenant is eligible to receive a credit against one half of the remaining Fixed Rent owed during the Term as such amount is amortized over the remainder of the Term at a rate of return of 8% from the date of Substantial Completion of the Approved Tenant Work.

(c) The City's approval of the proposed Tenant Work described in Section 4.8(b) above is separate and distinct from any and all other approvals regarding completion of any Tenant Work as set forth in this Agreement, including but not limited to approvals described in Article 3 and Section 6.2 hereof.

(e) In order for the credit set forth in Section 4.8(b) to be applied to the amount of Fixed Rent Tenant owes:

- (i) The Tenant Work shall have been completed in compliance with this Agreement;
- (ii) There shall be no Events of Default continuing, or any events the happening of which would be determined to be an Event of Default, under the Agreement; and
- (iii) Tenant shall provide documentation adequately setting forth the Substantial Completion date to the City for the Approved Tenant Work upon which the City shall provide Tenant with the amount of the Fixed Rent to be credited and the amortized amount of Fixed Rent owed for the remainder of the Term.

(f) The maximum credit Tenant shall receive pursuant to this Section 4.8, regardless of the final cost of the Approved Tenant Work, shall be the total amount of Fixed Rent owed during the remainder of the Term (as such Term may be extended pursuant to the terms of Section 2.1 hereof).

## ARTICLE V

### TAXES AND UTILITIES

5.1 Impositions. Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, payments in lieu of taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien upon, the Premises during the Term, or any part thereof or any appurtenance thereto, whether such charges are made directly to Tenant or through or in the name of the City (all such taxes, payments in lieu of taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges being hereafter referred to as "Impositions"); provided, however, that:

(a) If, by law, any Imposition may at the option of the taxpayer be paid in installments, Tenant may pay the same in such installments over such period as the law allows, and Tenant shall only be liable for such installments as shall become due during the Term; and

(b) All Impositions for the fiscal year in which the Term begins and ends shall be apportioned so that Tenant shall pay only those portions thereof that correspond with the portion of said year as is within the Term.

5.2 Receipts. Tenant, upon request of the City, shall furnish to the City within thirty (30) days of the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to the City, evidencing the payment thereof.

5.3 Abatements; Contests by Tenant. Tenant may seek a reduction in the valuation of the Premises or its leasehold interest therein assessed for tax purposes, and may contest by appropriate proceedings, at Tenant's sole cost and expense, the amount or validity in whole or in part of any Imposition, and may defer payment thereof if allowed by law, provided that:

(a) Tenant shall provide the City with security reasonably satisfactory to the City to assure payment of contested items;

(b) Tenant shall promptly pay such contested item or items if the protection of the Premises or of the City's interest therein from any lien or claim as required by Section 3.12 hereof shall, in the reasonable judgment of the City, require such payment; and

(c) The City shall not be required to join in any proceedings referred to herein unless the provisions of any Legal Requirements at the time in effect shall require that such proceedings be brought by or in the name of the City. The City shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless the City from any such costs and expenses.

5.4 Utilities. Tenant shall at its sole cost and expense, obtain separately metered utilities for all utility service that Tenant requires at the Premises. During the Term, Tenant shall pay, as Additional Rent, directly to the utility provider, all charges by any public entity (including the City, as the case may be) or utility provider for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made therefor, whether called charge, rate, tax, betterment, assessment, fee or otherwise, and whether such charges are made directly to Tenant. The City shall have no responsibility to furnish Tenant with any utilities, and makes no representations or warranties as to the availability of utilities from the companies furnishing such utilities.

5.5 No Liability of the City. The City shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to, electricity, light and power. The City hereby grants Tenant the right and easement to tie into the existing sources located at or on the Premises in their existing locations to the extent located in adjacent streets and ways owned or controlled by the City and to the extent necessary to operate the Premises, it being understood, however, that the City makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply

the Premises. In the event that Tenant determines that the enlargement, improvement or expansion of existing sources of supply, distribution points or utilities is necessary to supply the Premises, such enlargement, improvement, or expansion shall be the obligation, and the expense, of Tenant, and shall be undertaken in accordance with plans and specifications prepared by Tenant and reasonably approved by the City in accordance with this Lease.

## ARTICLE VI

### MAINTENANCE AND ALTERATIONS OF PREMISES

6.1 Repair and Maintenance. Throughout the Term, Tenant, at its sole cost and expense, shall keep the Premises (including, without limitation, all Infrastructure now or hereafter erected thereon) in good order, condition and repair, such that it can conduct its operations in accordance with Article VIII hereof except for (a) reasonable wear and tear, and (b) damage from a Taking or from fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder, and shall make all necessary repairs thereto, required by Legal Requirements from time to time during the Term. All repairs made by Tenant shall be performed in accordance with Legal Requirements and the applicable design and construction standards and requirements under this Lease.

6.2 Alterations.

(a) Tenant may, at its sole cost and expense, undertake alterations and changes to the Premises (collectively, "Alterations") provided that (A) an Event of Default shall not have previously occurred and is not then continuing under the Lease; and (B) Tenant shall obtain the City's written consent pursuant to this Lease for Alterations: (1) to Infrastructure improvements located on the Premises, and (2) that would cost more than ten percent (10%) of the replacement cost of the Infrastructure (items (1) and (2), collectively, the "Substantial Alterations").

(b) No Substantial Alteration shall be made without the prior written consent of the City (which consent shall not be unreasonably withheld provided, that the City may withhold its consent in its sole discretion if the Substantial Alteration would (A) change the use of the Premises to a use other than a Permitted Use or fail to comply with the City's design standards then in effect, (B) reduce or impair, to any material extent, the value, rentability, or usefulness of the Premises, or constitute waste, or (C) give to any owner, lessee or occupant of any other property or to any other person or entity any easement, right-of-way, or any other right over the Premises). Substantial Alterations shall be made in a good and workmanlike manner and otherwise in accordance with the requirements of the Lease.

(c) It shall be reasonable for the City to withhold approval of any proposed Alterations that are inconsistent with Legal Requirements, or the City's design standards for the Airport, or any other applicable standards or guidelines adopted from time to time by the City, provided such standards or guidelines are applied reasonably and consistently to similar improvements and with similar tenants at the Airport. Prior to commencing any proposed Alteration, Tenant shall submit to the City detailed plans and specifications showing such proposed Alteration that requires the City's consent as provided herein, and shall otherwise comply with the requirements of **Exhibit F**.

(d) Tenant shall reimburse the City for all actual out-of-pocket architectural and engineering expenses for architectural and engineering review reasonably incurred by the City in connection with its decision to grant or withhold consent to any proposed Tenant Work and inspect such Tenant Work to determine whether the same is being or has been performed in accordance with the terms of this Lease. Any Tenant Work for which consent has been received shall be performed substantially in accordance with the approved plans and specifications, and no material amendments or material additions to the plans and specifications shall be made without the prior written consent of the City in accordance with this Lease, which such consent shall not be unreasonably withheld or delayed.

(e) Tenant, at its expense, shall obtain all Required Approvals in accordance with Section 3.6 prior to Tenant's commencement and prosecution of any Tenant Work, and shall promptly deliver copies of the same to the City and cause the Tenant Work to be performed in compliance with all Legal Requirements and requirements of insurers of the Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workmanlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Premises that are being replaced.

(f) All costs associated with all Alterations and other Tenant Work shall be borne by Tenant.

(g) With respect to any Tenant Work, Tenant shall comply with the applicable requirements of Article III, Article VII, Article VIII, Article XIII, Article XVI, Article XVII and this Article VI.

6.3 Snow Removal; Waste Disposal and General Upkeep. Tenant, at its sole cost and expense, shall keep and maintain the Premises and areas adjacent thereto safe, secure, clean and sanitary (including without limitation, snow and ice clearance, planting and replacing landscaping), and in full compliance with all Legal Requirements.

6.4 Signs. Tenant's signs and all proposed changes to signs on or at the Premises, if any, shall be subject to review and approval by the City under its design review procedures for the Airport, as such may be modified from time to time, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, the City will not be considered unreasonable in disapproving proposed signage that (a) is inconsistent with any of the City's assurances to the FAA in grants or other agreements for the operation, development or planning of the Airport or, in the opinion of the City's Director of Aviation Operations, would constitute a safety hazard; (b) is inconsistent with the City's sign/design standards for the Airport, or any other applicable standards or guidelines, as may be adopted in the future, provided said standards or guidelines are applied consistently and fairly to similar improvements at the Airport; or (c) is for the purpose of advertising and not for identifying the Tenant.

6.5 Lighting. Tenant shall provide and maintain adequate lighting within and around the Premises, the adequacy of which shall be determined at the reasonable discretion of the City as applied consistently and fairly to similar improvements at the Airport.

6.6 Sustainability. Tenant shall also use reasonable efforts to implement commercially reasonable “sustainable best practices” in the maintenance and operation of the Premises, and City shall provide reasonable cooperation to Tenant in its implementation and approval of any such practices. In furtherance of the foregoing, Tenant agrees to use commercially reasonable efforts. Such efforts may include, without limitation, the use of environmentally preferable processes, products, and materials which do one or more of the following: (i) contain recycled material, are bio-based, are non-threatened species, or have other positive environmental attributes; (ii) minimize the consumption of resources, energy, or water; (iii) prevent the creation of solid waste, air pollution, or water pollution; and/or (iv) promote the use of non-toxic substances and avoid toxic materials or processes. Tenant has conducted a review of products, processes, and materials, and Tenant will continue to assess additional processes, products, and materials on an ongoing basis. If not required by Legal Requirements, Tenant is also encouraged to implement a recycling program.

## ARTICLE VII

### INSURANCE AND INDEMNITY

#### 7.1 Insurance Coverage Required for the Premises.

(a) The Tenant shall procure and maintain at all times, at Tenant’s own expense, the types of insurance specified below, with insurance companies having an AM Best rating of A- or better, financial size rating of IV or better or for those insurance companies not subject to AM Best’s rating, (a) an equivalent financial strength rating from S&P or (b) a similar nationally or internationally recognized reputation and responsibility, or as reasonably approved by the City, covering all operations under this Lease, performed by the Tenant. The kinds and amounts of insurance required are as follows:

(i) *Workers’ Compensation and Employer’s Liability Insurance*. Workers’ Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Lease with statutory limits. Such insurance shall include Employer’s Liability Insurance coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; \$1,000,000 disease-each employee. Coverage shall include other states endorsement, alternate employer and voluntary compensation, when applicable.

(ii) *Commercial General Liability Insurance (Primary and Umbrella)*. Commercial General Insurance or equivalent coverage with limits of not less than \$10,000,000 per occurrence for bodily injury (including death), personal injury and property damage liability, and in the aggregate for war risks and allied peril. Such insurance shall include but not be limited to: all premises and operations, products/completed operations, war risk and allied peril liability (including terrorism), liability for any auto (owned, non-owned and hired), explosion, collapse, underground, separation of insureds, defense, independent contractors (if commercially available), liquor liability and blanket contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City shall be named as an additional insured on the policy and coverage shall be at least as broad as that afforded the named insured. The additional insured coverage shall not have any limiting endorsement or language under the policy such as but not limited to, Tenant's sole negligence or the City's vicarious liability. The Tenant's insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by the City.

To the extent Tenant relies on excess or umbrella insurance to satisfy the requirements of this subsection (ii) or (iii), any such policy shall follow form and be no less broad than the underlying policy, shall cover the term of underlying policy without interruption, and shall include a drop down provision with no gap in policy limits.

(iii) *Automobile Liability Insurance (Primary and Umbrella).* When any motor vehicles are used in connection with work to be performed by or on behalf of the Tenant, the Tenant shall provide Automobile Liability Insurance with limits of not less than \$10,000,000 per occurrence combined single limit, for bodily injury and property damage for any auto including owned, non-owned or hired autos; provided, however, that Tenant may reduce the foregoing amount to \$1,000,000 per occurrence combined single limit so long as Tenant's Commercial General Liability Insurance or equivalent coverage includes excess auto liability. The City shall be named as an additional insured on a primary, non-contributory basis.

(iv) *All Risk Builders Risk Insurance.* When Tenant undertakes any construction at the Airport, including improvements, betterments or repairs, Tenant shall provide or cause Tenant's Contractor to provide All Risk Blanket Builder's Risk Insurance to cover the materials, equipment, machinery and fixtures that are or will be part of the Infrastructure. Coverage extensions shall include but not be limited to earthquake and flood.

(v) *All Risk Property Insurance.* All Risk Property Insurance shall be maintained at replacement cost valuation basis covering all loss, damage, or destruction to the Premises including improvements and betterments and property in the Tenant's care, custody and control. Coverage shall include but not limited to earthquake, flood, debris removal and business interruption and extra expense. The City shall be named as a loss payee, as its interests may appear.

The Tenant shall be responsible for all loss or damage to personal property owned, rented or used by the Tenant.

(vi) *Pollution Liability Insurance.* Pollution Liability Insurance shall be provided covering bodily injury, property damage, clean-up and other losses caused by pollution conditions or incidents including any Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material with limits of not less than \$5,000,000 per pollution condition or loss and \$5,000,000 annual aggregate. Coverage shall include but not be limited to: response to and remediation of new, preexisting, known and unknown on-site and off-site pollution conditions and incidents, emergency response costs, repairs, removals, abatement, corrective actions, transportation, contractual liability

and defense. When policies are renewed, the policy retroactive date shall coincide with or precede, start of work in connection with the Lease. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two (2) years. The City is to be named in the policy as an additional insured.

(b) Additional Requirements.

(i) *Evidence of Insurance.* The Tenant will furnish the Commissioner with original certificates of insurance (or copies thereof) and a copy of the additional insured endorsements, where applicable, evidencing the coverage required to be in force on the date of this Lease, and renewal certificates of insurance and additional insured endorsements, or such similar evidence (collectively, the "Evidence of Insurance"), if the coverages have an expiration or renewal date occurring during the term of this Lease. Tenant shall submit Evidence of Insurance prior to the Effective Date. The receipt of Evidence of Insurance does not constitute an agreement by the City that the insurance coverage required in this Lease has been fully met or the insurance policies indicated in the Evidence of Insurance are in compliance with all the Lease requirements. Failure of the City to obtain Evidence of Insurance from the Tenant showing compliance with this Section 7.1 is not a waiver by the City of any requirements for the Tenant to obtain and maintain the specified coverages. Tenant shall advise all insurers of the Lease provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect the Tenant for liabilities that may arise from or relate to the Lease. The City reserves the right to inspect complete, certified policy copies (or electronic copies thereof) of any required insurance at a mutually agreed location within the State of Illinois within ten (10) days of the City's written request.

(ii) *Failure to Maintain Insurance.* The insurance hereinbefore specified shall be carried during the Term. Failure to carry or keep such insurance in force shall constitute an Event of Default. To the extent there is such a failure, the City shall provide written notice thereof and Tenant shall have fifteen (15) business days to cure such failure, after which the City may exercise any of the City remedies under this Lease until proper evidence of insurance is provided.

(iii) *Notice of Cancellation, Material Change and Non-Renewal.* Tenant shall provide for thirty (30) days' advance notice to the City in the event coverage required in this Lease (except coverage for war and allied peril risk for which Tenant shall provide seven (7) days' advance notice or such other period as may be agreed by the parties) has been substantially changed, canceled, or non-renewed. Upon the earlier of Tenant's receipt of a cancellation notice for non-payment of premium or Tenant's knowledge thereof, Tenant shall provide immediate notice to the City of such cancellation or impending cancellation with Tenant's written plan for curing such non-payment and preventing non-payment of premiums thereafter.

(iv) *Insurance Required of Contractors, Affiliates and Sublessees.* In each contract with Tenant's Contractor, or any other consultant, contractor, affiliates and sublessees, the Tenant shall require such Tenant's Contractor, or other consultants, contractors, affiliates and sublessees to obtain insurance coverages to adequately cover

risks associated with any consultant, contractor, affiliate or sublessee that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract and standard in the industry within which such Tenant's Contractor, or other consultants, contractors, affiliates and sublessees practices. Such coverages shall insure the interests of the City, its employees, elected officials, agents and representatives including naming the City as an additional insured on an additional insured form acceptable to the City. Tenant is also responsible for ensuring that each Tenant's Contractor, or other consultants, contractors, affiliates and sublessees have complied with the required coverage and terms and conditions outlined in this Section 7.1(b). When requested by the City, the Tenant shall provide, or cause to be provided, to the City Evidence of Insurance acceptable in form and content to the City. The City reserves the right to inspect complete, certified policy copies (or electronic copies thereof) of any required insurance at a mutually agreed to location within the State of Illinois within ten (10) days of the City's written request. Failure of the Tenant's Contractor, or other consultants, contractors, affiliates and sublessees to comply with required coverage and terms and condition outlined herein will not limit Tenant's liability or responsibility hereunder.

(v) *No Limitation as to Tenants Liabilities.* The Tenant expressly understands and agrees that any insurance coverages and limits furnished by the Tenant shall in no way limit the Tenant's liabilities and responsibilities specified within this Lease or by applicable law.

(vi) *Waiver of Subrogation.* The Tenant waives and shall cause its insurers to waive, and the Tenant shall cause each of Tenant's Contractor, or other consultants, contractors, affiliates and sublessees, and each of Tenant's Contractor, or other consultants, contractors, affiliates and sublessees insurers, to waive, their respective rights of subrogation against the City Indemnified Parties for recovery of damages to the extent these damages are covered by the following insurance obtained by Tenant pursuant to this Agreement: (1) Workers' Compensation and Employer's Liability Insurance; (2) Commercial General Liability Insurance (primary and umbrella); (3) Automobile Liability Insurance; (4) All Risk Blanket Builder's Risk Insurance; and (5) All Risk Property Insurance. With respect to the waiver of subrogation for Workers' Compensation and Employer's Liability Insurance, Tenant shall obtain an endorsement equivalent to WC 00 03 13 to effect such waiver.

In the event the insurers of Tenant or insurers of any of Tenant's Contractor, or other consultants, contractors, affiliates and sublessees, should seek to pursue contribution or a subrogation claim against the City, the Tenant shall be responsible to pay all cost of defending such claims, including actual attorney's fees of counsel of the City's choosing subject to Section 7.2(g).

(vii) *Tenant Insurance Primary.* The Tenant expressly understands and agrees that any insurance or self-insurance programs maintained by the City shall apply in excess of and not contribute with insurance provided by the Tenant under this Lease. All insurance policies required of the Tenant under this Lease shall be endorsed to state that Tenant's insurance policy is primary and not contributory with any insurance carried by the City.

(viii) *Insurance Limits Maintained by Tenant.* If Tenant maintains higher limits than the minimum required herein, the City requires and shall be entitled to coverage for the higher limits maintained by the Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City as its interest may appear.

(ix) *Joint Venture or Limited Liability Company.* If Tenant is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

(x) *Other Insurance Obtained by Tenant.* If Tenant desires additional coverages, the Tenant shall be responsible for the acquisition and cost.

(xi) *Self-Insurance of Tenant.* The Tenant may not self-insure any portion of any limit of primary coverage required hereunder unless specifically permitted under this Section 7.1 or otherwise permitted by the City in extraordinary circumstances. It is understood that in any instance in which the Tenant is permitted to and chooses to self-insure a portion of the limit of primary coverage required hereunder, the Tenant, as a self-insurer, has the same duties and obligations to the City (e.g. obligation to provide a defense for covered claims) and to the City's liability insurer(s) as a primary liability insurer has to excess insureds and excess insurers under a standard ISO policy form even though the Tenant's self-insurance is not on a standard ISO form. For purposes of this subsection, self-insurance shall not be construed to include deductibles that apply on a per-occurrence basis.

(xii) *City's Right to Modify.* The City maintains the right, based on commercially reasonable standards, to modify, delete, alter or change these requirements with thirty (30) days prior written notice to the Tenant.

## 7.2 Indemnification.

(a) The Tenant agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, agents, employees, contractors, consultants and representatives (the "City Indemnified Parties"), to the maximum extent allowed by applicable statutes and case law, from and against any and all losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards and settlements (each individually a "Claim" and, collectively, "Claims"), including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property, arising out of or relating to:

(i) the tortious acts or omissions of (1) the Tenant, or (2) Tenant's employees, contractors, subcontractors, agents, licensees, affiliates, subtenants, vendors, invitees (excluding customers), any other person or entity that Tenant permits to use any portion of the Premises (regardless of whether Tenant enters into a sublease, assignment or license with such other party), and other parties under Tenant's direction or control that come onto the Airport arising out of or relating to Tenant's use or occupancy of the Premises (each an "Associated Party" and collectively, the "Associated Parties");

(ii) the Tenant's or its Associated Party's use or occupancy of the Airport in connection with its operations hereunder and the Premises;

(iii) the violation by the Tenant of this Lease, of any law, ordinance, regulation or court order affecting the Premises; or

(iv) suits of whatever kind or nature alleging violations of any federal or state laws as a result of any actions taken by the Tenant or its Associated Parties, or Tenant's failure to comply with obligations imposed upon the Tenant or its Associated Parties, pursuant to this Lease;

and the Tenant will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. To the extent City Indemnified Parties reasonably expend any cost and expense, including attorney fees, in investigating or responding to such claims, demands and suits, Tenant will reimburse the City Indemnified Parties for all such costs and expense, subject to Section 7.2(g) hereof.

(b) Without limiting the foregoing, the Tenant also agrees to defend, indemnify and hold harmless the City Indemnified Parties:

(i) from and against any and all claims or liability for compensation under any workers' compensation statute arising out of the injury or death of any employee of the Tenant. The Tenant shall cause its licensees and contractors to maintain in effect at all times workers' compensation insurance as required by law; and

(ii) from, and to assume all liability for, and to pay, all taxes and assessments for payment of which the City may become liable and which by law may be levied or assessed on the Premises occupied by the Tenant pursuant to this Lease, or which arise out of the operations of the Tenant or by reason of the Tenant's occupancy of the Premises. However, the Tenant may, at its own risk, cost and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit the Tenant to contest or appeal the same. The Tenant shall be responsible for obtaining bills for all of said taxes and assessments for which the Tenant is responsible directly from the taxing authority and shall promptly deliver to the City copies of receipts of payment. In the event the City receives any tax billings, it will forward said billings to the Tenant as soon as practicable.

(c) Without limiting the foregoing, the Tenant shall cause any of its contractors to agree to protect, defend, indemnify and hold the City Indemnified Parties free and harmless from and against any and all Claims including claims of property damage, injury or death, in consequence of granting the relevant Contract or arising out of or being in any way connected with the contractor's performance under this Lease except for matters shown by final judgment to have been caused by or attributable to the negligence of any City Indemnified Party to the extent prohibited by 740 ILCS 35/1 et seq. The indemnification provided herein shall be effective to the maximum extent permitted by applicable statutes. To the extent Tenant's

contractor fails to defend any and all claims, demands or suits against the City Indemnified Parties including claims by any employee, contractors, agents or servants of contractor even though the claimant may allege that a City Indemnified Party is or was in charge of the work or that there was negligence on the part of a City Indemnified Party, Tenant shall be responsible for such defense. To the extent City Indemnified Parties reasonably expend any cost and expense, including attorney fees, in investigating or responding to such claims, demands and suits, Tenant will reimburse the City Indemnified Parties for all such costs and expense, subject to Section 7.2(g). "Injury" or "damage," as such words are used in this Section 7.2 shall be construed to include injury, death or damage consequent upon the failure of or use or misuse by Tenant's contractor, such contractor's subcontractors, agents, servants or employees, of any scaffolding, hoist, cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by the City. Notwithstanding Tenant's obligation to cause any contractor to agree to the requirements set forth in this Section 7.2(c), Tenant's failure to cause its contractor to do so shall not constitute a breach hereof, provided that Tenant performs all such actions its contractor would have been required to perform under this Section 7.2(c), including indemnifying and defending the City, itself.

(d) The City shall notify the Tenant as soon as practicable of each Claim in respect of which indemnity may be sought by the City against the Tenant hereunder, setting forth the particulars of such Claim, and shall furnish the Tenant with a copy of all judicial filings and legal process and any correspondence received by the City related thereto.

(e) The City shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings related to any Claim against the City, provided that City shall bear the costs of its participation to the extent such participation is not in furtherance of City's defense of any such Claim. The City shall approve the terms of any settlement which requires the City to perform or refrain from performing any action *provided that* such approval will not be unreasonably withheld if a settlement includes a full and unconditional release for City Indemnified Parties.

(f) Without limiting the generality of any other provision hereof, the Tenant shall reimburse the City for the cost of any and all reasonable attorney's fees and investigation expenses and any other reasonable costs incurred by the City in the investigation defense and handling of said suits and claims and in enforcing the provisions of this Lease.

(g) Notwithstanding the provisions of this Section 7.2, in the event that the City and Tenant mutually agree or a court of competent jurisdiction determines by a final order that (a) a City Indemnified Party's negligence is at least fifty-one percent (51%), or (b) a City Indemnified Party's willful and wanton misconduct is any percentage of the total fault which proximately caused any Claims, Tenant's obligation to indemnify the City for amounts to be paid in connection with the Claims shall be limited to the amount attributable to Tenant's and its Associated Parties' proportionate share of the total fault which proximately caused the Claims. The City and Tenant agree, however, that this Section 7.2(g) is not intended to obviate or lessen in any way the Tenant's duty to defend the City Indemnified Parties; provided, however, that to the extent City and Tenant mutually agree or a court of competent jurisdiction rules that the Claims were the result of the sole negligent act or omission or the willful and wanton misconduct of a City Indemnified Party, the City shall reimburse Tenant for its proportionate share of the

costs of defense, including, but not limited to, attorneys' fees and court costs. For the avoidance of doubt, the City shall reimburse Tenant for all defense costs Tenant incurred with respect to defending the City Indemnified Parties against Claims to the extent that City and Tenant mutually agree or a court of competent jurisdiction rules that such Claims were the result of the sole negligent act or omission of a City Indemnified Party.

(h) Notwithstanding the provisions of this Section 7.2, the Tenant's indemnification obligations for Environmental Claims are set forth in Section 13.8.

(i) The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City or a City Indemnified Party that would exist at common law or under other provisions of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Lease.

(j) Subject to Section 7.2(g), Tenant shall be liable for any loss or damage to any personal property or equipment of Tenant, its agents, servants, employees, officials, or independent contractors.

(k) Tenant waives the right of contribution against the City Indemnified Parties, subject to Section 7.2(g), and subrogation against the City Indemnified Parties.

(l) This Section 7.2 shall survive expiration or early termination of this Lease. The Tenant understands and agrees that any insurance protection furnished by the Tenant pursuant to Section 7.1 shall in no way limit the Tenant's responsibility to indemnify and hold harmless the City under the provisions of this Lease.

## ARTICLE VIII

### USE OF PREMISES

8.1 Permitted Uses. Tenant may use the Premises only for vehicular parking for non-City employees working at the Airport and other supportive uses reasonably necessary and/or associated with Tenant's operation of the Premises for such vehicular parking (collectively, "Permitted Uses"). In conjunction with Tenant's use of the Premises, Tenant shall not: (i) cause substantial noise, vibration, fumes, debris, electronic interference, or other nuisance on or adjacent to the Premises; (ii) create any condition that is a safety hazard; or (iii) unreasonably interfere with Airport operations. Without limiting the generality of any other provision of this Lease, in connection with its operations hereunder, Tenant shall not, without the City's consent: (a) operate any automobile or vehicle rental business; (b) offer storage of merchandise for sale or consumption aboard aircraft; (c) use any portion of the Premises for parking for passengers or customers of the Airport; or (d) use any portion of the Premises for the installation or operation of any antennae, satellite dish or other system for third party transmission, reception or relay of voice or data unless otherwise approved by the City. Tenant shall comply with FAA regulations and applicable City policies pertaining to the use of any such electronic communication equipment. Tenant agrees that it will not rent to or permit the use of space by third parties wanting to place cellular sites on the Premises except in conformance with all applicable City

policies and guidelines. The payment of all applicable fees for such use shall be considered Additional Rent hereunder.

8.2 Prohibited Uses.

(a) Without limiting the provisions of Section 8.1, Tenant shall not use or occupy the Premises or any part of the Premises, and neither permit nor suffer the Premises, to be used or occupied, for any of the following (collectively, "Prohibited Uses"):

- (i) for any unlawful or illegal business, use or purpose;
- (ii) for any use which is a public nuisance; or
- (iii) in such a manner as may make void or voidable any insurance then in force with respect to the Premises.

(b) Promptly upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to immediately discontinue such business or use, or compel discontinuance of such business or use.

8.3 Airport Conditions. The following covenants, agreements, and restrictions shall apply to Tenant's use and occupancy of the Premises, which covenants, agreements, and restrictions shall run with the land, for the benefit of the City and its successors and assigns in the ownership and operation of the Airport:

(a) Tenant shall neither construct nor permit to stand on the Premises any Infrastructure, trees, or other object, whether natural or otherwise, in violation of FAR Part 77, or which would otherwise interfere with the use and operation of the Airport;

(b) Tenant's use of the Premises shall be compatible with noise levels associated with the operation of the Airport; and

(c) Tenant shall not knowingly or negligently undertake, or knowingly or negligently permit, any activity that could create a potential for attracting birds or other wildlife that may pose a hazard to aircraft operations at the Airport.

8.4 No Waste. Tenant shall not injure, overload, deface or strip, or cause waste or damage (other than reasonable wear and tear) to, the Premises or the underlying fee or any part thereof, nor commit any nuisance or unlawful conduct; nor permit the emission of any objectionable noise or; nor make any use of the Premises that is improper or offensive; nor permit or suffer any Associated Party to do any of the foregoing.

8.5 Legal Requirements. Throughout the Term, Tenant, at its expense, shall promptly comply with, and shall require all Associated Parties to promptly comply with, all present and future laws, ordinances, orders, rules, procedures, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers (including all reasonable and nondiscriminatory rules, procedures, requirements and regulations that do not conflict with the terms hereof or increase the burdens of Tenant hereunder, currently effective

and hereinafter amended, adopted or established by the City, collectively, "Airport Rules"), foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises, or to the use or manner of use of the same, whether or not such law, ordinance, order, rule, procedure, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises (collectively, "Legal Requirements", which shall be deemed to include, without limitation, all Laws, Airport Rules and Environmental Laws). Tenant shall, in the event of any violation or any attempted violation of this Section 8.5 by Tenant or its Associated Parties on or at the Premises, take steps, promptly upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same, as the case may be.

8.6 Compliance with Insurance Requirements. Throughout the Term, Tenant, at its expense, shall observe and comply with, and shall cause its Associated Parties to comply with, the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises if such observance or compliance is required by reason of any condition, event or circumstance arising after the commencement of the Term. Tenant shall, without limiting any other requirements of this Lease, in the event of any violation or any attempted violation of the provisions of this Section 8.6 by any Associated Party, take all reasonable steps, promptly upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

8.7 Manager; Availability of Employee for Entry. Throughout the Term, the management, maintenance and operation of the Tenant's business at the Premises shall be under the supervision and direction of an active, qualified, competent and experienced manager who shall at all times be subject to the direction and control of the Tenant. The Tenant shall assign such manager, or cause such manager to be assigned, a duty station or office at the Premises, and such manager shall be available during regular business hours to allow the City access to the Premises. The Tenant shall at all times during the absence of such manager provide the names and telephone numbers of at least two (2) employees who can be contacted in the event of an emergency at the Premises. Further, the Tenant shall, at all times during the Term, have an employee authorized to make decisions for the Tenant available at the Premises or who may be contacted immediately by telephone or other communication to permit the City timely entry onto the Premises or locked areas where required or permitted under this Lease.

## ARTICLE IX

### DAMAGE OR DESTRUCTION

9.1 Restoration Required. If any part of the Premises shall be partially damaged by fire or other casualty, but said circumstances do not render the Premises incapable of being used or occupied by Tenant for the Permitted Uses, Tenant shall give prompt written notice thereof to the City. Except as otherwise provided in this Article IX, Tenant shall, at Tenant's sole cost and expense, and without regard to the coverage, amount, or availability of proceeds of any insurance, restore, repair, replace, rebuild, or alter the Premises as nearly as possible to its condition immediately prior to such damage or destruction, all in conformity with and subject to the design and construction requirements of this Lease. Such restorations, repairs, replacements,

rebuilding or alterations shall be commenced as soon as practicable following the occurrence of such damage or destruction and shall thereafter be prosecuted continuously to completion with diligence. No abatement of Rent shall accrue to Tenant so long as the Premises remains capable of being used or occupied by Tenant for the Permitted Uses.

9.2 No Surrender or Abatement. Except as otherwise provided in this Article IX, no destruction of or damage to the Infrastructure on the Premises or any part thereof, or upon any portion of the Land upon which the Infrastructure or any part thereof are located, nor any damage to Tenant's equipment, fixtures, or other personal property installed or used in or on the Premises, by fire or any other casualty, whether or not insured, shall permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay the full Rent and other charges payable under this Lease or from any of its other obligations under this Lease. Except as otherwise provided in this Article IX, Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Premises, or any part thereof, or to any suspension, diminution, abatement or reduction of Rent on account of any such destruction or damage.

9.3 Conditions for Termination of Lease. Notwithstanding anything to the contrary contained in this Article IX, if at any time during the Term (a) more than twenty-five percent (25%) of the then current insurable value of the Infrastructure (excluding excavations and foundations) shall be damaged or destroyed by fire or other casualty, (b) Tenant has provided property insurance coverage to the full extent required in this Lease, (c) the proceeds thereof are made available by the applicable insurance carrier or the insurance carrier has acknowledged in writing its liability to pay proceeds under the applicable policy and has not raised any defenses to payment thereof or Tenant has agreed to fund such amount, and (d) Tenant notifies the City of its election within sixty (60) days of such damage or destruction to terminate this Lease, then this Lease shall terminate as follows, provided the following conditions are met: (i) Tenant shall pay to the City, or as otherwise directed in writing by the City, the property insurance proceeds (or, if applicable, assign to the City Tenant's right to receive property insurance proceeds) in the amount required to be insured hereunder, plus all proceeds of insurance for the City's loss of Rent, if any, and the amounts of any deductibles or permitted self-insurance retentions with respect to such insurance, (ii) if the City elects in its sole discretion, Tenant shall, prior to the effective date of termination, at its expense, subject to reimbursement from available insurance proceeds, tear down and remove all parts of the damaged Infrastructure then remaining and the debris resulting from such destruction, or shall otherwise clean up and restore the Premises to a clean and safe condition, free and clear of any and all liens and encumbrances, and (iii) within ten (10) days after the completion of said clean-up and restoration, Tenant shall surrender to the City possession of the Premises and shall pay (A) to the City, any Rent then due to the City accruing to the date of said surrender to the extent not yet paid, in addition to the amounts described in clause (i) above, and (B) all other amounts required of Tenant under this Lease, to the extent then owing and not yet paid, whether paid to the City or otherwise, adjusted through the date of surrender.

## ARTICLE X

### TAKING

10.1 Award. In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between the City, Tenant and those authorized to exercise such right (any such matters being herein referred as a "Taking"), the City and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their interests hereunder. Each party so participating shall pay its own expenses therein.

10.2 Termination. If at any time during the Term, there shall be a Taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the date of such Taking, and the Rent hereunder due and outstanding at the time of the Taking shall be paid to the date of such Taking. For the purpose of this Article X, "substantially all of the Premises" shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Infrastructure to allow Tenant's feasible operation thereof, as reasonably determined by Tenant. If there is a Taking resulting in the termination of this Lease as above provided, the rights of the City and Tenant with respect to the award shall be as follows:

(a) First, to the payment of the costs, fees and expenses incurred by the City and Tenant in connection with the collection of the award;

(b) Second, equal priority, to the City and to the Tenant, an amount equal to the value of the City's interest in the Premises determined as if this Lease had not terminated as a result of such Taking, and to Tenant, an amount equal to the fair market value of Tenant's leasehold interest determined if this Lease had not terminated as a result of such Taking; and

(c) Third, to the City, all remaining proceeds, if any.

The City shall also receive any separate award made by the Taking authority for the consequential damages to the City and diminution in value of the portion of the Land that is not taken, and Tenant shall receive any separate award made by the Taking authority for Tenant's relocation.

No such termination of this Lease under this Section 10.2 shall release Tenant from any obligation hereunder for Rent accrued or payable for or during any period prior to the effective date of the Taking, and any prepaid Rent, taxes and insurance premiums beyond the effective date of such termination shall be adjusted and paid or reimbursed to the party entitled thereto. This provision shall survive termination of this Lease under this Section 10.2.

10.3 Partial Taking. If a portion of the Premises is so taken, then this Lease shall terminate as to the portion of the Premises so taken upon the date of the Taking, but this Lease shall continue in full force and effect as to the remainder of the Premises provided that such portion can meet the operational needs of the Tenant, but the amount of Fixed Rent shall be equitably adjusted based on the portion of the Premises so taken. The award on account of such Taking shall be applied and paid as provided in Section 10.4.

10.4 Restoration. In the event of a Taking that does not result in the termination of this Lease pursuant to Section 10.2:

(a) Tenant shall, promptly after such Taking and at its expense, restore the Infrastructure to complete architectural units, and shall be entitled to so much of the proceeds of the Taking award as are reasonably necessary to perform such restoration and shall apply the same to the cost of restoration (which sum is hereinafter sometimes referred to as the “cost of restoration”). If the proceeds of the Taking award shall be insufficient to defray the cost of restoration, Tenant shall only be required to restore the Premises up through the cost of the Taking award.

(b) After restoration, any portion of the Taking award in excess of the cost of restoration, and equal to the value of the portion of the Land taken unencumbered by this Lease, shall be paid to the City. All remaining proceeds, if any, shall be divided between the City and Tenant in proportion to the amount the diminution in value of the City’s interest in the Premises bears to the amount of diminution in value of the Tenant’s leasehold interest as a result of such Taking, determined, in each case, in accordance with generally accepted appraisal principles.

10.5 Temporary Taking. If the whole or any part of the Premises shall be the subject of a temporary Taking, this Lease shall remain in full force and Tenant shall continue to pay in full the Rent payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive any award so made for the period of the temporary Taking which is within the Term. If such temporary Taking shall extend beyond the expiration or earlier termination of this Lease, Tenant shall then pay to the City a sum equal to the cost of performing any obligations required of Tenant by this Lease with respect to the surrender of the Premises.

10.6 City’s Power of Eminent Domain. Nothing in this Lease shall limit the eminent domain power of the City.

## ARTICLE XI

### ASSIGNMENT AND SUBLEASE OF PREMISES

11.1 Assignment and Sublet. Except as otherwise specifically provided herein:

(a) Except as set forth in Section 11.1(b), Tenant (including any sublessee or other occupant of the Premises) shall not, without the City’s prior written consent, which consent may be withheld in the City’s sole discretion, (i) assign the Lease or Tenant’s leasehold interest in the Premises (including a Leasehold Mortgage); (ii) sublet the Premises or any portion thereof; or (iii) permit the use or occupancy of the Premises or any part thereof, for any purpose other than a Permitted Use or by anyone other than Tenant. In no event shall the Lease be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall the Lease or any rights or privileges thereunder be an asset of Tenant under any bankruptcy, insolvency, or reorganization proceedings.

(b) Tenant may, with the prior written consent of the City, which consent shall not be unreasonably withheld, allow a transfer of the Premises (or any part thereof), the Lease or Tenant’s interest therein by operation of law, under the following conditions:

(i) transferee shall assume all rights and obligations under the Lease, including for the payment of all Rent and for the payment, performance, and observance of Tenant's other obligations and agreements under this Lease;

(ii) Tenant is not in default under the Lease at the time of giving notice thereof or on the effective date of such transfer;

(iii) Tenant delivers to the City copies of all documents relating to such transfer; and

(iv) As applicable, the transferee must provide disclosure in compliance with Chapter 2-154 of the Municipal Code of Chicago.

(c) Proceeds Rent shall be due and owing in accordance with Section 4.3 from the date of any assignment by Tenant, and Percentage Rent shall be due and owing in accordance with Section 4.4 of this Lease from the date of any sublease of the Premises.

(d) Any attempted assignment or transfer in violation of this Section 11.1 shall be void.

11.2 Leasehold Mortgages. Tenant, and its successors and assigns, shall not have the right to obtain Financing which will be secured by a Leasehold Mortgage:

(a) at any time during which any debt issued by the City for the construction, renovation, operation and/or maintenance of the Premises is outstanding; or

(b) if there is no debt issued by the City for the construction, renovation, operation and/or maintenance of the Premises outstanding, then without the City's prior written approval, which approval by the City may be conditioned and/or withheld in its sole discretion. Such Financing shall be subject to the following:

(i) In no event shall the fee interest in the Premises or any Rent be subordinate to any Leasehold Mortgage.

(ii) Once the City has provided its prior written consent pursuant to Section 11.1 hereof, Tenant shall provide the City with written notice of such Leasehold Mortgage of the Premises at least thirty (30) days prior to the closing of any such transaction.

(iii) Tenant covenants to pay all amounts when due, and to perform all obligations, under any Leasehold Mortgage made pursuant to this Section 11.2, and agrees to pay all expenses incurred by the City, including reasonable attorneys' fees, in connection with any Financing of such a Leasehold Mortgage or review of documents in connection with a proposed Financing, whether or not such transaction closes.

(iv) The making of a Leasehold Mortgage under this Section 11.2(b) shall not be deemed to constitute an assignment, nor shall any leasehold mortgagee under such a Leasehold Mortgage not in possession of the Premises be deemed an assignee of the leasehold estate created hereby, so as to require such leasehold mortgagee to assume the obligations of

Tenant hereunder, but a leasehold mortgagee in possession and the purchaser at any sale of the leasehold estate created hereby upon foreclosure of a Leasehold Mortgage given in accordance with this Section 11.2(b), or the assignee of Tenant's interest under this Lease pursuant to an assignment in lieu of such foreclosure, shall be deemed to be an assignee of Tenant (but no consent by the City to such assignment or transfer shall be required) and shall be deemed to have assumed all rights and obligations of Tenant under this Lease from and after the date of taking possession or of such purchase or assignment. If a leasehold mortgagee who is deemed to have assumed the obligations of Tenant hereunder thereafter assigns its interest in this Lease to an assignee who assumes all obligations of Tenant hereunder, such leasehold mortgagee, upon compliance by such assignee with Legal Requirements related to the assignment, shall be relieved of the obligations of Tenant arising after such assignment and assumption. A conditional assignment of Tenant's interest in this Lease to a leasehold mortgagee as security for a Leasehold Mortgage granted in accordance with this Section 11.2(b) shall not constitute an assumption of liability by the leasehold mortgagee of Tenant's obligations hereunder until the date of such leasehold mortgagee's taking of possession pursuant to the exercise of its rights under such conditional assignment.

## ARTICLE XII

[INTENTIONALLY OMITTED]

## ARTICLE XIII

### HAZARDOUS MATERIALS AND OTHER ENVIRONMENTAL MATTERS

#### 13.1 Definitions.

For purposes of this Lease, the following definitions will apply to environmental matters:

(a) *Reserved*

(b) "*Initial Environmental Conditions Walk-Through*" or "*Initial Walk-Through*" shall mean a physical walk-through of the Premises by a representative or consultant of City and Tenant prior to the date Tenant occupies the Premises or conducts operations thereon pursuant to this Lease, for the purpose of observing the environmental condition of the Premises and Tenant's state of compliance with Environmental Laws, the findings of which shall be documented in a report prepared by such City representative or consultant in consultation with Tenant.

(c) "*Concluding Environmental Conditions Walk-Through*" or "*Concluding Walk-Through*" shall mean a physical walk-through of Tenant's Premises or any portion thereof by a representative or consultant of the City and Tenant prior to the date that such Premises are vacated or surrendered pursuant to this Lease, for the purpose of observing the environmental condition of the Premises or any portion thereof and Tenant's compliance with Section 13.2(k), the findings of which shall be documented in a report prepared by such City representative or consultant in consultation with Tenant.

(d) “*Contaminant*” shall mean any of those materials set forth in 415 ILCS 5/3.165, as amended from time to time, that are subject to regulation under any Environmental Law.

(e) “*Discharge*” shall mean an act or omission by which Hazardous Substances or Other Regulated Material, now or in the future, are leaked, spilled, poured, deposited, or otherwise disposed into land, wetlands or Waters, or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run or otherwise enter said land, wetlands or Waters.

(f) “*Dispose*”, “*Disposal*” or “*Disposing*” and variants thereof means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any Hazardous Substance or Other Regulated Material into or on any land or water so that such Hazardous Substance or Other Regulated Material or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(g) “*Environmental Claim*” shall mean any demand, cause of action, proceeding, or suit (a) for damages (actual or punitive), injuries to person or property, taking or damaging of property or interests in property without just compensation, nuisance, trespass, damages to natural resources, fines, penalties, interest, or (b) for losses, or for the costs of site investigations, feasibility studies, information requests, health or risk assessments, contribution, settlement, or actions to correct, remove, remediate, Respond to, clean up, prevent, mitigate, monitor, evaluate, assess, or abate the Release of a Hazardous Substance or Other Regulated Material, or any other investigative, enforcement, cleanup, removal, containment, remedial, or other private or governmental or regulatory action at any time threatened, instituted, or completed pursuant to any applicable Environmental Law, or (c) to enforce insurance, contribution, or indemnification agreements being made pursuant to a claimed violation or non-compliance with any Environmental Law.

(h) “*Environmental Indemnities*” shall have the meaning set forth in Section 13.8.

(i) “*Environmental Law(s)*” shall mean any Federal, state, or local law, statute, ordinance, code, rule, permit, plan, regulation, license, authorization, order, or injunction which pertains to health, safety, any Hazardous Substance or Other Regulated Material, or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.* (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*; the Gasoline Storage Act, 430 ILCS 15/0.01 *et seq.*; the Sewage and Waste Control Ordinance of the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”); the Municipal Code of the City of Chicago; and any other local, state, or

federal environmental statutes, and all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

(j) “*Hazardous Substance*” has the meaning set forth in 415 ILCS 5/3.215, as amended from time to time.

(k) “*NPDES*” shall mean the National Pollutant Discharge Elimination System.

(l) “*Other Regulated Material*” shall mean any Waste, Contaminant, or any other material, not otherwise specifically listed or designated as a Hazardous Substance, that is or contains: petroleum, including crude oil or any fraction thereof, motor fuel, jet fuel, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas, asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or is a hazard to the environment or to the health or safety of persons.

(m) “*Release*” or “*Released*” shall mean, any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, Discharging, injecting, escaping, leaching, dumping, or Disposing of any Hazardous Substance or Other Regulated Material into the environment.

(n) “*Response*” or “*Respond*” shall mean action taken in compliance with Environmental Laws to correct, remove, remediate, clean-up, prevent, mitigate, treat, monitor, evaluate, investigate, assess, or abate the Release of any Hazardous Substance or Other Regulated Material, or to prevent or abate any public nuisance.

(o) “*Waste*” includes those materials defined in the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* as waste and identified subcategories thereof, including but not limited to, construction or demolition debris, garbage, household waste, industrial process waste, landfill waste, landscape waste, municipal waste, pollution control waste, potentially infectious medical waste, refuse, or special waste.

(p) “*Waters*” has the meaning set forth in 415 ILCS 5/3.550, as amended from time to time.

### 13.2 Tenant Representations, Warranties and Covenants.

Tenant represents, warrants, and covenants the following:

(a) Tenant has obtained and throughout the Term shall regularly maintain and timely update all applicable licenses, permits, registrations and other authorizations and approvals required under Environmental Laws, and shall provide any notices required under Environmental Laws, for conducting its operations at the Premises during the Term of this Lease. Tenant shall ensure that its Associated Parties obtain, maintain and update all applicable licenses, permits, registrations and other authorizations required by Environmental Laws pertaining to its and their use of and operations at the Premises.

(b) Tenant shall comply and shall ensure that its Associated Parties comply, with all applicable Environmental Laws pertaining to its and their use of and operations at the Premises.

(c) Tenant shall not conduct its operations at the Premises during the Term of this Lease in such a manner so as to cause, unlawfully allow or contribute to, and shall ensure that its Associated Parties do not cause, unlawfully allow or contribute to:

(i) any Release, Discharge or Disposal of any Hazardous Substance or Other Regulated Material at the Premises, unless authorized by an Environmental Law;

(ii) any violation of any applicable Environmental Law as a result, in whole or in part, of the use by or operations of Tenant or its Associated Parties at the Premises;

(iii) any Release, Discharge or Disposal in violation of any applicable Environmental Law which is a contributing cause of City exceeding any terms, conditions or effluent limits of any NPDES permit or individual storm water discharge permit issued to City, Multi-Sector General Permit, Municipal Separate Storm Sewer System permit, or any applicable federal or State of Illinois effluent limitation guideline, or standard of the MWRD;

(iv) any Release, Discharge or Disposal to the soil or Waters at, underlying, or adjacent to the Premises in violation of any applicable Environmental Laws; or

(v) any emissions to the air in violation of any applicable Environmental Law that results in an exceedance of an applicable emission standard at the Airport or of any terms or conditions of any Tenant air permit.

(d) Tenant shall, and shall ensure that its Associated Parties, handle, use, store, Dispose of, transport, or otherwise manage any Hazardous Substance or Other Regulated Material at the Premises during the Term in a lawful manner. Without limiting the foregoing, Tenant shall not conduct, and shall ensure that its Associated Parties do not conduct, any operations or activities involving the use or application of ethylene glycol, propylene glycol, or any other substance at the Premises except in accordance with all applicable Environmental Laws and in compliance with any applicable policies and practices as may be adopted by City in consultation with Tenant.

(e) Tenant shall be, and shall ensure that its Associated Parties are, responsible for the proper transportation and Disposal of all Hazardous Substances or Other Regulated Material generated by Tenant or its Associated Parties, or resulting from Tenant's use, activities, and operations, at the Premises during the Term, including those activities and operations conducted by its Associated Parties. In such cases, in the event a signature as "generator" is required on waste manifests, waste profile sheets or generator's certifications of non-special waste, Tenant shall ensure that either Tenant or its appropriate Associated Party(ies) signs such documents. Tenant shall be responsible for the proper removal, transportation, and Disposal of Hazardous Substances or Other Regulated Material confiscated by the Transportation Security Administration ("TSA") or the City, but only with respect to the Premises.

(f) Tenant shall be, and shall ensure that its Associated Parties are, responsible for the maintenance of any structural controls (above-ground or below-ground), as defined below, used to treat sanitary sewer waste and storm water runoff operated by Tenant or its Associated Parties on the Premises during the Term. Maintenance frequencies for structural controls shall be established by the Tenant in a reasonable manner in accordance with industry standards and applicable Environmental Law to ensure effective operation of such controls and to prevent failures of such controls that could result in the Discharge, Release or Disposal of pollutants in violation of any applicable Environmental Law. Tenant shall ensure that environmental records required to be kept by applicable law, including the O'Hare Storm Water Pollution Prevention Plan, are maintained on-site for a period of three (3) years, unless a different document retention requirement is provided by applicable law. Structural controls to be maintained shall include, but not be limited to: oil/water separators (both storm and sanitary sewer), grease traps, sand traps, diversion valves, shut-off valves, storm sewer drain filters, trench drains, catch basins, rain gardens, and retention/holding ponds and any other structural controls specifically listed on **Exhibit E** to this Lease as the maintenance responsibility of the Tenant. Tenant shall remove and properly Dispose of any Waste in said designated structural controls maintained by Tenant prior to vacating the Premises. The structural controls for which Tenant is responsible for maintaining as of the date of this Lease are listed on **Exhibit E**, which list may be modified by agreement of the Parties to reflect construction/commissioning or demolition/decommissioning of structural controls. To the extent any portion of a structural control identified on **Exhibit E** extends outside of the boundary of the Premises onto City-owned property, Tenant shall have a nonexclusive right to access and use the City-owned property encompassing and adjacent to the identified structural control, for purposes of carrying out Tenant's obligations and responsibilities under this section 13.2.

(g) Tenant shall be, and shall ensure that its Associated Parties are, responsible for the maintenance of air pollution control equipment, if any, required by any applicable Environmental Law operated by Tenant or its Associated Parties on the Premises during the Term. If applicable, maintenance frequencies for such air pollution control equipment shall be established by Tenant in a reasonable manner in accordance with industry standards, the provisions of applicable air permits and applicable Environmental Law to ensure effective operation of such equipment and to prevent failures of such equipment that could result in the emission of pollutants in violation of any applicable Environmental Law. If applicable, Tenant shall ensure that environmental records required to be kept by applicable law are maintained on-site for a period of three (3) years, unless a different document retention requirement is provided by applicable law. If applicable, the air pollution control equipment units to be maintained shall include, but not be limited to: scrubbers, filters, adsorbers, condensers, precipitators and other equipment, in each case to the extent such equipment is specifically listed on **Exhibit E** to this Lease as the maintenance responsibility of the Tenant. Tenant shall remove and properly Dispose of any Waste in said designated air pollution control equipment, if any, operated by Tenant prior to vacating the Premises. The air pollution control equipment, if any, for which Tenant is responsible as of the date of this Lease is listed on **Exhibit E**, which list may be modified by agreement of the Parties to reflect construction/commissioning or demolition/decommissioning of air pollution control equipment.

(h) If Tenant or its Associated Parties cause, unlawfully allow or contribute to a Release, Discharge or Disposal of a Hazardous Substance or Other Regulated Material at the

Premises in violation of any applicable Environmental Law that is above any applicable reportable quantity, emission standard or effluent guideline set forth in any applicable Environmental Law including the O'Hare Spill Response Guide, Tenant shall report such Release, Discharge or Disposal to the appropriate governmental authorities in compliance with applicable Environmental Law, including the O'Hare Spill Response Guide. Tenant shall ensure that its Associated Parties report any Release or Discharge in violation of any applicable Environmental Law to the appropriate governmental authorities, in compliance with applicable Environmental Law, if the operations of said third party cause, unlawfully allow or contribute to a Discharge or Release of a Hazardous Substance or Other Regulated Material in violation of any applicable Environmental Law that is above any reportable quantity set forth in any applicable Environmental Law.

(i) Tenant acknowledges that City is subject to certain NPDES permits, state and federal storm water regulations, federal and state effluent limitation guidelines, and MWRD standards for operations at the Airport. Tenant shall conduct operations and activities at the Premises, including but not limited to construction, and shall ensure that its Associated Parties conduct operations and activities at the Premises in compliance with applicable Environmental Laws. Tenant acknowledges that its reasonable cooperation is necessary to ensure Airport's compliance with any applicable NPDES storm water permits and effluent limitation guidelines under Environmental Laws. Tenant shall minimize the exposure to storm water of materials generated, stored, handled, or used by Tenant or its Associated Parties at the Premises including Hazardous Substances or Other Regulated Material, by implementing and requiring implementation of certain written "Best Management Practices" as defined by and required under Environmental Laws, and shall make them available to City upon reasonable request. Tenant further acknowledges that any effluent limitation guidelines in any NPDES storm water discharge permit issued to City and timely provide to Tenant applicable to the Tenant are incorporated by reference into this Lease to the extent affecting Tenant's operations at or use of the Premises or operations or activities conducted on its behalf at the Premises, or necessitating Tenant's reasonable cooperation to assure City's compliance therewith. City shall provide advance notice to Tenant of and a reasonable opportunity to comment on, and shall otherwise endeavor to negotiate reasonable and cost effective terms and conditions of any permits issued to City which may affect Tenant's operations at or use of the Premises or operations or activities conducted on its behalf at the Premises, or which may necessitate Tenant's reasonable cooperation to assure City's compliance therewith.

(j) Tenant or its Associated Parties shall cooperate with City, as reasonably requested from time to time by City, to ensure that Tenant's operations at or use of the Airport will not unreasonably interfere with City's implementation of its Chicago O'Hare International Airport Wildlife Hazard Management Plan to reduce wildlife hazards at the Airport.

(k) Tenant, prior to vacating or surrendering any portion of the Premises for any reason, shall:

(i) remove and Dispose of any and all trash, debris or Waste generated by Tenant or its Associated Parties;

(ii) remove any and all above-ground containers and non-permanent structural controls owned by Tenant or its Associated Parties, including, but not limited to, removable filters, grates and above-ground tanks located on Tenant's Premises, if any, unless Tenant and City agree otherwise; and

(iii) comply with applicable Environmental Laws regarding the closing or removal from service of any underground or aboveground tanks, vessels, and containers operated or owned by Tenant or its Associated Parties and located on the Premises.

(l) Tenant understands and acknowledges that certain of its and City's future capital projects at the Premises may require review or approval by the FAA or the United States Environmental Protection Agency ("USEPA") or the Illinois Environmental Protection Agency ("IEPA"), pursuant to requirements imposed upon the Airport or City. If requested by City, Tenant shall reasonably cooperate with City in its preparation of such submittals as are required of City by FAA, USEPA, or IEPA, or their successor agencies, in connection with Tenant's future capital projects or in connection with City capital projects which benefit Tenant.

(m) Tenant shall, and shall ensure that its Associated Parties, dispose of Hazardous Substances or Other Regulated Material in accordance with applicable Environmental Laws. Tenant shall, and shall ensure that its Associated Parties, employ properly permitted disposal facilities. Upon the City's reasonable request, the Tenant shall make available for City inspection documents relating to disposal activities of Tenant or its Associated Parties and/or the disposal facilities employed.

### 13.3 Right of Entry to Perform Environmental Inspections and Sampling.

(a) City and its contractors and other agents shall have the full right to enter any part of the Premises, at all reasonable times and in City's sole discretion, for the purpose of conducting an inspection, assessment, investigation, regular inspection, or regulatory compliance audit of Tenant's operations thereon, or any other party's use and operations, including operations of Tenant's Associated Parties. City and its authorized agents may take samples and perform tests as needed, including but not limited to soil borings, ground water monitoring, and collection of samples of air, soil, water, groundwater, Hazardous Substances or Other Regulated Material Releases, and Discharges, at City's expense. City will provide seventy-two (72) hours' advance written notice of any City inspection, assessment, investigation, regular inspection, or regulatory compliance audit of Tenant's operations thereon, or any other party's use and operations, including operations of Tenant's Associated Parties or intrusive City sampling to Tenant, except in emergencies, when advance notice shall not be required. Tenant shall have the right to accompany City when any such inspection or sampling is performed, provided that City is not required to unreasonably delay its inspection or sampling to enable Tenant to be present. Tenant shall have the right to obtain, at Tenant's expense, split samples, and City shall promptly provide copies of all analytical results of such sampling, including any non-privileged reports.

(b) Tenant shall cooperate, and shall ensure that its Associated Parties cooperate, in allowing prompt, reasonable access to City to conduct such inspection, assessment, audit, sampling, or tests. In the exercise of its rights under this Section, City shall not unreasonably interfere with the authorized use and occupancy of the Premises by Tenant or Tenant's

Associated Parties. Tenant remains solely responsible for its environmental, health, and safety compliance, notwithstanding any City inspection, audit, or assessment.

#### 13.4 Information to be provided to City.

(a) If Tenant receives any written notice, citation, order, warning, complaint, claim or demand regarding Tenant's use of, or operations at, the Premises during the Term that is not legally privileged, made confidential by applicable law, or protected as trade secrets:

(i) concerning any alleged Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material by Tenant or by its Associated Parties;

(ii) alleging that Tenant or any of its Associated Parties is the subject of an Environmental Claim or alleging that Tenant or any Associated Party is, or may be, in violation of any Environmental Laws; or

(iii) asserting that Tenant or any such third party as identified in subsection (i) and (ii) above is liable for the cost of investigation or remediation of a Release or Discharge;

Tenant shall promptly, but not later than five (5) business days after Tenant's receipt, inform City in writing of same, including a copy of such notice received by Tenant.

(b) Tenant shall simultaneously provide to City copies of its submittals of any non-privileged reports or notices required under Environmental Laws to any governmental agency regarding:

(i) Tenant's or its Associated Parties' alleged failure to comply with any Environmental Laws at the Premises, or

(ii) any Release or Discharge arising out of the past or present operations at or use of the Premises pursuant to this Lease.

(c) In connection with any matter arising under Section 13.4(a) above, Tenant shall make available, within ten (10) business days of Tenant's receipt of City's written request, subject to document retention requirements provided by applicable law, the non-privileged documents that Tenant has submitted to any governmental agency pertaining to the environmental compliance status of Tenant's operations at or use of the Premises, including without limitation any and all non-privileged records, permits, permit applications, test results, sample results, written or electronic documentation, studies, or other documentation regarding environmental conditions or relating to the presence, use, storage, control, Disposal, or treatment of any Hazardous Substance or Other Regulated Material by Tenant or its Associated Parties at the Premises.

#### 13.5 Tenant's Environmental Response and Compliance Obligations.

(a) Without limiting the indemnity obligations of Section 13.8, if during the Term Tenant or any of its Associated Parties causes, unlawfully allows or contributes to a Release,

Discharge, or Disposal of a Hazardous Substance or Other Regulated Material (including, but not limited to those which contaminate or pollute any air, soil, Waters, storm sewer, detention basin, other stormwater infrastructure, or conveyance system) in violation of any applicable Environmental Law that is above any applicable reportable quantity, emission standard or effluent guideline set forth in an applicable Environmental Law including the O'Hare Spill Response Guide, at any portion of the Premises or adjacent Waters, in connection with their operations at the Premises, Tenant shall perform or cause to be performed, consistent with the provisions of Section 13.6, the following:

(i) notify the O'Hare Communications Center ("OCC") of such Release, Discharge, or Disposal as required by and in accordance with the O'Hare Spill Response Guide and applicable Environmental Laws;

(ii) report such Release, Discharge, or Disposal to appropriate governmental agencies as required by and in accordance with applicable Environmental Laws;

(iii) promptly Respond to the Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material, as required by applicable Environmental Laws;

(iv) promptly take all further actions required under Environmental Laws to abate any threat to human health or the environment;

(v) promptly undertake any further removals, remediation, or corrective actions as are required by Environmental Laws or a governmental agency exercising its authorized regulatory jurisdiction under Environmental Laws, to remedy any such Release, Discharge or Disposal of a Hazardous Substance or Other Regulated Material, and any resulting impacts; and

(vi) promptly obtain documentation of the approval of the closure of such Release, Discharge, or Disposal from the governmental agency(ies) with regulatory jurisdiction as such may be issued under Environmental Laws, and provide such documentation to City.

(b) Any remedial or other activity undertaken by Tenant under this Article shall not be construed to impair Tenant's rights, if any, to seek contribution or indemnity from any person, consistent with the terms and limitations of this Lease, including Section 13.8, below.

(c) Tenant shall not be responsible under this Section 13.5 for a Discharge, Release, or Disposal to the extent caused by an Air Carrier that Tenant is compelled to accommodate pursuant to Preferential Use Rules and Procedures.

### 13.6 Investigation, Remediation, or Corrective Action Process.

Before commencing any subsurface soil, surface water, stormwater, or groundwater investigations, removals, remediation, or corrective actions that Tenant or Tenant's Associated Parties are required to perform at the Premises under this Lease, including any such actions mandated in Section 13.5, and except for immediate removal actions required by Environmental Laws and otherwise undertaken pursuant to Section 13.5, Tenant shall promptly provide any

proposed plans for such investigations, removals, remediation, or corrective actions to City for approval in accordance with applicable Environmental Laws, which shall not be unreasonably withheld or conditioned. The work shall be performed in a diligent manner consistent with the time(s) prescribed by Environmental Laws and relevant governmental authorities and at Tenant's expense, and City shall have the right to review and inspect all such work at any time using consultants and representatives of City's choice, at City's expense. Specific cleanup levels for any environmental removals, remediation, or corrective actions shall comply with applicable Environmental Laws, with commercial and industrial remediation standards being applied to such actions consistent with the use of the Premises for such purposes. Tenant may also utilize institutional controls and other engineered barriers as part of any removals, remediation or corrective actions to the extent authorized by Environmental Laws and approved by the City in writing, which shall not be unreasonably withheld. In the event deed recordation by the City is necessary for the utilization of commercial and industrial remediation standards or other controls as part of any removals, remediation or corrective actions or any other costs and expenses are incurred in connection with the use of such standards or controls Tenant shall reimburse the City for all deed recordation fees and reasonable attorneys' fees incurred in connection with such recordation. Tenant shall, at Tenant's own cost and expense, have all tests performed, and reports and studies prepared, and shall provide such information to any governmental agency as may be required by applicable Environmental Laws, with a copy simultaneously provided to City. This obligation includes but is not limited to any requirements for a site characterization, site assessment, remediation objectives report, remedial action plan, and remedial action completion report that may be necessary to comply with applicable Environmental Laws.

13.7 City's Rights to Ensure Tenant Compliance with Environmental Response and Compliance Obligations.

(a) If, as is reasonably determined by City, Tenant, Tenant's Associated Parties:

(i) do not take appropriate Response actions required by applicable Environmental Laws in response to a Release, Discharge or Disposal for which it is responsible under Section 13.5, within the time(s) prescribed by such Environmental Law(s) and relevant governmental authorities; or

(ii) do not perform or complete reporting, notifications, investigations, removals, remediation, corrective actions, or closure actions for which it is responsible under Section 13.5 within the time(s) prescribed by applicable Environmental Laws and relevant governmental authorities, or within the time reasonably necessary to enable City to meet its obligations under Environmental Laws (subject to the condition that, in the case of both Section 13.7(a)(i) and (ii) above, City must first provide reasonable advance written notice to Tenant of Tenant's failure to comply with such obligations and a reasonable opportunity for Tenant to cure such failure to comply by Tenant initiating or recommencing any such actions consistent with required schedules (including exercising its legal right to reasonably and in good faith challenge such alleged obligation to comply), but in any event not to exceed forty-five (45) days, except in emergency circumstances in which such advance notice is not possible),

then City or its authorized contractor, in addition to its rights and remedies described elsewhere in this Lease and otherwise available at law, in equity, or otherwise, may, at its election, upon reasonable notice, enter the affected area, and take whatever action City reasonably deems necessary to meet Tenant's obligations under Environmental Laws, within the time required under such Environmental Laws, consistent with the requirements of Section 13.5. In addition to notice and opportunity to cure as set forth in Section 13.7(a)(ii) above, City shall provide Tenant with its plan to perform such work for Tenant's review and comment at least seven (7) business days before the commencement of such work, which comments shall be reasonably considered by the City, except in emergency circumstances where such advance notice is not possible. Such action taken by City consistent with the requirements of this this Lease shall be at Tenant's expense plus administrative expenses of the greater of five hundred dollars (\$500.00) or 25% of all costs incurred by City, including but not limited to reasonable attorneys' and consultants' fees and expenses, monetary fines and penalties, litigation costs or costs incurred in anticipation of litigation, expert witness fees, and expenses of investigation, removal, remediation, or other required plan, report, or Response action performed in accordance with applicable Environmental Laws.

(b) Except as set forth in Section 13.7(c), below, if City cannot identify with commercially reasonable effort any of the parties causing, unlawfully allowing, contributing to or responsible for a Release, Discharge, or Disposal at or from the Premises requiring the completion of appropriate Response actions as provided in Section 13.5(a), then City shall provide reasonable advance written notice to Tenant of its intention to take actions, to the extent of Tenant's obligations for such actions as provided in Section 13.5(a), to report, repair, contain, investigate, remove, correct or remediate such Release, or Discharge, or Disposal consistent with the requirements of Section 13.5. Tenant shall thereafter be afforded a reasonable opportunity (not to exceed forty-five (45) days) to commence such actions or provide City with information on the identity of the party or parties causing, contributing to, or responsible for such Release, Discharge, or Disposal, which information shall be considered in good faith by City and, as appropriate, shall provide a basis for City's pursuit of any responsible parties consistent with the provisions of Section 13.7(a). In addition to the above written notice, City shall provide Tenant with its plan to perform such actions for Tenant's review and comment at least seven (7) business days before the commencement of any work (except in emergency circumstances in which such advance notice is not possible), which comments shall be reasonably considered by City, after which the costs of such actions, if implemented by City, shall be recovered as a City operating and maintenance or a capital cost, as appropriate.

(c) In the event a Release, Discharge, or Disposal in violation of Environmental Law which occurred prior to the Effective Date is encountered on any portion of Premises, Tenant shall be presumed to be responsible for all costs incurred in connection with such impacts, including investigation, removal, remediation, or other required plan, report, or Response action, unless and to the extent Tenant provides clear evidence demonstrating that another party is responsible or that the Release, Discharge or Disposal occurred prior to the date of its occupancy at the Premises.

(d) Nothing in this Section is intended or shall be construed so as to prevent City or Tenant from exercising, in their reasonable discretion, any rights granted or available elsewhere in this Article, in this Lease, or by law.

13.8 Environmental Indemnification and Reimbursement.

(a) Notwithstanding any other provision to the contrary, Tenant agrees to indemnify, defend, and hold harmless City, its past and present elected and appointed officials, officers, agents and employees (“Environmental Indemnitees”) from and against any and all Environmental Claims resulting from:

(i) the breach by Tenant of any representation or warranty made in this Article; or

(ii) the failure of Tenant to meet its obligations under this Article, whether caused or unlawfully allowed by Tenant or any third party under Tenant’s direction or control; or

(iii) documented loss by any Environmental Indemnitee(s) from any Environmental Claim, to the extent caused, unlawfully allowed or contributed to by the unauthorized Release, Discharge, or Disposal of a Hazardous Substance or Other Regulated Material by Tenant or by its Associated Parties or the failure of Tenant or any Associated Party to comply with applicable Environmental Laws in connection with the operations of Tenant or its Associated Parties at the Premises used by Tenant in connection with this Lease, during the Term;

(b) Notwithstanding the provisions of this Section 13.8, in the event that the City and Tenant mutually agree or a court of competent jurisdiction determines by a final order that an Environmental Indemnitee’s negligence or willful and wanton misconduct is at least fifty-one percent (51%) of the total fault which proximately caused the Environmental Claims, Tenant’s obligation to indemnify the Environmental Indemnitee for amounts to be paid in connection with the Environmental Claims shall be limited to the amount attributable to Tenant’s and its Associated Parties’ proportionate share of the total fault which proximately caused the Environmental Claims. The City and Tenant agree, however, that this Section 13.8(b) is not intended to obviate or lessen in any way the Tenant’s duty to defend the Environmental Indemnitees; provided, however, that to the extent City and Tenant mutually agree or a court of competent jurisdiction rules that the Environmental Claims were the result of the sole negligent act or omission or the willful and wanton misconduct of an Environmental Indemnitee, the City shall reimburse Tenant for its proportionate share of the costs of defense, including, but not limited to, attorneys’ fees and court costs. For the avoidance of doubt, City shall reimburse Tenant for all defense costs Tenant incurred with respect to defending the City Indemnified Parties against Claims to the extent that City and Tenant mutually agree or a court of competent jurisdiction rules that such Claims were the result of the sole negligent act or omission of a City Indemnified Party.

(c) City shall provide Tenant with prompt notice of any Environmental Claims to allow Tenant the opportunity to properly and effectively respond to or otherwise defend such Environmental Claims. Tenant shall, at its own cost and expense, defend all Environmental Claims whether frivolous or not. In the event City undertakes any action, including but not limited to investigations, removals, remediation, or corrective actions with respect to any Environmental Claims in response to the failure of Tenant to defend such Environmental Claims

as Tenant deems appropriate in its reasonable judgment, Tenant shall reimburse City, upon written demand by City, for all reasonable and documented costs that City incurs in association with such action, including but not limited to consultants' fees, contractors' fees, reasonable attorneys' fees, and expenses of investigation, removal, Response, remediation, or corrective action.

(d) Except to the extent set forth in Section 13.8(b) above, Tenant waives the right of contribution and subrogation against the Environmental Indemnitees in connection with Environmental Claims set forth in Section 13.8(a) and (c), above.

(e) Regardless of the date of termination of this Lease, the indemnifying party's representations, obligations and liabilities under this Article shall continue as long as the indemnified party bears any liability or responsibility under this Article or the Environmental Laws.

(f) Any claims for environmental matters shall be subject to this Section 13.8 and shall not be subject to the indemnification provisions set forth in Section 7.2 of this Lease.

13.9 Limitations. Except pursuant to Section 13.7(b) and (c), Tenant's obligations under this Article shall not apply to: (a) any Release, Discharge or Disposal of Hazardous Substances or Other Regulated Materials that existed at the Premises prior to Tenant's or its corporate predecessor(s)'s initial occupancy or operations at such area(s) of Release, Discharge or Disposal of Hazardous Substances or Other Regulated Materials at the Premises, provided that neither Tenant or its corporate predecessor(s) nor any other party under Tenant's or its corporate predecessor(s)'s direction or control, or conducting operations or activities on its or their behalf caused, unlawfully allowed or contributed to such Release, Discharge or Disposal of Hazardous Substances or Other Regulated Materials, or caused, unlawfully allowed or contributed to a subsequent Release, Discharge or Disposal of such pre-existing Hazardous Substances or Other Regulated Materials; or (b) Releases, Discharges or Disposal that migrate onto, into, or from the Premises or the Airport and that were not caused, unlawfully allowed or contributed to by Tenant or its corporate predecessor(s) or third parties under Tenant's or its corporate predecessor(s)'s direction or control or conducting operations or activities on its or their behalf; or (c) Releases, Discharges or Disposals on, at, or from the Premises not caused, unlawfully allowed or contributed to by Tenant or its corporate predecessor(s) or by its or their Associated Parties, or any other party under Tenant's or its corporate predecessor(s)'s direction or control.

#### 13.10 Initial Environmental Walk-Through.

Prior to Tenant's initial occupancy of, use of, or operations at the Premises, City shall have the opportunity to perform, at its own expense, an Initial Walk-Through of the Premises regarding the environmental condition of the Premises and its state of compliance with Environmental Laws and produce an Initial Walk-Through report. City shall provide Tenant with an opportunity to participate in the walk-through and review and comment upon the conclusions and findings of the Initial Walk-Through report. In the event pre-existing environmental conditions are encountered, the provisions of Section 13.5 shall apply, except that the provision in Section 13.5(a) limiting Tenant's obligations to incidents during the Term shall not apply.

13.11 Concluding Environmental Walk-Through. At least sixty (60) days prior to vacating or surrendering the Premises or any portion of them for any reason, Tenant shall provide City with access to perform a Concluding Walk-Through in order to determine the environmental condition of the Premises or that part of the Lease Premises being vacated, and their state of compliance with the requirements of Section 13.2(k). City shall provide Tenant with an opportunity to participate in the walk-through. If the Concluding Walk-Through reveals that Tenant has not removed all trash, containers, tanks, structures, debris, residue, and other items, materials and Waste for which Tenant or anyone operating on its behalf is responsible as required by Section 13.2(k), or has otherwise failed to comply with the requirements of Section 13.2(k), City will share its Concluding Walk-Through report and any relevant photographs with Tenant. Tenant will remove or correct any items to the extent not in compliance with the requirements of Section 13.2(k) within five (5) business days of receipt of said report and photographs, or such longer period of time as reasonably requested by Tenant to perform the corrective actions. The parties agree that leased facilities and equipment being surrendered or vacated shall be left by Tenant in a state of good repair. However, tanks, structures and other items and materials owned by Tenant may revert to City upon agreement of the parties, with City accepting such tanks, structures and other items and materials in an "as is, where is" condition.

13.12 Tenant Hazardous Substance-Related Equipment and Fixtures. Any fixed tanks, pumps, chemical or Hazardous Substance or Other Regulated Material containers, pipelines, lines, and equipment or other such fixtures installed by or on behalf of Tenant shall at all times remain the property of Tenant, and ownership of or responsibility for such equipment shall not pass to City by virtue of such equipment being installed at the Premises, except pursuant to the agreement of the City and the Tenant. No such equipment shall be installed without the written consent of City. The list of structural controls in Section 13.2(f), **Exhibit E**, and/or air pollution control equipment in Section 13.2(g), **Exhibit E**, above, if applicable, shall be amended by agreement of the parties to reflect such installation.

13.13 Waiver. Any waiver of any provision of this Article, or any delay by City in the enforcement of any right hereunder, shall neither be construed as a waiver, nor create an expectation of non-enforcement of that or any other provision or right. In order to be effective, any waiver of any right, benefit, or power hereunder must be in writing and signed by an authorized representative of City, it being intended that no waiver shall be implied by City's conduct or failure to act. Any specific written waiver shall be applicable only to the particular facts and circumstances thereby addressed and shall not be of any effect with respect to future events, even if any of said future events involve substantially similar circumstances. Any remedies provided for in this Article shall be cumulative and in addition to, and not in lieu of, any other remedies available to City elsewhere in this Lease, at law, in equity, or otherwise.

13.14 Notice. With respect to those provisions of this Article which expressly require City to provide written notice to Tenant, electronic mail to the designated Tenant representative will satisfy such requirement. The parties' addresses for environmental notices shall be:

If to the City:

Chicago Department of Aviation  
P.O. Box 66142  
10510 West Zemke Road  
Chicago, IL 60666  
Attn: Commissioner  
Electronic Mail Address:  
CDACommissioner@cityofchicago.org

With a copy to:

Corporation Counsel City of Chicago  
30 North LaSalle Street, 9th Floor  
Chicago, IL 60602  
Attn: Deputy Corporation Counsel for Aviation  
Electronic Mail Address:  
CDAGeneralCounsel@cityofchicago.org

And a copy to:

Chicago Department of Aviation  
P.O. Box 66142  
10510 West Zemke Road  
Chicago, IL 60666  
Attn: Deputy Commissioner of Environment  
Electronic Mail Address:  
CDADeputyEnvironment@cityofchicago.org

If to Tenant:

[INSERT ADDRESS/PHONE INFO]

With a copy to:

[INSERT ADDRESS/PHONE INFO]

And a copy to:

[INSERT ADDRESS/PHONE INFO]

13.15 Survival of Environmental Provisions.

Unless specifically stated elsewhere herein, the provisions of this Article, including the representations, warranties, covenants and indemnities of Tenant, are intended to and shall survive the expiration or earlier termination of this Lease.

**ARTICLE XIV**

**SECURITY DEPOSIT**

14.1 Delivery and Use of Security Deposit. If there is an Event of Default under Section 15.2(a) more than twice within any twelve (12) month consecutive period at any time during the Term, Tenant shall provide to the City within sixty (60) days of the date of the City's third notice pursuant to Section 18.5 of such Event of Default under Section 15.2(a), and the City's written demand a security deposit equal to the total Fixed Rent that was payable for the three (3) months immediately prior to the date of such third notice of Event of Default (the "Security Deposit"). The Security Deposit shall be in the form of a surety bond the terms of

which are acceptable to the City or a letter of credit meeting the requirements set forth in Section 14.2 to secure Tenant's performance and observance of Tenant's obligations under this Lease. The City may deduct from the Security Deposit an amount equal to: (A) any sums payable pursuant to Section 15.2(a); (B) all reasonable sums that the City expends as the result of an Event of Default; and (C) an amount equal to the City's reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by the City, together with reasonable out-of-pocket costs and expenses incurred by the City, upon the occurrence of an Event of Default.

#### 14.2 Terms; Letter of Credit.

(a) For a Security Deposit in the form of a letter of credit, such letter of credit shall be an irrevocable commercial standby letter of credit for the amount of the Security Deposit in form and substance reasonably acceptable to the City that meets the following criteria:

- (i) the letter of credit shall provide for its continuance for at least one year from issuance and for automatic extension for additional periods of at least one year from initial expiry date and each subsequent expiry date, unless the issuer of the letter of credit gives the City notice of its intention not to renew such letter of credit not less than sixty (60) days before such expiry date (a "Nonrenewal Notice");
- (ii) the letter of credit shall be payable upon the City's presentation of the original of such letter of credit together with a sight draft to the issuer, accompanied by the City's signed statement that the City is entitled to draw on such letter of credit without further notice to the Tenant and hold the proceeds thereof;
- (iii) the letter of credit shall be issued by a commercial bank reasonable satisfactory to the City which maintains a branch in Chicago, Illinois for presentment for payment:
  - (1) that is chartered under the laws of the United States or any state thereof, or the District of Columbia;
  - (2) that is insured by the Federal Deposit Insurance Corporation;
  - (3) whose long-term, unsecured and unsubordinated debt obligations are rated by at least two of Fitch Ratings Ltd. ("Fitch"), Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Ratings Services ("S&P") or their respective successors (the "Rating Agencies") with ratings of not less than A- from Fitch, A3 from Moody's and A- from Standard & Poor's (the "Long-Term LC Issuer Requirements"); and
  - (4) whose short-term rating from at least two Rating Agencies is not less than F2 from Fitch, P-2 from Moody's and A-2 from S&P (the "Short-Term LC Issuer Requirements" and, together with the Long Term LC Issuer Requirements, the "LC Issuer Requirements").

(iv) If at any time the LC Issuer Requirements are not met, or if the financial condition of such issuer changes in any other materially adverse way, as determined by the City in its sole discretion, then Tenant shall within five (5) days of written notice from the City deliver to the City a replacement Letter of Credit which otherwise meets the requirements of this Lease and that meets the LC Issuer Requirements (and Tenant's failure to do so shall, notwithstanding anything in this Lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid five-day period).

(b) The Letter of Credit shall remain in effect until the date which is thirty (30) days after the Term. If Tenant shall hold over possession of the Premises pursuant to Section 15.8 hereof, then Tenant shall ensure that the Letter of Credit is extended to cover a period which is not less than thirty (30) days after the expiration of any holdover period.

(c) The City shall consent to reduce or release such letter of credit when and as this Lease would entitle Tenant to any reduction or release of the Security Deposit.

14.3 Use of Letter of Credit. If any of the following occurs, then the City may draw upon the balance of the letter of credit in an amount equal to the aggregate amount of the Security Deposit this Lease then requires: (A) the issuer delivers (i) a Nonrenewal Notice or (ii) notice that such issuer no longer intends to maintain a branch in Chicago, Illinois, provided that in either case (i) or (ii) Tenant fails to deliver a replacement letter of credit that complies with this Lease within thirty (30) days after Tenant receives notice of the occurrence of (i) or (ii) (for purposes of which, the parties shall reasonably cooperate to facilitate the simultaneous exchange of the old letter of credit for the new letter of credit); (B) the happening of any instance in which the criteria set forth in Section 14.2(a) are not met; (C) if the remaining term of the letter of credit is at any time less than thirty (30) days, but Tenant has not delivered an extension or renewal of such letter of credit for at least one year; or (D) the City transfers this Lease to a third party (or pledges it to a fee mortgagee) and (i) the issuer of the letter of credit does not consent to and cooperate as necessary to effectuate the transfer of the letter of credit to such third party (or its fee mortgagee), at no cost to the City (or its fee mortgagee), or (ii) Tenant fails to deliver a replacement letter of credit for the benefit of such third party within thirty (30) days after Tenant receives notice of the effective date of such transfer.

14.4 Assignment by the City. If the City transfers (as collateral or otherwise) its interest in this Lease, then the City shall transfer the Security Deposit to such transferee (as collateral or otherwise). Upon such transfer, the City shall be automatically freed and relieved from all liability for the return of the Security Deposit, provided that (a) such transferee assumes by written agreement with Tenant all of the City's past, present, and future obligations regarding the Security Deposit; and (b) the City notifies Tenant of such transferee and the name and address of such transferee. Without limiting the generality of the foregoing, this paragraph shall apply to every transfer of the Security Deposit to a successor of the City. The City (and its successors and assigns) shall in no event be bound by any assignment, encumbrance, attempted assignment, or attempted encumbrance of the Security Deposit in violation of this Section 14.4.

14.5 No Assignment by Tenant. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit, except in connection with an assignment of this Lease that complies with this Lease.

## ARTICLE XV

### SURRENDER, DEFAULT AND REMEDIES

#### 15.1 Surrender.

(a) Tenant shall on the last day of the Term, or upon any earlier termination of this Lease (such date being the "Termination Date"), quit and peacefully surrender and deliver up the Premises, including the Infrastructure and all other improvements to the Premises, to the possession and use of the City without delay and in good condition and repair, and in accordance with the terms and provisions of Article 13 of this Lease, ordinary wear and tear, and damage due to fire or other casualty, condemnation, or the negligence or willful misconduct of the City or another City Indemnified Party excepted. Tenant shall remove all personal property (including without limitation, if requested by the City, any underground storage tanks installed by Tenant or its Associated Parties on the Premises) and trade fixtures (including all equipment), if any, of Tenant from the Premises prior to the date of termination or earlier expiration of this Lease, and shall repair any damage to the Premises caused by Tenant's removal thereof. All such removal and repair required of Tenant pursuant to this Section 15.1 shall be at Tenant's sole cost and expense. If Tenant fails to remove any items required to be removed by it hereunder, or fails to repair any resulting damage, prior to or within thirty (30) days after termination or earlier expiration of this Lease, then the City may remove said items and repair any resulting damage, and Tenant shall pay the cost of any such removal and repair, together with interest thereon at the Default Rate from and after the date such costs were incurred until the City's receipt of full payment therefor. Upon or at any time after the expiration or earlier termination of this Lease, the City may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises, and may have, hold and enjoy the Premises and the right to receive all income from the same.

(b) Tenant shall not remove any permanent improvements constructed on the Premises, including without limitation any fixtures (other than trade fixtures that have been installed by Tenant for Tenant's specific use of the Premises, if any) without the City's prior written permission.

(c) Upon written request by the City made no later than six (6) months prior to the end of the Term, Tenant shall return the Premises to the original condition of the Premises on the Term Commencement Date, in conformance with and/or to the extent permitted by applicable Environmental Laws, including but not limited to stormwater requirements, erosion control requirements and requirements relating to the maintenance of engineered barriers.

15.2 Events of Default. If any one or more of the following events (each, "Event of Default") shall happen:

(a) If default shall be made in the due and punctual payment of any Rent or other sums payable under this Lease or any part thereof, when and as the same shall become due and payable, and such default shall continue for a period of five (5) business days after notice from the City to Tenant specifying the items in default; or

(b) If Tenant shall fail to maintain insurance as required by Article VII, and such default shall continue for a period of five (5) business days after notice from the City to Tenant, subject however, to the City's right to cure such default prior to the expiration of such five (5) business day cure period, the cost of which shall be reimbursed by Tenant; or

(c) If Tenant fails to promptly update the economic disclosures furnished in connection with this Lease, as required and in accordance with Section 2-154-020 of the Municipal Code of Chicago, when such information or responses contained in its economic disclosures are no longer complete or accurate; or

(d) The default of Tenant under any lease agreement, indemnity agreement, or other agreement Tenant may presently have or may enter into with the City during the Term of this Lease which involves criminal, fraudulent, or deceitful acts, and failure to cure said default within any applicable cure period as set forth in any such lease agreement, indemnity agreement or other agreement (if any cure period is available). Tenant agrees that in case of an Event of Default under this Lease for similar causes and failure to cure such default within ten (10) business days after notice from the City to Tenant, the City also may declare a default under any such other agreements; or

(e) If the Premises shall be abandoned, deserted, or vacated by Tenant, it being understood that the Premises shall be deemed abandoned, deserted, or vacated if the Infrastructure is not operated on the Premises for a period of thirty (30) consecutive days for any reason other than a Force Majeure Event or the process of restoration following a casualty or taking (which restoration requires more than thirty (30) days to be completed); or

(f) If Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors, or if there shall be initiated against Tenant any such proceedings which are not dismissed within ninety (90) days; or

(g) If default shall be made by Tenant in the performance of or compliance with any of the agreements, terms, covenants or conditions in this Lease, other than those referred to in paragraphs (a) through (f) of this Section 15.2, for a period of thirty (30) days after notice from the City to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, Tenant fails to proceed within such thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with diligence and to cure such default within one hundred eighty (180) days after notice of the default;

then, and in any such event, the City at any time thereafter shall have the right to (A) for any monetary Event of Default, deduct from the Security Deposit or draw on the Letter of Credit

such amounts to make the City whole, or (B) give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice, and upon the date specified in such notice this Lease and the Term thereby demised and all rights of Tenant under this Lease shall expire and terminate, unless prior to the date specified for termination the Event or Events of Default shall have been cured, and Tenant shall remain liable as hereinafter provided, and the Premises shall become the property of the City without the necessity of any deed or conveyance from Tenant to the City. Tenant agrees upon request of the City to promptly execute and deliver to the City any deeds, releases or other documents deemed necessary by the City to evidence the vesting in the City of the ownership of all structures, alterations, additions and improvements.

15.3 Relet. At any time or from time to time after any termination, the City may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term), on such conditions (which may include commercially reasonable concessions or free rent and alterations of the Premises) and for such uses as the City, in its good faith discretion, may determine, and may collect and receive the rents therefor. The City shall, nevertheless, undertake good faith efforts to relet the Premises in order to mitigate damages, but City shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

15.4 City's Right To Perform Tenant's Covenants.

(a) Performance by the City. If Tenant shall at any time beyond the expiration of any applicable cure or grace periods provided under this Lease fail to pay any Imposition as defined in and in accordance with the provisions of Article V hereof, or to take out, pay for, maintain or deliver any of the Evidence of Insurance as provided for in Article VII hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed, then the City may, but shall be under no obligation to:

(i) pay any Imposition payable by Tenant pursuant to the provisions of Article V hereof, or

(ii) take out, pay for and maintain any of the insurance policies provided for in Article VII hereof, or

(iii) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided.

The City may enter upon the Premises (after two (2) days' notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

(b) Reimbursement. All sums so paid by the City and all reasonable costs and expenses incurred by the City, including reasonable attorneys' fees and expenses, in connection with the performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by the City of such cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to the City on demand. If

the City shall exercise its rights under paragraph (a) of this Section 15.4 to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the City shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such Additional Rent to the City upon demand. Any costs of the City pursuant to this Section 15.4(b) as a result of a default by Tenant of Section 6.1 shall be recoverable by the City as Additional Rent at a rate of 125% of the costs for such work performed by the City. All costs incurred by the City hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

(c) Entry. During the progress of any work on the Premises which may under the provisions of this Section 15.4 be performed by the City, the City may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment, provided that such activity does not disrupt Tenant's operations. The City shall not be liable for inconvenience, annoyance, or disturbance, subject to the conditions in the preceding sentence, by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby.

15.5 Additional Remedies. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to the City the Rent and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term in the absence of such expiration or termination, shall be liable to the City for, and shall pay to the City, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Rent and charges that would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting after deducting all the City's reasonable expenses actually incurred in good faith in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorneys' fees, alteration costs, and expenses of preparation for such reletting. Tenant shall pay such current damages (herein called "deficiency") to the City on the date(s) on which the Rent would have been payable under this Lease if this Lease were still in effect, and the City shall be entitled to recover from Tenant each deficiency as the same shall arise. At any time after any such expiration or termination, in lieu of collecting any further deficiencies as aforesaid, the City shall be entitled to recover from Tenant, and Tenant shall pay to the City, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the value of the excess of the Rent reserved hereunder for the unexpired portion of the Term over the then fair and reasonable rental value of the Premises for the same period (subject to the limitations on use of the Premises set forth herein), minus any such deficiencies for such period previously recovered from Tenant and discounted to present value in accordance with generally accepted accounting principles.

15.6 No Waiver. No failure by either the City or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such

agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the City or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the City or Tenant of any breach shall constitute a waiver of any other, or subsequent, breach or in any way affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

15.7 Injunctive Relief. In the event of any breach by Tenant or the City of any of the agreements, terms, covenants or conditions contained in this Lease, the non-breaching Party shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other available remedies not provided for in this Lease.

15.8 Holdover. In the event of continued occupancy by Tenant of all or any portion of the Premises after the Termination Date without the express prior written approval of the City, Tenant shall pay Rent for the Premises at 125% for the first sixty (60) days and 150% thereafter of the annual rate of the Rent last payable. No occupancy by Tenant after the expiration or earlier termination of this Lease shall be construed to extend the Term. In addition, in the event that Tenant's holdover continues for sixty (60) days or longer, Tenant shall also be liable for any and all damages, consequential as well as direct, sustained by the City by reason of Tenant's continued occupancy of the Premises, or any portion thereof, from and after the expiration or earlier termination of this Lease (provided, Tenant shall have no liability for consequential damages hereunder unless the City first provides Tenant with not less than thirty (30) days' written notice that the City has identified either a third party tenant for, or a necessary surrender date for, the Premises, or any portion thereof, and Tenant continues such holding over beyond the date set forth in such notice). Any holding over shall constitute a lease from month to month on the same terms and conditions as this Lease, including payment of the Rent as set forth herein.

15.9 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

## ARTICLE XVI

### NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS

16.1 Non-Discrimination. Tenant acknowledges that the City has given to the United States of America, acting by and through the FAA, certain assurances with respect to non-discrimination required by Title VI of the Civil Rights Act 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252), 49 CFR Part 21, 49 CFR § 47123, 28 CFR § 50.3 and other acts and regulations

relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (“DOT”) (collectively, and including all amendments thereto, the “Acts and Regulations”) as a condition precedent to receiving Federal financial assistance from FAA for certain Airport programs and activities. The City is required under the Acts and Regulations to include in this Lease, and Tenant agrees to be bound by, the following covenants and requirements:

(a) Tenant, for itself, its assignees and successors in interest, covenants and agrees that it shall assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA. In the event of Tenant’s breach of any of the above Non-discrimination covenants, the City shall have the right to terminate this Lease.

(b) Tenant, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations such that no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities.

(c) In the event of Tenant’s breach of any of the Non-discrimination covenants described in subsection (b), above, the City shall have the right to terminate this Lease, and to enter, re-enter and repossess the Premises and the facilities thereon, and hold the same as if this Lease had never been made or issued. This subparagraph (c) shall not become effective until the procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

(d) Tenant, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that (i) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (iii) Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

(e) In the event of Tenant’s breach of any of the Non-discrimination covenants described in subsection (d), above, the City shall have the right to terminate this Lease, and to enter or re-enter and repossess the Premises and the facilities thereon, and hold the same as if this Lease had never been made or issued. This subparagraph (e) shall not become effective until the applicable procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

(f) Tenant shall include these subsections (a) through (f), inclusive, in Tenant's licenses, permits and other instruments relating to the Premises, and shall require that its licensees, permittees and others similarly include these statements in their licenses, permits and other instruments relating to the Premises.

16.2 Affirmative Action. Tenant assures that: (a) it shall undertake an affirmative action program as required by the City, and by all federal and state laws, rules and regulations pertaining to Civil Rights (and any and all amendments thereto), including, without limitation, 49 CFR Part 21 and 49 U.S.C. § 47123, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the benefits of the program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section 16.2 in Tenant's contracts and other applicable documents under this Lease, and shall require that its contractors and others similarly include these statements in their subcontracts and applicable documents.

## ARTICLE XVII

### OTHER REQUIREMENTS

17.1 Contract Requirements. Without limiting the provisions of Section 8.1 of this Lease, Tenant shall, at its sole cost and expense, at all times observe and comply, and shall require for all Tenant Work that Tenant's Contractor, and all other of its consultants, contractors, and subcontractors (including, without limitation, requiring the inclusion or incorporation by reference of such requirements in all of Tenant's contracts or agreements with Tenant's Contractor and all other such consultants, contractors, or subcontractors and the City shall be expressly identified as a third party beneficiary in the contracts thereunder) observe and comply, with all applicable federal, state, and local laws, ordinances, rules (including Airport Rules), regulations, and executive orders, now existing or hereinafter in effect (each, a "Law", and collectively, "Laws"), which are applicable to such party and its operations at the Land or the Premises.

(a) Federal.

(1) Aviation Security, 49 USC 449 et seq.

(2) It shall be an unlawful employment practice for Tenant to fail to hire, to refuse to hire, to discharge, or to discriminate against any individual with respect to his/her compensation, or the terms, conditions, or privileges of his/her employment, because of such individual's race, color, religion, sex, age, handicap, or national origin; or to limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, age, handicap, or national

origin. Additionally, the Tenant and any assignee or sublessee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no individual 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, including but not limited to the following:

- A. Civil Rights Act of 1964, 42 USC 200 et seq.; 49 CFR Part 21; Executive Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 USC 2000(e) note, as amended by Executive Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Section 520 of the Airport and Airway Improvement Act of 1982.
  - B. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended.
  - C. Civil Rights Restoration Act of 1987 (P.L. 100-209).
  - D. Age Discrimination Act of 1975 (42 USC 6101 – 6106), as amended.
  - E. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended; and 49 CFR part 27.
  - F. Equal Employment Opportunity Regulations 41 CFR Part 60-2.
  - G. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601.
  - H. Americans with Disabilities Act of 1990 (P.L. 101-336); and 41 CFR Part 60 et seq., and 49 CFR parts 37 and 38.
  - I. Air Carriers Access Act, 49 USC 41705.
- (3) Federally Assisted Contracts, 49 Code of Federal Regulations Part 26.
  - (4) Uniform Federal Accessibility Guidelines for Buildings and Facilities.
  - (5) Occupational Safety and Health Act, 40 USC 333; 29 CFR 1926.1.
  - (6) Hazard Communication Standard, 29 CFR 1926.58.

(b) State (to the extent that the below are applicable to Tenant and/or Tenant's Permitted Uses at the Premise):

- (1) Municipal Purchasing Act, 65 ILCS 5/8-10-1 et seq.
- (2) Illinois Environmental Protection Act, 415 ILCS 5/1.

- (3) Tax Delinquency Certification, 65 ILCS 5/11-42.1-1.
- (4) Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq., regulations at 71 Ill. Adm. Code Ch. 1, Sec. 400.110.
- (5) Steel Products Procurement Act, 30 ILCS 565/1 et seq.
- (6) Public Construction Bond Act, 30 ILCS 550/0.01 et seq. (in form and amount and with surety acceptable to the City and The City named as co-obligee)
- (7) Prevailing Wage Act, 820 ILCS 130/0.01 22 et seq.
- (8) Mechanics Lien Act, 770 ILCS 60/23 (waiver of liens).
- (9) Criminal Code provisions applicable to public works contracts, 720 ILCS 5/33E.
- (10) Employment of Illinois Workers on Public Works Act, 30 ILCS 570/0.01 et seq.
- (11) Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.
- (12) Public Works Employment Discrimination Act, 775 ILCS 10/0.01.
- (13) Illinois Public Act 85-1390 (1988 Ill. Laws 3220) (MacBride Principles).
- (14) Veteran Preference Act, 330 ILCS 55/0.01 et seq.
- (15) Illinois Governmental Ethics Act, 5 ILCS 420/1-101.
- (16) Public Officer Prohibited Activities Act, 50 ILCS 105/3.
- (17) Municipal Purchasing Act for Cities of 500,000 or More Population, 65 ILCS 5/8-10-17 (pecuniary interest).
- (18) Illinois Wage Payment and Collection Act, 820 ILCS 115/9 (deduction from wages).

(c) Municipality (to the extent the below are applicable to Tenant and/or Tenant's Permitted Uses at the Premises).

- (1) Section 2-92-250 of the Municipal Code of Chicago (Retainage).
- (2) Section 2-92-030 of the Municipal Code of Chicago (Performance bonds).
- (3) Section 2-92-580 of the Municipal Code of Chicago (MacBride Principles).

(4) Section 2-160-010, et seq. of the Municipal Code of Chicago (Chicago Human Rights ordinance). Further, Tenant shall furnish such reports and information as requested by the Chicago Commission of Human Relations.

(5) Section 2-92-420 of the Municipal Code of Chicago (Minority Owned and Women-Owned Business Enterprise Procurement Program). Tenant shall make good faith efforts and shall cause its contractors and subcontractors to utilize good faith efforts to meet participation goals for MBEs and WBEs in the design (25% for MBEs and 5% for WBEs) and construction (26% for MBEs and 6% for WBEs) of the Tenant Work, including the utilization of the City's Assist Agencies to aid in the identification of MBE and WBE certified businesses, as more fully set forth in **Exhibit D**.

(6) Section 2-92-330 of the Municipal Code of Chicago (Resident and Premises Area Hiring Preferences).

(7) Section 2-92-390 of the Municipal Code of Chicago (Affirmative Action).

(8) Section 2-92-586 (Disability Owned and Operated Firms). Generally encourages Tenant and its contractors to use firms owned or operated by individuals with disabilities.

(9) Section 2-92-320 of the Municipal Code of Chicago (Non Collusion, Bribery of a Public Officer or Employee). Generally, no person or business shall be awarded a contract if such person or business entity has been convicted of, or admitted guilt for, bribery or attempting to bribe a public officer or employee of the City, State of Illinois, or any agency of the federal government or any state or local government in the United States or has been convicted of, or admitted guilt for, collusion among bidders, in the previously three years.

(10) Chapter 2-56 of the Municipal Code of Chicago (Office of Inspector General). Generally, Tenant and its Associated Parties shall cooperate with the City Inspector General and Legislative Inspector General in investigations.

(11) Chapter 2-154 of the Municipal Code of Chicago (Disclosure of Ownership Interests). Generally, Tenant and any person having equal to or greater than a 7.5% direct or indirect ownership interest in Tenant and any person, business entity or agency contracting with the City shall be required to complete appropriate disclosure documents as required by the City.

(12) Chapter 2-156 of the Municipal Code of Chicago (Governmental Ethics Ordinance). Generally, no payment, gratuity or offer of employment shall be made in connection with any City contract, including this Lease and there are no conflicts of interest.

(13) Section 2-92-380 of the Municipal Code of Chicago. (Set-off for fines or fees owed the City).

(14) Sections 2-156-111, 2-156-160, 2-156-080 and 2-164-040 of the Municipal Code of Chicago (Requires financial interest disclosure).

(15) Section 2-92-610 of the Municipal Code of Chicago (Living Wage Ordinance) and Mayoral Executive Order 2014-1 setting the City minimum wage.

(16) Chapter 4-36 of the Municipal Code of Chicago (Licensing of General Contractors).

(17) Section 11-4-1600(e) (Environmental Warranties). Generally, the Tenant warrants and represents that to its knowledge, it, and its Associated Parties, are not in violation with certain Municipal Code provisions regarding dumping and disposal of public waste.

(18) Chapter 4-36 of the Municipal Code of Chicago (Licensing of General Contractors).

(19) Section 2-156-030(b) (Prohibition on Certain Relationships with Elected Officials).

(20) Multi Project Labor Agreement (PLA). The City has entered into the PLA with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the City's website at:

<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-ProjectLaborAgreement-PLAandSignatoryUnions.pdf>. To the extent that this Contract involves a project that is subject to the PLA, Tenant acknowledges familiarity with the requirements of the PLA and its applicability to any work under this Lease, and shall, or cause Tenant's Contractor to, comply in all respects with the PLA.

(21) Mayoral Executive Order 2011-4 (Prohibition on Certain Contributions): Tenant or any person or entity who directly or indirectly has an ownership or beneficial interest in Tenant of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Lessee's subtenants, if any, any person or entity who directly or indirectly has an ownership or beneficial interest in any subtenant, if any, of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Lessee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Lease, including while this Lease or Other Contract is executory, (ii) the Term or any Other Contract between City and Tenant, and/or (iii) any period in which an extension of this Lease or Other Contract with the City is being sought or negotiated.

Tenant represents and warrants that from the date the City approached the Tenant or the date the Tenant approached the City, as applicable, regarding the formulation of this Lease, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Tenant shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political

fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Lease, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Lease, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

For purposes of this provision:

- “Other Contract” means any agreement entered into between the Lessee and the City that (i) is formed under the authority of Municipal Code of Chicago Ch. 2-92; (ii) is for the purchase, sale or lease of real or personal property; or (iii) is for materials, supplies, equipment or services which are approved and/or authorized by the City Council.
- “Contribution” means a “political contribution” as defined in Municipal Code of Chicago Ch. 2-156, as amended.
- “Political fundraising committee” means a “political fundraising committee” as defined in Municipal Code of Chicago Ch. 2-156, as amended.

17.2 No Exclusive Rights. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) to conduct any business (other than the exclusive right to use and occupy the Premises), and the City reserves the right to grant to others the privileges and right of conducting any or all activities at the Premises (other than the right to use and occupy the Premises).

17.3 Reasonable Prices. Tenant agrees to furnish services in the United States in compliance with Legal Requirements and on a reasonable and not unjustly discriminatory basis to all users thereof, and to charge reasonable, and not unjustly discriminatory prices for each unit of service; provided, that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions.

17.4 Subordination of Lease to Agreements. Tenant’s use and occupancy of the Premises shall be and remain subject to the provisions of any existing or future agreements between the City and the United States government, the FAA, or any other governmental authority with jurisdiction over the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal or other governmental funds, including, without limitation, grant agreements. Tenant shall reasonably abide by the requirements of agreements entered into between the City and the United States, and shall consent to amendments and modifications of this Lease if required by such agreements or if required as a condition of the City’s entry into such agreements.

17.5 SEC Rule 15c2-12. Tenant, upon the City's request, shall provide to the City such non-confidential information as the City may reasonably request in writing to comply with the City's continuing disclosure requirements under SEC Rule 15c2-12, as it may be amended from time to time, provided, however, that Tenant may, in lieu of providing the requested information, direct the City to a Tenant or Securities and Exchange Commission website where the requested information is then currently available.

## ARTICLE XVIII

### MISCELLANEOUS

18.1 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term without hindrance by anyone claiming by, through or under the City as such, subject, however, to the exceptions, reservations and conditions of this Lease. The foregoing shall not create any liability on the part of the City for any defects in or encumbrances on the City's title existing as of the date hereof.

18.2 Entry on Premises by the City. Tenant shall permit the City and its authorized representatives, upon two (2) days' notice to Tenant except in the case of emergency (in which case the City shall use reasonable efforts to provide prior notice and, in any event, shall provide such notice promptly following such emergency entry), to enter the Premises at all reasonable times for the purpose of inspecting the same for compliance with the covenants and obligations of this Lease, provided that such inspections shall be conducted so as not to unreasonably interfere with the conduct of business therein by Tenant or any subtenant or other occupant, and Tenant shall have the right to have a representative accompany the City.

18.3 Intentionally Omitted.

18.4 Intentionally Omitted.

18.5 Notices. Notwithstanding anything else in this Lease to the contrary, all notices required to be provided pursuant to this Lease shall be in writing and shall be sent: (a) by personal delivery, nationally-recognized commercial overnight delivery service, (b) by registered or certified U.S. mail, postage prepaid and return receipt requested, addressed to the applicable party as set forth below, or to such other address(es) as such party may designate from time to time by notice to the other party or as required by this Lease, and shall be deemed given upon receipt, or upon attempted delivery where delivery is refused or mail is unclaimed; or (c) to the extent expressly permitted elsewhere in this Lease for a specific notice or as mutually agreed by the City and Tenant, by electronic mail with electronic receipt. The parties' addresses for notices shall be:

If to the City:

Chicago Department of Aviation  
P.O. Box 66142  
10510 West Zemke Road  
Chicago, IL 60666  
Attn: Commissioner  
Electronic Mail Address:  
CDACommissioner@cityofchicago.org

With a copy to:

Corporation Counsel City of Chicago  
30 North LaSalle Street, 9th Floor  
Chicago, IL 60602  
Attn: Deputy Corporation Counsel, Aviation,  
Environmental, Regulatory Division  
CDADeputyEnvironment@cityofchicago.org

And a copy to:

Chicago Department of Aviation  
P.O. Box 66142  
10510 West Zemke Road  
Chicago, IL 60666  
Attn: Chief Development Officer  
Electronic Mail Address:  
CDACHiefDevOfficer@cityofchicago.org

And a copy to:

Chicago Department of Aviation  
P.O. Box 66142  
10510 West Zemke Road  
Chicago, IL 60666  
Attn: Deputy of Real Estate  
Electronic Mail Address:  
CDADeputyRealEstate@cityofchicago.org

If to Tenant:

[INSERT ADDRESS/PHONE INFO]

With a copy to:

[INSERT ADDRESS/PHONE INFO]

And a copy to:

[INSERT ADDRESS/PHONE INFO]

And a copy to:

Chicago Department of Aviation  
P.O. Box 66142  
10510 West Zemke Road  
Chicago, IL 60666  
Attn: General Counsel  
Electronic Mail Address:  
CDAGeneralCounsel@cityofchicago.org

18.6 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.7 Estoppel Certificates. The City and Tenant shall, without charge, at any time and from time to time (but no more often than two (2) times per calendar year), within sixty (60) days after request by the other, certify by written instrument, duly executed, acknowledged and delivered to the party making such request, or any other person, firm or corporation specified by such party:

(a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

(b) whether or not, to the best knowledge of the person executing the certificate on behalf of the City or Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of the other party hereto to be performed or complied with, and, if so, specifying the same;

(c) the dates, if any, to which the Rent and other charges hereunder have been paid;

(d) the date of expiration of the current Term;

(e) the Rent then payable under this Lease; and

(f) other commercially reasonable statements of a purely factual nature, to the best knowledge of the person executing the certificate on behalf of the City or the Tenant, required by a third party unaffiliated lender or purchaser.

Said certificate shall be substantially in the form of that attached hereto as **Exhibit C**, and shall in no event serve or intend to modify, change or interpret the provisions of this Lease or otherwise impair the rights of or limit the obligations of the City or Tenant hereunder.

18.8 Waiver of Jury Trial. The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or

connected with this Lease or any of its provisions, any negotiations in connection therewith, or Tenant's use or occupation of the Premises. In case the City shall commence summary proceedings or an action for non-payment of Rent or sums due hereunder against Tenant, Tenant shall not interpose any non-compulsory counterclaim of any nature or description in any such proceeding or action, but such claim shall be relegated to an independent action at law.

18.9 No Brokers. The City and Tenant mutually represent that they have dealt with no broker in connection with this Lease. The City and Tenant hereby indemnify and agree to save the other harmless from any and all loss, cost, damage or expense incurred arising from their respective dealing with a broker.

18.10 No Partnership or Joint Venture. Nothing contained under this Lease shall be construed to create a partnership or joint venture between the City and Tenant or to make the City an associate in any way of Tenant in the conduct of Tenant's business, nor shall the City be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

18.11 Consents. Except in the case where the City has specifically agreed in this Lease not to unreasonably withhold its consent and the City withholds its consent in violation of such specific requirement in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against the City for money damages by reason of any refusal, withholding or delaying by the City of any consent, approval or statement of satisfaction, and, in such event, Tenant's only remedies therefor shall be an action for specific performance or injunction to enforce any such requirement, but in all events the City's liability is limited to actual compensatory damages and is subject to the limitations in Section 18.15.

18.12 Accord and Satisfaction. No acceptance by the City of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction, and the City may accept such check or payment without prejudice to the City's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

18.13 Integration. All prior understandings and agreements between the parties in respect of the subject matter hereof, are merged within this Lease, which alone fully and completely sets forth the understanding of the parties in respect of the subject matter hereof; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by both the City and Tenant.

18.14 Successors and Assigns. All of the covenants, stipulations and agreements herein contained shall, subject to the provisions of Section 11.1, inure to the benefit of and be binding upon, the successors and assigns of the parties hereto.

18.15 Enforcement of the City's Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the City's liability under this Lease shall be enforceable only out of the City's interest in the

Premises, and the rents, issues and profits therefrom; and there shall be no other recourse against, or right to seek a deficiency judgment against, the City except to the extent caused by the City's willful misconduct, nor shall there be any personal liability on the part of any official, officer, employee, agent or representative of the City, with respect to any obligations to be performed hereunder, except in the case of willful and/or wanton misconduct.

18.16 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the City may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless the City executes and records an instrument affirmatively electing otherwise.

18.17 Captions. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

18.18 Table of Contents. The Table of Contents contained in this Lease is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

18.19 Governing Law. This Lease shall be governed exclusively by, and construed in accordance with, the laws of the State of Illinois. The City and Tenant agree that any court action to be brought by either party in connection with this Lease shall be brought in a court of competent jurisdiction located within the State of Illinois, and each party consents to the jurisdiction of such court and hereby waives any right to remove any such action to any other forum.

18.20 Time of the Essence. Time shall be of the essence hereof.

18.21 Force Majeure. A delay in or a failure of performance by Tenant in the performance of its obligations hereunder shall not constitute a default under this Lease to the extent that such delay or failure of performance (i) could not be prevented by Tenant's exercise of reasonable diligence and (ii) results from acts of God, or of the public enemy, acts of the government, terrorism, fires, floods, or other casualties, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, strikes or other labor disturbances in the Chicago area not attributable to the failure of Tenant to perform its obligations under any applicable labor contract or law and directly and adversely affecting Tenant (a "Force Majeure Event"). The following shall, in no event, be deemed to be Force Majeure Events: Tenant's financial condition; inability to obtain permits and approvals if Tenant is not diligently pursuing the same; or delays due to soil conditions. Tenant agrees to use commercially reasonable efforts to minimize the delay and other adverse effects of any Force Majeure Event. Tenant shall provide the City with prompt written notice of any Force Majeure Event excusing its delay or non-performance. Tenant shall keep the City reasonably informed of any development pertaining to such Force Majeure Event.

18.22 Tenant's Employees and Subcontractors to Work in Harmony. Tenant agrees for itself and its Associated Parties that they shall be able to work in harmony with all elements of labor employed by the City at other facilities owned or operated by the City.

18.23 Tenant Cooperation With Other Development. Tenant agrees not to oppose applications for governmental permits and approvals relating to any proposed development by the City and any other party of any portion of the remaining land owned by the City in the vicinity of the Premises, provided that such applications or development will not alter Tenant's rights or limit or interfere with Tenant's Permitted Uses hereunder.

18.24 Definition of the City. For purposes of this Lease and the exhibits attached hereto, the "City" means the City of Chicago, a municipal corporation and home rule unit of local government organized and existing under Article VII, Sections 1 and 6(a), respectively, of the 1970 Constitution of the State of Illinois, and its successors and assigns. In any case under this Lease or the exhibits attached hereto that the City may or shall take any action, perform any review or approval, engage or participate in any process, or otherwise perform any of its obligations or other terms hereunder, such action or performance may be undertaken by, under the supervision of, or at the direction of the Chicago Department of Aviation (the "CDA"), the Commissioner of Aviation, or by such other departments, persons, officials, representatives, or contractors as may be specifically authorized by the City from time to time. Without limitation of the foregoing, however, it is understood and agreed that, unless the City notifies Tenant otherwise, the Commissioner of Aviation shall be authorized to act on behalf of the City.

18.25 Confidentiality. The parties recognize that each party may be required to deliver certain proprietary information to the other under the terms of this Lease. Each party, upon receipt from the other party of any document designated as "confidential" or "proprietary" shall use reasonable efforts, subject to compliance with all Legal Requirements, to protect the confidentiality of any such document and the information contained therein.

18.26 No Construction Against Draftsman. No inference in favor of or against any party should be drawn from the fact that such party drafted or participated in the drafting of this Lease or that such provisions have been drafted on behalf of such party.

18.27 Exhibits. All exhibits referred to in this Lease and which may, from time to time, be referred to in any duly executed amendment to this Lease are (and with respect to future amendments, shall be) by such reference incorporated into this Lease, and deemed a part of this Lease as fully as if set forth within it.

18.29 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed and shall constitute a single, integrated original document.

18.30 Non-Liability for Public Officials. Neither party shall charge any official, employee or agent of the other party personally with any liability or expenses of defense or hold any official, employee or agent of such other party personally liable to them under any term or provision of this Lease or because of such party's execution, attempted execution or any breach of this Lease.

IN WITNESS WHEREOF, the City has caused this Lease to be executed on its behalf by the Mayor of the City of Chicago and attested by the City Clerk of the City of Chicago, pursuant to due authorization of the City Council, and the Tenant has caused this instrument to be executed on its behalf by its \_\_\_\_\_.

CITY OF CHICAGO

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

ATTEST:

By: \_\_\_\_\_  
City Clerk  
  
(Corporate Seal)

EXECUTION OF THIS LEASE BY THE CITY OF CHICAGO  
IS RECOMMENDED BY THE COMMISSIONER OF THE  
CHICAGO DEPARTMENT OF AVIATION

By: \_\_\_\_\_  
Commissioner of the Chicago  
Department of Aviation

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Chief Assistant Corporation Counsel

**THIS LEASE SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS  
AND UNTIL IT IS SIGNED BY THE CITY AND REVIEWED AND APPROVED BY  
THE CITY'S LAW DEPARTMENT.**

[TENANT'S SIGNATURE PAGE TO FOLLOW]

**TENANT:**

**CHICAGO AIRLINES TERMINAL CONSORTIUM, an Illinois  
not-for-profit corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT'S ILLINOIS AGENT FOR SERVICE OF PROCESS:**

Print Name: \_\_\_\_\_  
Print Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT A**

**Description of the Premises**

See Attached.



## **EXHIBIT B**

### **Permitted Exceptions**

1. All covenants, conditions and restrictions and other exceptions or encumbrances of record with the Cook County Recorder's Office as of the Effective Date.
2. General leasehold taxes not yet due or payable as of the Effective Date.
3. All rights and interests of the Federal Aviation Administration in the Premises as designated for airport purposes.
4. All City-owned or controlled utility facilities or installations, or third party utility facilities or installations, located on, over or under the Premises as of the Effective Date, including such matters noted or depicted within O'Hare Modernization Program utility database.

**EXHIBIT C**

**Form of Estoppel Certificate**

See Attached.

**EXHIBIT C**  
**FORM OF ESTOPPEL CERTIFICATE**

To: Chicago Airlines Terminal Consortium ("Tenant")

**DEFINITIONS:**

Ground Lease: Ground Lease dated as of \_\_\_\_\_, 2018 between City of Chicago and Chicago Airlines Terminal Consortium

Premises: An area of land consisting of approximately 411,253 square feet at O'Hare International Airport, Chicago, Illinois, all as more specifically described in the Lease.

Landlord: City of Chicago

Tenant: Chicago Airlines Terminal Consortium

Term Commencement Date: July 1, 2018

Current Annual Fixed Rent: \$ \_\_\_\_\_ per annum

Common Area Costs: \$ \_\_\_\_\_ per month

Proceeds Rent Three percent (3%) of Gross Proceeds (as defined in the Lease), due as set forth in the Lease

Percentage Rent: Three percent (3%) of Gross Revenue (as defined in the Lease), due quarterly

Additional Rent: [PROCEEDS RENT, ANY OTHER AMOUNTS DUE TO CITY UNDER LEASE NOT ALREADY SET FORTH]

Term: \_\_\_\_\_ years

Termination Date: [11:59 p.m. Chicago Time on the earlier of (a) the ninetieth (90th) day following notice to Tenant that the City has secured the issuance of the certificate of occupancy for the Consolidated Parking Structure and has decided to close the east Airport employee parking lot on which the Premises is located, (b) December 31, 2033, (c) the date which is the end of the term as set forth in Section 5.1 of the Agreement by and between the City of Chicago and Chicago Airlines Terminal Consortium, or (d) the Termination Date as provided in the Lease ] [See Section 2.1 of Lease]

Renewal Options: [ ]

Security Deposit: [Surety Bond [INSERT DETAILS]][Irrevocable Letter of Credit Number \_\_\_\_\_ from [NAME OF BANK] dated [DATE] in the amount of \$ \_\_\_\_\_ for the [current renewal] term expiring [DATE]]

Landlord's Address for Notices: City of Chicago  
Office of Chief Financial Officer  
Room 600  
33 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Financial Officer  
CC:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner of Department of Aviation

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner of Real Estate

City of Chicago  
Department of Law  
30 North LaSalle Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel, Aviation, Environmental,  
Regulatory Division

The undersigned Landlord under the Lease hereby certifies, represents, confirms and agrees, in favor of Tenant the following:

1. The Lease has not been canceled, modified, assigned, extended or amended [(except as set forth above)] and contains the entire agreement between Landlord and Tenant.
2. Rent has been paid to [DATE].
3. Tenant's current annual Fixed Rent is as set forth above. Tenant's current annual Fixed Rent shall be adjusted in accordance with the terms of the Lease on the following date: [DATE]. Tenant's current [Monthly] Additional Rent payments are as set forth above.
4. The Lease is for the Term set forth above ending on the Termination Date.

5. [Substantial Completion has occurred for the [renovation/Alterations (as defined in the Lease] of the Premises in accordance with the requirements of the Lease and all improvements required to be made by Tenant under the terms of the Lease have been completed.
6. Landlord has not assigned its right, title or interest in the Lease or, except pursuant to the Lease, the Premises.
7. To the best of Landlord's knowledge, Tenant is not in any respect in default under the terms and provisions of the Lease.
8. To the best of Landlord's knowledge, Landlord is not in any respect in default under the terms and provisions of the Lease.
9. Tenant has paid Landlord a security deposit in the manner and amount set forth above.
10. The Lease is in full force and effect.
11. The statements contained herein may be relied upon by Tenant.
12. The current address to which all notices to Landlord as required under the Lease should be sent is the Landlord's Address for Notices, as set forth above.

IN WITNESS WHEREOF, Landlord has executed this estoppel certificate as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

City of Chicago

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT D**

**Minority and Women Owned Business Enterprises Commitment**

See Attached.

Note: Tenant should ensure conformance with current applicable policy and form requirements as such terms and conditions may be subject to change.

# SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION CONTRACTS

## I. Policy and Terms

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, as well as MBEs and WBEs certified by Cook County, Illinois, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

Pursuant to 2-92-535, the prime contractor may be awarded an additional 0.333 percent credit, up to a maximum of a total of 5 percent additional credit, for every 1 percent of the value of a contract self-performed by M.B.E.s or W.B.E.s, or combination thereof, that have entered into a mentor agreement with the contractor. This 5% may be applied to the contract specific goals, or it may be in addition to the contract specific goals.

As provided in Section 2-92-720(e), Diversity Credit Program credits awarded by the City's affirmative action advisory board may also be applied to the contract specific goals.

### Contract Specific Goals and Bids

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%**  
**WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

Pursuant to 2-92-535, the prime contractor may be awarded an additional 0.333 percent credit, up to a maximum of a total of 5 percent additional credit, for every 1 percent of the value of a contract self-performed by M.B.E.s or W.B.E.s, or combination thereof, that have entered into a mentor agreement with the contractor. This 5% may be applied to the contract specific goals, or it may be in addition to the contract specific goals.

#### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Mentor-Protégé Agreement means an agreement between a prime and MBE or WBE subcontractor pursuant to 2-92-535, that is approved by the City of Chicago and complies with all requirements of 2-92-535 and any rules and regulations promulgated by the Chief Procurement Officer.

"Minority Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a minority owned and controlled business by Cook County, Illinois.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a women owned business by Cook County, Illinois.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

- A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:
1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
  2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
  3. Each joint venture partner executes the bid to the City; and

4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.
  - 1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  - 2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
  - 1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
  - 1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
  - 1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
  - 1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  - 2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
  - 1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  - 2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.
- H. If the MBE or WBE subcontracts out any of its work:
  - 1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.

2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

## V. Procedure to Determine Bid Compliance

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

### A. Schedule B: MBE/WBE Affidavit of Joint Venture

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

### B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

### C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to

any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

D. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago or Cook County, Illinois, must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

F. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of a Log of Contacts.
2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.

G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.

- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.
- K. Any applications for City approval of a Mentor Protégé agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

**VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
  - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  - 2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  - 3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - 4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  - 5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  - 6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  - 7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  - 8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
  9. Termination of a Mentor Protégé Agreement.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:
1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract

Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.

4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

**IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740 of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

**X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

**XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.



**Attachment A – Assist Agency List**  
 DEPARTMENT OF  
**PROCUREMENT  
 SERVICES**

**CITY OF CHICAGO  
 ASSIST AGENCY LIST**

Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

<p><b>51<sup>st</sup> Street Business Association</b>          220 E. 51<sup>st</sup> Street          Chicago, IL 60615          Phone: 773-285-3401          Fax: 773-285-3407          Email: alexisbivensltd@yahoo.com          51stStreetWeekly.com</p>	<p><b>Asian American Business Expo</b>          207 E. Ohio St. Suite 218          Chicago, IL 60611          Phone: 312-233-2810          Fax: 312-268-6388          Email: Janny@AsianAmericanBusinessExpo.org</p>
<p><b>Asian American Institute</b>          4753 N. Broadway St. Suite 502          Chicago, IL 60640          Phone: 773-271-0899          Fax: 773-271-1982          Email: kfernicola@aaichicago.org          Web: <a href="http://www.aaichicago.org">www.aaichicago.org</a></p>	<p><b>Association of Asian Construction Enterprises</b>          4100 S. Emerald          Chicago, IL 60609          Phone: 847-525-9693          Email: <a href="mailto:nakmancorp@aol.com">nakmancorp@aol.com</a></p>
<p><b>Black Contractors United</b>          12000 S. Marshfield Ave.          Calumet Park, IL 60827          Phone: 708-275-4622          Fax: 708-389-5735          Email: <a href="mailto:bcunewera@att.net">bcunewera@att.net</a>          Email: <a href="mailto:mckinnie@blackcontractorsunited.com">mckinnie@blackcontractorsunited.com</a>          Web: <a href="http://www.blackcontractorsunited.com">www.blackcontractorsunited.com</a></p>	<p><b>Chatham Business Association Small Business Development, Inc.</b>          800 E. 78<sup>th</sup> Street          Chicago, IL 60619          Phone: 773-994-5006          Fax: 773-994-9871          Email: <a href="mailto:melindakelly@cbaworks.org">melindakelly@cbaworks.org</a>          Web: <a href="http://www.cbaworks.org">www.cbaworks.org</a></p>
<p><b>Chicago Area Gay &amp; Lesbian Chamber of Commerce</b>          3179 N. Clark St.          Chicago, IL 60657          Phone: 773-303-0167          Fax: 773-303-0168          Email: <a href="mailto:info@glchamber.org">info@glchamber.org</a>          Web: <a href="http://www.glchamber.org">www.glchamber.org</a></p>	<p><b>Chicago Minority Supplier Development Council, Inc.</b>          105 W. Adams, Suite 2300          Chicago, IL 60603-6233          Phone: 312-755-8880          Fax: 312-755-8890          Email: <a href="mailto:pbarreda@chicagomsgdc.org">pbarreda@chicagomsgdc.org</a>          Web: <a href="http://www.chicagomsgdc.org">www.chicagomsgdc.org</a></p>
<p><b>Chicago Urban League</b>          4510 S. Michigan Ave.          Chicago, IL 60653          Phone: 773-285-5800          Fax: 773-285-7772          Email: <a href="mailto:president@thechicagourbanleague.org">president@thechicagourbanleague.org</a>          Web: <a href="http://www.cul-chicago.org">www.cul-chicago.org</a></p>	<p><b>Chicago Women in Trades (CWIT)</b>          2444 W. 16<sup>th</sup> Street          Chicago, IL 60608          Phone: 773-942-1444          Fax: 312-942-1599          Email: <a href="mailto:cwitinfo@cwit2.org">cwitinfo@cwit2.org</a>          Web: <a href="http://www.chicagowomenintrades.org">www.chicagowomenintrades.org</a></p>
<p><b>Cosmopolitan Chamber of Commerce</b>          30 E. Adams Suite 1050          Chicago, IL 60603          Phone: 312-499-0611          Fax: 312-701-0095          Email: <a href="mailto:info@cosmochamber.com">info@cosmochamber.com</a>          Web: <a href="http://www.cosmochamber.org">www.cosmochamber.org</a></p>	<p><b>Contractor Advisors Business Development</b>          1507 E. 53<sup>rd</sup> Street, Suite 906          Chicago, IL 60615          Phone: 312-436-0301          Email: <a href="mailto:sfstantley@contractoradvisors.us">sfstantley@contractoradvisors.us</a>          Web: <a href="http://www.contractoradvisors.us">www.contractoradvisors.us</a></p>
<p><b>Eighteenth Street Development Corporation</b>          1843 S. Carpenter          Chicago, IL 60608          Phone: 312-733-2287  <a href="mailto:aesparza@eighteenthstreet.org">aesparza@eighteenthstreet.org</a>  <a href="http://www.eighteenthstreet.org">www.eighteenthstreet.org</a></p>	<p><b>Federation of Women Contractors</b>          5650 S. Archer Avenue          Chicago, IL 60638          Phone: 312-360-1122          Fax: 312-360-0239          Email: <a href="mailto:fwcchicago@aol.com">fwcchicago@aol.com</a>          Web: <a href="http://www.fwcchicago.com">www.fwcchicago.com</a></p>

<p><b>Greater Englewood Community Development Corp.</b>  6957 S. Halsted  Chicago, IL 60621  Phone: 773-891-1310  Email: <a href="mailto:gfulton@greaterenglewoodcdc.org">gfulton@greaterenglewoodcdc.org</a>  <a href="http://www.greaterenglewoodcdc.org">www.greaterenglewoodcdc.org</a></p>	<p><b>Greater Pilsen Economic Development Assoc.</b>  1801 S. Ashland  Chicago, IL 60608  Phone: 312-698-8898  Email: <a href="mailto:contact@greaterpilsen.org">contact@greaterpilsen.org</a>  Web: <a href="http://www.greaterpilsen.org">www.greaterpilsen.org</a></p>
<p><b>Hispanic American Construction Industry Association (HACIA)</b>  650 W. Lake St.  Chicago, IL 60661  Phone: 312-575-0389  Fax: 312-575-0544  Email: <a href="mailto:info@haciaworks.org">info@haciaworks.org</a>  Web: <a href="http://www.haciaworks.org">www.haciaworks.org</a></p>	<p><b>Illinois Black Chamber of Commerce</b>  331 Fulton Street  Suite 530  Chicago, Illinois 60602  Phone: 309-740-4430  Email: <a href="mailto:LarryIvory@IllinoisBlackChamber.org">LarryIvory@IllinoisBlackChamber.org</a>  <a href="http://www.illinoisblackchamberofcommerce.org">www.illinoisblackchamberofcommerce.org</a></p>
<p><b>Illinois Hispanic Chamber of Commerce</b>  855 W. Adams, Suite 100  Chicago, IL 60607  Phone: 312-425-9500  Fax: 312-425-9510  Email: <a href="mailto:oduque@ihccbusiness.net">oduque@ihccbusiness.net</a>  Web: <a href="http://www.ihccbusiness.net">www.ihccbusiness.net</a></p>	<p><b>Latin American Chamber of Commerce</b>  3512 W. Fullerton Avenue  Chicago, IL 60647  Phone: 773-252-5211  Fax: 773-252-7065  Email: <a href="mailto:d.lorenzopadron@LACCUSA.com">d.lorenzopadron@LACCUSA.com</a>  Web: <a href="http://www.LACCUSA.com">www.LACCUSA.com</a></p>
<p><b>National Association of Women Business Owners</b>  3332 W. Foster #121  Chicago, IL 60625  Phone: 312-224-2605  Fax: 847-679-6291  Email: <a href="mailto:info@nawbochicago.org">info@nawbochicago.org</a>  Web: <a href="http://www.nawbochicago.org">www.nawbochicago.org</a></p>	<p><b>National Organization of Minority Engineers</b>  33 W. Monroe, Suite 1540  Chicago, IL 60603  Phone: 312-425-9560  Fax: 312-425-9564  Email: <a href="mailto:shandy@infrastructure-eng.com">shandy@infrastructure-eng.com</a>  Web: <a href="http://www.nomeonline.org">www.nomeonline.org</a></p>
<p><b>Rainbow/PUSH Coalition</b>  International Trade Bureau  930 E. 50<sup>th</sup> Street  Chicago, IL 60615  Phone: 773-373-3366  Fax: 773-373-3571  Email: <a href="mailto:jmitchell@rainbowpush.org">jmitchell@rainbowpush.org</a>  Web: <a href="http://www.rainbowpush.org">www.rainbowpush.org</a></p>	<p><b>South Shore Chamber, Incorporated</b>  Black United Funds Bldg. 1750  E. 71<sup>st</sup> Street, Suite 208  Chicago, IL 60649-2000  Phone: 773-955-9508  Email: <a href="mailto:sshorechamber@sbcglobal.net">sshorechamber@sbcglobal.net</a>  Web: <a href="http://www.southshorechamberinc.org">www.southshorechamberinc.org</a></p>
<p><b>The Monroe Foundation</b>  1547 South Wolf Road  Hillside, Illinois 60162  Phone: 773-315-9720  Fax: 708-449-1976  Email: <a href="mailto:omonroe@themonroefoundation.org">omonroe@themonroefoundation.org</a>  Web: <a href="http://www.themonroefoundation.org">www.themonroefoundation.org</a></p>	<p><b>The Resurrection Project</b>  1818 S. Paulina Street  Chicago, IL 60608  Phone: 312-666-1323  Email: <a href="mailto:asoto@resurrectionproject.org">asoto@resurrectionproject.org</a>  Web: <a href="http://www.resurrectionproject.org">www.resurrectionproject.org</a></p>
<p><b>US Minority Contractors Association, Inc.</b>  1250 Grove Ave. Suite 200  Barrington, IL 60010  Phone: 847-852-5010  Fax: 847-382-1787  Email: <a href="mailto:larry.bullock@usminoritycontractors.org">larry.bullock@usminoritycontractors.org</a>  Web: <a href="http://USMinorityContractors.org">USMinorityContractors.org</a></p>	<p><b>Women's Business Development Center</b>  8 S. Michigan Ave., Suite 400  Chicago, IL 60603  Phone: 312-853-3477  Fax: 312-853-0145  Email: <a href="mailto:fcurry@wbdc.org">fcurry@wbdc.org</a>  Web: <a href="http://www.wbdc.org">www.wbdc.org</a></p>
<p><b>Women Construction Owners &amp; Executives (WCOE)</b>  Chicago Caucus  308 Circle Avenue  Forest Park, IL 60130  Phone: 708-366-1250  Fax: 708-366-5418  Email: <a href="mailto:mkm@mkmservices.com">mkm@mkmservices.com</a>  Web: <a href="http://www.wcoeusa.org">www.wcoeusa.org</a></p>	

## SCHEDULE B: MBE/WBE Affidavit of Joint Venture

*All information requested on this schedule must be answered in the spaces provided. Do not refer to your joint venture agreement except to expand on answers provided on this form. If additional space is required, attach additional sheets. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of its current Letter of Certification.*

I. Name of joint venture: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number of joint venture: \_\_\_\_\_

II. Email address: \_\_\_\_\_  
Name of non-MBE/WBE venturer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

III. Name of MBE/WBE venturer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Attach a copy of the joint venture agreement.

In order to demonstrate the MBE and/or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital, personnel and equipment and share of the costs of bonding and insurance; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.

A. What is the percentage(s) of MBE/WBE ownership of the joint venture?  
MBE/WBE ownership percentage(s) \_\_\_\_\_  
Non-MBE/WBE ownership percentage(s) \_\_\_\_\_

B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other details as applicable):

1. Profit and loss sharing: \_\_\_\_\_

2. Capital contributions:  
a. Dollar amounts of initial contribution: \_\_\_\_\_  
b. Dollar amounts of anticipated on-going contributions: \_\_\_\_\_

- 3. Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer):  


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- 4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control: \_\_\_\_\_  


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- 5. Costs of bonding (if required for the performance of the contract):  


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- 6. Costs of insurance (if required for the performance of the contract):  


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- C. Provide copies of all written agreements between venturers concerning this project.
- D. Identify each current City of Chicago contract and each contract completed during the past two years by a joint venture of two or more firms participating in this joint venture:  


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**VII. Control of and Participation in the Joint Venture.**

Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. Indicate any limitations to their authority such as dollar limits and co-signatory requirements:

- A. Joint venture check signing:  


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- B. Authority to enter contracts on behalf of the joint venture:  


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- C. Signing, co-signing and/or collateralizing loans:  


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- D. Acquisition of lines of credit:  


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- E. Acquisition and indemnification of payment and performance bonds:  


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- F. Negotiating and signing labor agreements:

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G. Management of contract performance. (Identify by name and firm only):

1. Supervision of field operations: \_\_\_\_\_
2. Major purchases: \_\_\_\_\_
3. Estimating: \_\_\_\_\_
4. Engineering: \_\_\_\_\_

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

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B. Identify the "managing partner," if any, and describe the means and measure of his/her compensation:

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C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

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IX. State the approximate number of operative personnel by trade needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-MBE/WBE firm, the MBE/WBE firm, or the joint venture.

Trade	Non-MBE/WBE Firm (Number)	MBE/WBE (Number)	Joint Venture (Number)

X. If any personnel proposed for this project will be employees of the joint venture:

A. Are any proposed joint venture employees currently employed by either venturer?

Currently employed by non-MBE/WBE venturer (number) \_\_\_ Employed by MBE/WBE venturer \_\_\_

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:

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C. Which venturer will be responsible for the preparation of joint venture payrolls:

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XI. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract that may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

\_\_\_\_\_  
Name of MBE/WBE Partner Firm

\_\_\_\_\_  
Name of Non-MBE/WBE Partner Firm

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Name and Title of Affiant

\_\_\_\_\_  
Name and Title of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

On this \_day of \_\_\_\_\_, 20 \_\_\_\_, the above-signed officers

\_\_\_\_\_  
**(names of affiants)**

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires: \_\_\_\_\_(Seal)



**SCHEDULE C**  
MBE/WBE Letter of Intent to  
Perform as a Subcontractor to the Prime Contractor

**FOR  
CONSTRUCTION  
PROJECTS ONLY**

**NOTICE: THIS SCHEDULE MUST BE AUTHORIZED AND SIGNED BY THE MBE/WBE SUBCONTRACTOR FIRM. FAILURE TO COMPLY MAY RESULT IN THE BID BEING REJECTED AS NON-RESPONSIVE.**

Project Name: \_\_\_\_\_ Specification No.: \_\_\_\_\_

From: \_\_\_\_\_  
 (Name of MBE/WBE Firm)

To: \_\_\_\_\_ and the City of Chicago.  
 (Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago or Cook County Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer." 60% participation is credited for the use of a MBE or WBE "regular dealer."

The undersigned is prepared to perform the following services in connection with the above named project/contract. If more space is required to fully describe the MBE or WBE proposed scope of work and/or payment schedule, attach additional sheets as necessary. The description must establish that the undersigned is performing a commercially useful function:

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The above described performance is offered for the following price and described terms of payment:

<u>Pay Item No./Description</u>	<u>Quantity/Unit Price</u>	<u>Total</u>

Subtotal: \$ \_\_\_\_\_

Total @ 100%: \$ \_\_\_\_\_

Total @ 60% (if the undersigned is performing work as a regular dealer): \$ \_\_\_\_\_

**NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES ON EACH PAGE.**

\_\_\_\_\_  
 (If not the undersigned, signature of person who filled out this Schedule C) (Date)

\_\_\_\_\_  
 (Name/Title-Please Print) (Company Name-Please Print)

\_\_\_\_\_  
 (Signature of President/Owner/CEO or Authorized Agent of MBE/WBE) (Date)

\_\_\_\_\_  
 (Name/Title-Please Print)

**Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor to the Prime Contractor**

**Partial Pay Items**

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount(s):

<u>Pay Item No./Description</u>	<u>Quantity/Unit Price</u>	<u>Total</u>

Subtotal: \$ \_\_\_\_\_

Total @ 100%: \$ \_\_\_\_\_

Total @ 60% (if the undersigned is performing work as a regular dealer): \$ \_\_\_\_\_

**SUB-SUBCONTRACTING LEVELS**

A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to non MBE/WBE contractors.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or WBE contractors.

**NOTICE: If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to Non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment in Construction Contracts.**

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago.

The undersigned has entered into a formal written mentor protégé agreement as a subcontractor/protégé with you as a Prime Contractor/mentor. ( ) Yes ( ) No

**NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES ON EACH PAGE.**

\_\_\_\_\_  
(If not the undersigned, signature of person who filled out this Schedule C) (Date)

\_\_\_\_\_  
(Name/Title-Please Print) (Company Name-Please Print)

\_\_\_\_\_  
(Email & Phone Number)

\_\_\_\_\_  
(Signature of President/Owner/CEO or Authorized Agent of MBE/WBE) (Date)

\_\_\_\_\_  
(Name/Title-Please Print)

\_\_\_\_\_  
(Email & Phone Number)



# SCHEDULE C

## MBE/WBE Letter of Intent to Perform as a 2<sup>nd</sup> Tier Subcontractor to the Prime Contractor

**FOR  
CONSTRUCTION  
PROJECTS ONLY**

Project Name: \_\_\_\_\_ Specification No.: \_\_\_\_\_

From: \_\_\_\_\_  
(Name of MBE/WBE Firm)

To: \_\_\_\_\_  
(Name of 1<sup>st</sup> Tier Contractor)

To: \_\_\_\_\_ and the City of Chicago.  
(Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago or Cook County Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer." 60% participation is credited for the use of a MBE or WBE "regular dealer."

The undersigned is prepared to perform the following services in connection with the above named project/contract. If more space is required to fully describe the MBE or WBE proposed scope of work and/or payment schedule, attach additional sheets as necessary:

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

The above described performance is offered for the following price and described terms of payment:

<u>Pay Item No./Description</u>	<u>Quantity/Unit Price</u>	<u>Total</u>

Subtotal: \$ \_\_\_\_\_

Total @ 100%: \$ \_\_\_\_\_

Total @ 60%: \$ \_\_\_\_\_

**Partial Pay Items**

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount(s):

<u>Pay Item No./Description</u>	<u>Quantity/Unit Price</u>	<u>Total</u>

Subtotal: \$ \_\_\_\_\_

Total @ 100%: \$ \_\_\_\_\_

Total @ 60%: \$ \_\_\_\_\_

Schedule C: MBE/WBE Letter of Intent to Perform as a 2<sup>nd</sup> Tier Sub to the Prime Contractor

**SUB-SUBCONTRACTING LEVELS**

A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to non MBE/WBE contractors.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or WBE contractors.

**NOTICE: If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to Non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment in Construction Contracts.**

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago.

The undersigned has entered into a formal written mentor protégé agreement as a subcontractor/protégé with you as a Prime Contractor/mentor: ( ) Yes ( ) No

**NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.**

\_\_\_\_\_  
(Signature of President/Owner/CEO or Authorized Agent of MBE/WBE)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name/Title-Please Print)

\_\_\_\_\_  
(Email & Phone Number)



# SCHEDULE C (Construction)

MBE/WBE Letter of Intent to Perform as a SUPPLIER

Project Name: \_\_\_\_\_

Specification Number: \_\_\_\_\_

From: \_\_\_\_\_  
(Name of MBE or WBE Firm)

To: \_\_\_\_\_ and the City of Chicago:  
(Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago or Cook County Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer". 60% participation is credited for the use of a MBE or WBE "regular dealer".

The undersigned is prepared to supply the following goods in connection with the above named project/contract. On a separate sheet, fully describe the MBE or WBE proposed scope of work and/or payment schedule, including a description of the commercially useful function being performed. Attach additional sheets as necessary:

Pay Item No. / Description	Quantity / Unit Price	Total
_____	_____	_____
_____	_____	_____
_____	_____	_____
	Line 1: Sub Total:	\$ _____
	Line 2: Total @ 100%:	\$ _____
	Line 3: Total @ 60%:	\$ _____

**Partial Pay Items.**

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount(s):

Pay Item No. / Description	Quantity / Unit Price	Total
_____	_____	_____
_____	_____	_____
_____	_____	_____
	Line 1: Sub Total:	\$ _____
	Line 2: Total @ 100%:	\$ _____
	Line 3: Total @ 60%:	\$ _____

**SUB-SUBCONTRACTING LEVELS** - A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to non-MBE/WBE contractors.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or WBE contractors.

**NOTICE:** If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment in Construction Contracts.

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago.

The undersigned has entered into a formal written mentor protégé agreement as a subcontractor/protégé with you as a Prime Contractor/mentor: ( ) Yes ( ) No

**NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.**

Signature of Owner, President or Authorized Agent of MBE or WBE \_\_\_\_\_ Date \_\_\_\_\_

Name / Title (Print) \_\_\_\_\_

Phone Number \_\_\_\_\_

Email Address \_\_\_\_\_





**I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.**

\_\_\_\_\_  
(Name of Prime Contractor – Print or Type)

State of: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

County of: \_\_\_\_\_

\_\_\_\_\_  
(Name/Title of Affiant – Print or Type)

\_\_\_\_\_  
(Date)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the above signed officer \_\_\_\_\_

(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

\_\_\_\_\_  
(Notary Public Signature)

SEAL:

Commission Expires: \_\_\_\_\_

**SCHEDULE F: REPORT OF SUBCONTRACTOR SOLICITATIONS  
FOR CONSTRUCTION CONTRACTS**

**Submit Schedule F with the bid. Failure to submit the Schedule F may cause the bid to be rejected.**

Duplicate sheets as needed.

Project Name: \_\_\_\_\_

Specification #: \_\_\_\_\_

I, \_\_\_\_\_ on behalf of \_\_\_\_\_  
(Name of reporter) (Prime contractor)

have either personally solicited, or permitted a duly authorized representative of this firm to solicit, work for this contract from the following subcontractors which comprise all MBE/WBE and non-MBE/WBE subcontractors who bid or quoted price information on this contract

**Company Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_  
**Contact Person** \_\_\_\_\_  
**Date of contact** \_\_\_\_\_  
**Method of contact** \_\_\_\_\_  
**Response to solicitation** \_\_\_\_\_  
**Type of Work Solicited** \_\_\_\_\_  
**Please circle classification:** MBE Certified WBE Certified MBE & WBE Certified Non- Certified

**Company Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_  
**Contact Person** \_\_\_\_\_  
**Date of contact** \_\_\_\_\_  
**Method of contact** \_\_\_\_\_  
**Response to solicitation** \_\_\_\_\_  
**Type of Work Solicited** \_\_\_\_\_  
**Please circle classification:** MBE Certified WBE Certified MBE & WBE Certified Non- Certified

**Company Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_  
**Contact Person** \_\_\_\_\_  
**Date of contact** \_\_\_\_\_  
**Method of contact** \_\_\_\_\_  
**Response to solicitation** \_\_\_\_\_  
**Type of Work Solicited** \_\_\_\_\_  
**Please circle classification:** MBE Certified WBE Certified MBE & WBE Certified Non- Certified

**Company Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_  
**Contact Person** \_\_\_\_\_  
**Date of contact** \_\_\_\_\_  
**Method of contact** \_\_\_\_\_  
**Response to solicitation** \_\_\_\_\_  
**Type of Work Solicited** \_\_\_\_\_  
**Please circle classification:** MBE Certified WBE Certified MBE & WBE Certified Non- Certified

**Company Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_

Contact Person \_\_\_\_\_  
Date of contact \_\_\_\_\_  
Method of contact \_\_\_\_\_  
Response to solicitation \_\_\_\_\_  
Type of Work Solicited \_\_\_\_\_  
Please circle classification: MBE Certified WBE Certified MBE & WBE Certified Non- Certified

Company Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Date of contact \_\_\_\_\_  
Method of contact \_\_\_\_\_  
Response to solicitation \_\_\_\_\_  
Type of Work Solicited \_\_\_\_\_  
Please circle classification: MBE Certified WBE Certified MBE & WBE Certified Non- Certified

Company Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Date of contact \_\_\_\_\_  
Method of contact \_\_\_\_\_  
Response to solicitation \_\_\_\_\_  
Type of Work Solicited \_\_\_\_\_  
Please circle classification: MBE Certified WBE Certified MBE & WBE Certified Non- Certified

Company Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Date of contact \_\_\_\_\_  
Method of contact \_\_\_\_\_  
Response to solicitation \_\_\_\_\_  
Type of Work Solicited \_\_\_\_\_  
Please circle classification: MBE Certified WBE Certified MBE & WBE Certified Non- Certified

Company Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Date of contact \_\_\_\_\_  
Method of contact \_\_\_\_\_  
Response to solicitation \_\_\_\_\_  
Type of Work Solicited \_\_\_\_\_  
Please circle classification: MBE Certified WBE Certified MBE & WBE Certified Non- Certified

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Name of Prime Contractor - Print or Type)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name/Title of Affiant) - Print or Type)

\_\_\_\_\_  
(Date)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

the above signed officer, \_\_\_\_\_,  
(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

\_\_\_\_\_  
Notary Public Signature

(Seal)

Commission Expires: \_\_\_\_\_

**SCHEDULE H: DOCUMENTATION OF GOOD FAITH EFFORTS  
TO UTILIZE MBEs AND WBEs ON CONSTRUCTION CONTRACT**

Project Name: \_\_\_\_\_  
Specification # \_\_\_\_\_

The Department of Procurement Services reserves the right to audit and verify all Good Faith Efforts as a condition of award. Material misrepresentations and omissions shall cause the bid to be rejected.

The following is documentation and explanation of the bidder's Good Faith Efforts to meet the contract specific goals as described in the Good Faith Efforts Checklist as part of Schedule D. The Schedule D cannot be modified without the written approval of DPS.

I, \_\_\_\_\_ on behalf of \_\_\_\_\_  
(Name of reporter) (Prime contractor)

have determined that it is unable to meet the contract specific goals in full or in part as set forth in the Special Conditions Regarding Minority and Women Business Enterprise Commitment in Construction Contracts. I hereby declare and affirm that the following good faith efforts were undertaken by the Bidder/Contractor to meet the MBE and/or WBE contract specific goals of this project.

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**Good Faith Efforts Checklist from Schedule D**  
**Attach additional sheets as needed.**

\_\_\_ Solicited through reasonable and available means at least 50% (or at least 5 when there are more than 11 certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, within sufficient time to allow them to respond, as described in the Schedule F.

**Attach copies of written notices sent to MBEs and WBEs.**

\_\_\_ Provided timely and adequate information about the plan, specifications and requirements of the contract.

**Attach copies of contract information provided to MBES and WBEs.**

\_\_\_ Advertised the contract opportunities in media and other venues oriented toward MBEs and WBEs.

**Attach copies of advertisements.**

\_\_\_ Negotiated in good faith with interested MBEs or WBEs that have submitted bids and thoroughly investigated their capabilities.

**Attach Schedule F, Report of Subcontractor Solicitations for Construction Contracts.**

\_\_\_ Selected those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, including, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation.

**Describe selection of scopes of work solicited from MBEs and WBEs and efforts to break out work items.**

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\_\_\_ Made efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.

**Describe assistance efforts.**

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\_\_\_ Made efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

**Describe assistance efforts.**

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\_\_\_ Effectively used the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs as listed on Attachment A.

**Describe efforts to use agencies listed on Attachment A.**

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I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE CONTRACTOR, TO MAKE THIS AFFIDAVIT.

Name of Contractor: \_\_\_\_\_  
(Print or Type)

Signature: \_\_\_\_\_  
(Signature of Affiant)

Name of Affiant: \_\_\_\_\_  
(Print or Type)

Date: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_  
County (City) of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name/s of person/s)  
as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)  
of \_\_\_\_\_ (name of party on behalf of whom instrument  
was executed).

\_\_\_\_\_  
Signature of Notary Public

(Seal)



**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE CONTRACTOR, TO MAKE THIS AFFIDAVIT.**

Name of Contractor: \_\_\_\_\_  
(Print or Type)

Signature: \_\_\_\_\_  
(Signature of Affiant)

Name of Affiant: \_\_\_\_\_  
(Print or Type)

Date: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_

County (City) of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)

by \_\_\_\_\_ (name/s of person/s)

as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)

of \_\_\_\_\_ (name of party on behalf of whom instrument was executed).

\_\_\_\_\_  
Signature of Notary Public

(Seal)

**AFFIDAVIT OF UNCOMPLETED WORK**  
(Complete this form by either typing or using black ink.)

**PART I. WORK UNDER CONTRACT**

List below all work you have under contract as either a prime contractor or a subcontractor, including all pending low bids not yet awarded or rejected.

	1	2	3	4	5	Awards Pending	
PROJECT							
CONTRACT WITH							
ESTIMATED COMPLETION DATE							
TOTAL CONTRACT PRICE							TOTAL
UNCOMPLETED DOLLAR VALUE							

**PART II. UNCOMPLETED WORK TO BE DONE WITH YOUR OWN FORCES.**

List below the uncompleted dollar value of work for each contract to be completed with your own forces including all work indicated as awards pending. All work subcontracted TO others will be listed on PART III of this form. In a joint venture, list only that portion of the work to be done by your company.

	1	2	3	4	5	Awards Pending	TOTALS
EXCAVATING & GRADING							
PCC BASE, C&G PAVING							
BIT CONCRETE PAVING							
STABILIZED BASE (BAM, CAM, PAM)							
AGGREGATE BASE AND FILL							
FOUNDATION (CAISSON & PILE)							
HIGHWAY STRUCTURES							
SEWER & DRAIN STRUCTURES							
PAINTING							
PAVEMENT MARKING							
SIGNING							
LANDSCAPING							
DEMOLITION							
FENCING							

	1	2	3	4	5	Awards Pending
OTHERS (LIST)						
STRUCT. STEEL (BLDG. CONST.)						
ORNAMENTAL STEEL (BLDG. CONST.)						
MISCELLANEOUS CONCRETE						
FIREPROOFING						
MASONRY						
H.V.A.C.						
MECHANICAL						
ELECTRICAL						
PLUMBING						
ROOFING & SHEET METAL						
FLOORING & TILE WORK						
DRYWALL AND PLASTER WORK						
CEILING CONST.						
HOLLOW METAL AND HARDWARE						
GLAZING AND CAULKING						
MISCELLANEOUS ARCH. WORK						
OTHERS (LIST)						
<b>TOTALS</b>						

REMARKS. \_\_\_\_\_

**PART III. WORK SUBCONTRACTED TO OTHERS.** List below the work, according to each contract on the preceding page, which you have subcontracted to others. DO NOT include work to be performed by another prime contractor in a joint venture. No work may be indicated as subcontracted to others on awards pending. If no work is subcontracted to others, show NONE.

	1	2	3	4	5
SUBCONTRACTOR					
TYPE OF WORK					
SUBCONTRACT PRICE					
AMOUNT UNCOMPLETED					
SUBCONTRACTOR					
TYPE OF WORK					
SUBCONTRACT PRICE					
AMOUNT UNCOMPLETED					
SUBCONTRACTOR					
TYPE OF WORK					
SUBCONTRACT PRICE					
AMOUNT UNCOMPLETED					
SUBCONTRACTOR					
TYPE OF WORK					
SUBCONTRACT PRICE					
AMOUNT UNCOMPLETED					
SUBCONTRACTOR					
TYPE OF WORK					
SUBCONTRACT PRICE					
AMOUNT UNCOMPLETED					

I, being duly sworn do hereby declare that this affidavit is a true and correct statement relating to ALL uncompleted contracts of the undersigned for Federal, State, County, City and private work including ALL subcontract work, ALL pending low bids not yet awarded or rejected, and ALL estimated completion dates.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_. Signed \_\_\_\_\_  
 Company \_\_\_\_\_  
 Address \_\_\_\_\_

My commission expires \_\_\_\_\_

**EXHIBIT E**

**Structural Controls**

See Attached



OHARE INTERNATIONAL AIRPORT  
CITY OF CHICAGO  
CHARGE INFORMATION PROGRAM

BRADY EMANUEL  
IN CHARGE  
CHARGE INFORMATION PROGRAM  
04/03/2018



PROJECT NAME  
EAST AIRPORT  
EMPLOYEE PARKING LOT

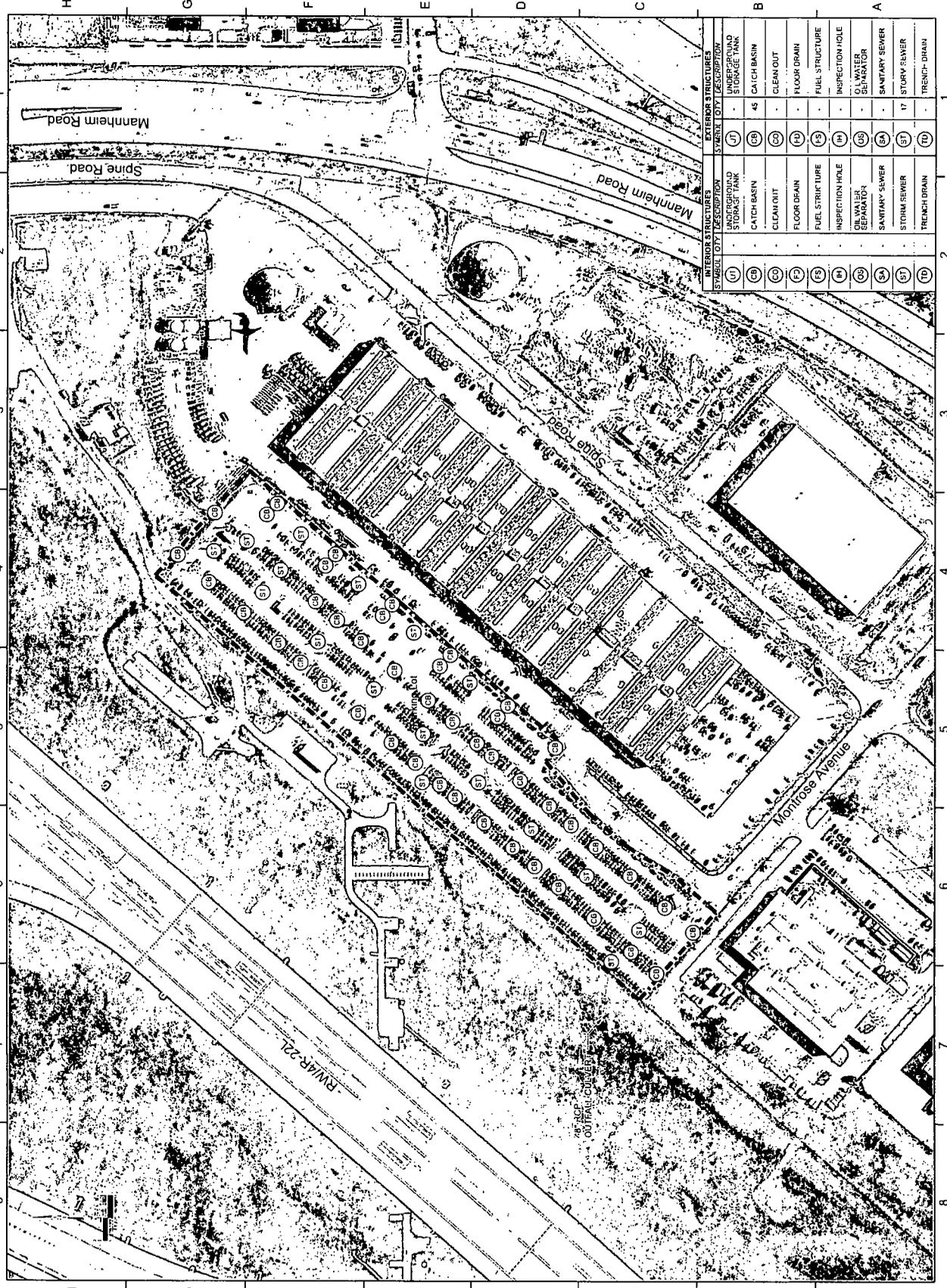
SHEET TITLE  
EXHIBIT E

DESIGNED BY  
N.S. N.S.

CHECKED BY  
N.S. N.S.

PROJECT NO.  
04/03/2018

DRAWN BY  
N.S. N.S.



INTERIOR STRUCTURES		EXTERIOR STRUCTURES	
SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
(U)	STORAGE TANK	(J)	STORAGE TANK
(B)	CATCH BASIN	(K)	CATCH BASIN
(C)	CLEAN OUT	(L)	CLEAN OUT
(D)	FLOOR DRAIN	(M)	FLOOR DRAIN
(E)	FUEL STRUCTURE	(N)	FUEL STRUCTURE
(F)	INSPECTION HOLE	(O)	INSPECTION HOLE
(G)	OIL WATER SEPARATOR	(P)	OIL WATER SEPARATOR
(H)	SANITARY SEWER	(Q)	SANITARY SEWER
(I)	STORM SEWER	(R)	STORM SEWER
(J)	TRENCH DRAIN	(S)	TRENCH DRAIN

**EXHIBIT F**

**Design, Renovation and Construction  
Tenant Projects  
Standard Operating Procedure**

See Attached.

Note: Tenant should ensure conformance with current applicable policy and form requirements as such terms and conditions may be subject to change.



CHICAGO O'HARE INTERNATIONAL AIRPORT  
and  
CHICAGO MIDWAY INTERNATIONAL AIRPORT

DESIGN, RENOVATION, AND CONSTRUCTION  
**Tenant Projects**  
STANDARD OPERATING PROCEDURE ("SOP")

July, 2014

The City of Chicago, acting through its Chicago Department of Aviation (“CDA”), is responsible for the management of the Airports, and accordingly CDA reserves the right to review and approve the construction and/or modification of any structure on Airport property. The CDA, through its Design and Construction Division, reviews, oversees, and approves design and work for all new construction, renovation, and remodeling projects at the Airports. The procedures, submission requirements and deadlines set forth in this standard operating procedure (“SOP”) are mandatory and may be waived only upon approval of the CDA Commissioner or designated representative in unique circumstances. The CDA reserves the right to modify the following procedural requirements based on the scope of each project and items discovered throughout the design and construction process.

The Tenant’s design team shall provide evidence of professional services throughout the design, documentation, and field review stages of the work. Design, drawings, documents, materials, and as-builts shall be prepared, signed, and sealed by a licensed design professional, and a Leadership in Energy and Environmental Design (LEED) Accredited Professional (AP) to the extent dictated in the tenant’s lease.

All Tenants, defined as any entity with a legal right to occupy Airport property including airlines, concessionaires, government agencies or other entities operating on Airport property, who desire to perform construction or renovation on Airport property shall use the following procedure.

## **DESIGN**

### **Step 1: Project Initiation Letter**

The Tenant must submit to the CDA Coordinating Architect, Design and Construction, a Project Initiation Letter on Tenant letterhead that includes:

- Tenant Point of Contact (POC) name, phone number and e-mail address
- Tenant’s Architectural/Engineering firm’s (if applicable) POC name and phone number
- Narrative of the Intended Project Scope
- Photos of the Current Conditions of the Project Location (showing adjacencies)
- Proposed Location Key Plan (if project is within the terminal facilities, show column lines, tenant lease line, and adjacencies within 3 to 5 bays, in addition to clearly identifying impacts to others)
- List of all items that need to be relocated by others (CDA or adjacent tenant) in order for the project to be built (advertising, phones, vending devices, internet kiosks, charging stations, AED’s, fire extinguishers, CDA signage, public address speakers, mechanical/electrical/plumbing equipment, etc.)
- Conceptual Drawings defining the basic parameters of the project
- Estimated Construction Cost
- Preliminary Project Schedule including the appropriate time frame for CDA’s review and response per the Design section in this SOP
- Indication if this is going to be a self-certified project
- Indication if this is the first time the designer has performed work at either ORD or MDW



Please address all design submittals as identified below, and copy as indicated on all emails. For concession projects only, please also copy the CDA Deputy Commissioner of Concessions and the CDA Retail Management Company.

Roger Reeves  
Coordinating Architect, Design and Construction  
Chicago Department of Aviation  
Chicago O'Hare International Airport  
Aviation Administration Building  
10510 West Zemke Road  
Chicago, IL 60666  
(773) 686-6626  
[roger.reeves@cityofchicago.org](mailto:roger.reeves@cityofchicago.org)  
cc: [tfitzgerald@careplusllc.org](mailto:tfitzgerald@careplusllc.org)

Within ten working days of receiving the Project Initiation Letter, the CDA will send a "Response to Project Initiation Letter" to the Tenant with comments and direction regarding the design submittals, including your assigned Project Number which must be included on all future project correspondence and submittals including on all permits. The letter will also identify the CDA Point of Contact for the design phase of the project who will either be a CDA employee or a designated representative. All Tenant questions, concerns, or requests for information or project coordination should be directed to the CDA Point of Contact.

During the project initiation step, the tenant and designer should proactively consider potential sustainable design elements for further consideration and detail in preparation of sustainable design requirements as outlined in Step 2.

Requests for Drawings:

Tenants requesting drawings from the CDA for use in their design shall use the link below for the "Document Request Form" and submit it to the CDA Point of Contact for required approvals. Drawings will not be available until the form is signed by CDA. Tenant will be notified by the CDA Point of Contact when the drawings are available.

*CDA Document Request Form*

**Step 2: Design Submittals and CDA Review**

The Tenant will submit to the CDA Coordinating Architect, Design and Construction, the 30%, 60%, 90%, and 100% design levels, or other completion level combinations based upon review and completeness of the initial and follow-up submittals. Less complex projects may be approved to deviate from this requirement, which will be addressed in CDA's "Response to Project Initiation Letter". Tenant may be requested to conduct a 30% design level presentation to the CDA. This request will also be addressed in the CDA's "Response to Project Initiation Letter".

The Design Documents must illustrate and describe the refinement of the design of the Project and define the scope, relationships, forms, size and appearance of the Project by means of plans, sections, and elevations, typical sectional details, diagrams, and equipment layouts. The Design Documents must include specifications that identify major materials and systems, and establish, in general, their quality levels. Design Documents must also include all calculations, studies,

technical evaluations and other tasks as required to provide complete Design Documents. Consultant must ensure that all projects are in compliance with all local, state and federal requirements and codes.

All concession tenant projects are required to include an updated project schedule and cost estimate with each design submittal. All other tenant projects shall be required to provide schedule and cost information at the CDA's request.

Projects requiring building permits will require reviews with the Department of Buildings. Complex projects may require multiple reviews at various stages during the design process. These reviews are mandatory for more complex projects to familiarize the Department of Buildings with the project and to provide the project manager with productive input during the design process, thus avoiding issues later in the Design, Renovation & Construction Procedures permit review process. The Tenants must coordinate the schedule for these meetings early on in the design process.

All CDA design reviews require a minimum ten (10) working day review period plus an additional five (5) working days for consolidation of comments and responding back to the Tenant. The tenant will receive either a "reviewed as noted" or a "revise and resubmit" in the "Review and Conditions Letter". The letter will include the "Submittal Review Comments Form" spreadsheet containing all design review comments.

The Tenant is required to include responses to all review comments listed in the "Submittal Review Comments Form" spreadsheet, as well as any issues identified in the "Review and Conditions Letter", by CDA and any other reviewing agencies/departments. The spreadsheet column titled "Tenant Response" must be completed and accompany the next designated design submittal. The Tenant must also incorporate all review comments into the next designated design submittal. Failure to do so will affect the design review process.

Adjacencies:

Designs requiring any work in spaces outside the tenant's lease line needs to be clearly identified on all drawings, communicated to the CDA Point of Contact and, if applicable, coordinated with the tenant of the impacted space during the design phase of the project. Designs must also specify any items that need to be relocated by others such as advertising, phones, vending devices, internet kiosks, charging stations, AED's, fire extinguishers, CDA signage, public address speakers, mechanical/electrical/plumbing equipment, etc.

Construction Components:

The components of construction including dumpster locations, phasing, haul routes of material to site and through terminal facility, required shutdowns of systems, and laydown/material storage areas should be coordinated to the best of the tenant's and designer's ability during the design phase. Due diligence should be taken to determine the exact locations of all system tie-ins, and to provide a design that requires minimal system shut downs in order to avoid the project being assessed multiple shut down fees. Work hours for the project must be included in the notes of the design submittal including work components planned for daytime versus work components planned for nighttime.

### Barricades

Projects requiring barricades that are within the view of passengers in the terminal facility must adhere to the CDA Temporary Barricade Standard for each airport. Please select the link below for the current version of CDA's Barricade Standard for ORD and MDW. Barricade details (height, material, color, location) must be included on the demolition drawing of the design submittal for review and approval by the CDA. Any requested deviations to the standard must be highlighted in the design submittal and must be approved by the CDA. All barricade graphics must also be included in the design submittal for review and approval by CDA.

*ORD Barricade Detail*

*MDW Barricade Detail*

Projects requiring barricades outside the view of passengers are not required to adhere to the CDA standard but must still include the proposed barricade design on the demolition drawing of the design submittal for review and approval by the CDA during the design review process. Any deviations to the CDA standard must be highlighted to assist in the review process.

### Sustainable Airport manual (SAM):

Included with each design submittal, the Tenant must also submit a Sustainable Airport Manual (SAM) Checklist. The relevant SAM chapter is Concessions & Tenants – Design & Construction which can be found along with all its supporting documentation at [www.airportgoinggreen.org/SAM](http://www.airportgoinggreen.org/SAM).

### Tenant and CDA Signage:

If the project includes new storefront and/or blade signage, the final design submittal must include side view renderings or photos, the sign location, the exact dimensions, and an elevation for review by CDA to ensure the signage meets the terminal specific requirements. Please note that if a sign permit is required, it can only be obtained by a licensed sign contractor. All storefront and blade signs, with and without electrical components, require a sign permit.

The Tenant must inform the CDA Point of Contact if the project requires CDA signage be removed, modified, or supplemented. A walk through with CDA will be scheduled to ensure CDA has adequate time to schedule the required signage work to occur during the construction phase. Please note that any CDA signage needing to be removed or relocated within the project area must be performed by CDA. If CDA signage is located within the project area, the Tenant must include in the construction documents that the contractor will adequately protect all CDA signage to ensure it is not damaged during construction.

### FAA 7460:

A Federal Aviation Administration (FAA) Form 7460 (Notice of Proposed Construction or Alteration) may be required for certain projects that are expecting to use cranes or any other equipment that could impact the Airport Operations Area (AOA) due to its height. This should be confirmed with the FAA, and it is the responsibility of the Tenant to prepare and submit the Form 7460, if required, to the FAA. In addition to the Form 7460, the local FAA office also requires an FAA checklist and detailed site plan. For further information on this process, please contact the CDA Planning Office at (773) 894-6907 or (773) 686-3732. Select the link below to learn more

about the 7460 process, to complete the form, and for the FAA's contact information. Please note, this process takes approximately 45 days to complete.

*FAA 7460 Form*

Impacts to CDA Security:

The Tenants must notify the CDA Point of Contact if the project scope of work includes the removal, installation, deactivation, reactivation, or relocation of an access control device or boundary including perimeter fence, perimeter gate or checkpoint, or new openings (temporary or permanent) from the public area to the sterile area/airside, access control door, camera, alarm, or supporting hardware. If the scope of work includes any of these items, CDA Security must comply with TSA regulations. Conditions lasting less than 60 days require a TSA Change Condition, and conditions lasting 60 days or longer require a TSA Amendment. Both submittal processes require a TSA approval process of up to 45 days. Information on scope will be required by the Tenant to assist CDA Security with the process.

**Step 3: Construction Document Approval.**

Upon review of the 100% design submittal and a determination that the documents are complete to the 100% level, the CDA Coordinating Architect, Design and Construction, will issue a "Construction Document Approval" to the Tenant, including any outstanding issues that need to be incorporated into the documents and/or addressed. For those projects requiring a building permit, a letter will also be included addressed to the City of Chicago, Department of Buildings indicating the documents have been reviewed and are acceptable for beginning the permit application process.

After receiving the CDA's "Construction Document Approval" letter and completing all necessary construction document modifications required from the 100% design review, the Tenant may then apply for the required permits from the City of Chicago, and any other applicable state and federal authorities. The Tenant must coordinate the method, process and schedule for the permit application submittals. It is the Tenant's sole responsibility to follow-up on the permit issuance process.

The Chicago Department of Buildings is the department which conducts building inspections and processes and issues building permits. A list of work requiring a permit is located on the Department of Buildings website. Please note that if a sign construction permit is required, it can only be obtained by a licensed sign contractor.

All Chicago Department of Buildings permit applications and submittals are fully electronic via the City's online system "E-Plan" available at the following website: <http://www.cityofchicago.org/buildings>.

For work being performed at the terminal, the Description of Work on the permit must include the associated terminal (i.e. Terminal 2), the closest gate (i.e. E4) if applicable, the project name, and CDA project number.

## **CONSTRUCTION**

### **Step 4: Preconstruction Meeting**

Following completion of Steps 1-3, the construction phase of the process begins. The Tenant shall request a Preconstruction Meeting through the CDA as directed in the "Construction Document Approval" letter. Requests shall be submitted to the CDA in a single email with all required documentation, as listed below, attached:

- All required City, State and Federal Permits
- FAA approved 7460 Forms, if required
- 100% design submittal response to comments
  - CDA 100% Document Review Comments spreadsheet with completed responses by Tenant's architect/engineer
  - Transmittal letter or email to the CDA Coordinating Architect, Design and Construction, documenting that the comments have been sent
- Certificate of Insurance documenting that all appropriate insurance has been obtained. All City contractors and subcontractors must a copy of the Certificate of Insurance indicating the City of Chicago and its representatives as additional insured. Insured amounts should match requirements dictated in the tenant's lease documents.
- Contractor's Safety Representative documentation per the CDA Construction Safety Manual
  - Incident Notification Plan
  - Site Specific Safety Plan or Job Hazard Analysis
  - Dedicated On-Site Safety Professional
    - 3 year resume showing minimum of 3 year verifiable construction projects safety experience
    - 30 hour Occupational Safety and Health Administration (OSHA) card
    - Current Automated External Defibrillator (AED) / Cardiopulmonary Resuscitation (CPR) certification
- Construction schedule that includes: All phases from Permit Application through Construction Completion and Punchlist Walkthrough, including expected Department of Buildings inspections
- List of contractors/subcontractors with 24 hour phone numbers
- Compliance plan including Minority Business Enterprise (MBE)/Women-owned Business Enterprise (WBE) and City of Chicago residency requirements to the extent dictated in the tenant's lease
- Barricade Plan and elevation showing signage/graphics with dimensions
- Staging, dumpster location, and haul route
- Copy of ComEd electrical meter application if project requires a new electrical meter

The CDA will arrange a pre-construction meeting and notify the Tenant of the meeting time and location. Every project must have a construction manager assigned by the Tenant who attends the preconstruction meeting. The Tenant and construction team shall answer any outstanding questions and exchange documentation. The Tenant shall submit one (1) hardcopy of all submittals listed above in addition to one (1) full size hardcopy set of stamped approved building plans and one (1) PDF of stamped approved building plans. The Tenant must also state in the preconstruction meeting if this is the first project for the contractor or any subcontractors at ORD or MDW.

The Tenant must present the barricade graphic as approved by CDA during the design phase. If the size of the graphic precludes the Tenant from bringing it to the preconstruction meeting, the Tenant must provide proof that the graphic has been produced and is ready for installation. The barricade graphic must be installed within 24 hours of erecting the barricade.

During the pre-construction meeting, the CDA will assign a Point of Contact for the construction phase of the project who will either be a CDA employee or a designated representative. The CDA Point of Contact will act as the project tenant coordinator. All Tenant questions, coordination requests, changes in schedule, or adjacency/infrastructure impacts should be directed to the CDA Point of Contact.

No construction may begin until all required documentation has been submitted and reviewed by the CDA, and all required coordination is complete.

Processes for all required Airport ID Badges and permits must be completed for every employee and vehicle involved in the Project before work begins and should be substantially completed by the time of this meeting. All Tenant badging requests must be handled by CARE Plus (Chicago Airports Resources Enterprise Plus) as specified in the Security ID Badging section included in this document.

#### **Step 5: Notice to Airport Users**

For all tenant projects, the Tenant is required to submit a Notice to Airport User Form. The Tenant shall register or login to the online Notice to Airport Users Form at <https://eforms.cityofchicago.org/uforms> and create a project start up form indicating scope, start and completion dates. Additional user forms required during the course of construction will be discussed at the Pre-Construction Meeting. All User Forms must be submitted at least 3 days in advance of the anticipated start of work to allow adequate time for review. Select the link below to learn more about how to submit a Notice to Airport Users Form for O'Hare International Airport and Midway International Airport.

*ORD Quick Reference Guide*  
*MDW Quick Reference Guide*

#### **Step 6: Construction**

All permits and the User Form shall be prominently displayed on the exterior of the barricade in a frame approved by the CDA. One full size stamped set of drawings and the original permit must be kept on site at all times for use by the CDA and the Chicago Department of Buildings during inspections.

During construction, contractors must request inspections by Ventilation, Electrical, Plumbing, and New Construction Department of Buildings Inspection Bureaus on all projects with issued building permits, regardless of scope, for both rough and final inspections. Failure to request these inspections may result in suspension or revocation of the permit and issuance of citations by the Chicago Department of Buildings for violation of licensing requirements against general and subcontractors. All rough and final inspections will conclude with the inspector signing the back of the original permit. If an inspector determines a walkthrough is not necessary or does not respond to the request for an inspection, the contractor must indicate on the back of the permit when the inspection was requested and the reason, if known, for an inspection not occurring.

Please note that the Department of Buildings assigned Chief Inspector for the project will not sign off on the permit if necessary inspections have not been completed.

Chicago Department of Buildings inspections shall be scheduled via the web-based, on-line inspection scheduling system at [www.cityofchicago.org/buildings](http://www.cityofchicago.org/buildings). All requests for rough and final Chicago Department of Buildings inspections should be requested fourteen (14) working days in advance.

If needed, you may also contact the Department of Buildings Inspection Bureaus by phone as listed below:

Ventilation Department – (312) 743-3573  
Electrical Department – (312) 743-3622  
Plumbing Department – (312) 743-3572  
New Construction Department – (312) 743-3531

In addition, contractors must offer the terminal manager and building engineer an opportunity to perform an inspection at demolition, rough, and final phases. The Tenant shall contact the CDA Point of Contact for notification to the terminal manager and building engineer for demolition, rough and final inspections.

Demolition:

Once demolition is completed, the CDA terminal manager and the CDA building engineer shall be offered the opportunity to perform an inspection of the site prior to beginning construction. Please note that demolition and construction waste management

Rough Inspections:

All internal structural components and mechanical systems shall remain exposed for completion of the preliminary rough inspection by the appropriate inspectors. Drywall should be installed only upon verification of code compliance for any work performed on any altered structural and/or mechanical systems. In addition, while rough components and systems are exposed, the CDA terminal manager and the CDA building engineer shall be offered the opportunity to perform an inspection.

Final Inspections:

Once the rough inspection is approved and the balance of construction completed, a final inspection must also be performed by Chicago Department of Buildings inspectors from bureaus having jurisdiction over the related work. In addition, the CDA terminal manager, and the CDA building engineer shall be offered the opportunity to perform a final inspection.

Retail food establishments are required to provide a building license which triggers a health inspection to be conducted by the Chicago Department of Public Health. Concessions applying for a liquor license require a separate inspection coordinated by the Business Affairs and Consumer Protection Department, in addition to the Department of Buildings inspections.

During construction, the tenant shall submit monthly Chicago residency utilization reports per 2-92-330 of the Municipal Code of the City of Chicago to the extent dictated in the tenant's lease. All monthly reports shall be submitted to the assigned CDA point of contact.

Non-compliance with any of the “Conditions of Approval” listed in the “Submittal Review Comments Form” may be just cause for the CDA to order work stoppage until corrective measures are completed and compliance is obtained. Any cost or claims due to this work stoppage shall be borne by the contractor.

#### **Step 7: Notification to the City of Substantial Completion.**

Upon substantial completion and prior to opening/occupancy, the Tenant shall request a site inspection/punchlist walk through with the CDA Point of Contact as instructed during the pre-construction meeting. Attendees should include the Tenant’s designer and contractor, the CDA terminal manager, the CDA building engineer, the CDA Point of Contact, and any other attendees identified during the preconstruction meeting. During the walkthrough, an oral punch list will be communicated followed within a week by a written punch list produced and distributed to all attendees by the Tenant. Documentation showing the completion of punchlist items must be submitted to the CDA Point of Contact within 30 days of the punchlist walkthrough. If additional time is needed, the Tenant must coordinate that request through the CDA Point of Contact.

If a Certificate of Occupancy is required, as determined by the City of Chicago Department of Buildings, it will need to be submitted to the CDA prior to any occupancy of the renovated or newly constructed space. It is the Tenant’s responsibility to arrange for inspection by the Department of Buildings for the Certificate of Occupancy.

The Tenant shall close out the Notice to Airport Users Form by electronically attaching a PDF of the permit’s front and back showing inspector sign-offs, by entering the substantial completion date, by entering the punchlist walkthrough date, and by entering the anticipated submittal of redlined drawings which must be within 30 days of the punchlist walk through. An automatic email reminder will be sent to the Tenant/Contractor if this information is not entered into the Notice to Airport Users Form on or before the scheduled substantial completion date.

The Tenant must also submit a final construction SAM Checklist at construction completion that incorporates information on final quantities, contractor submittals, and other SAM-related data that is incorporated during the construction phase. SAM checklists will be reviewed concurrently with the contract documents with the exception of the final construction submittal which is submitted by the Tenant and reviewed separately by the Sustainable Review Panel (SRP). Recognition in the form of a Green Airplane Certification will be awarded at completion of final checklist review.

### **CLOSEOUT**

#### **Step 9: As-Builts**

The as-built documents (all required prints and electronic files) shall be transmitted to the CDA Coordinating Architect, Design and Construction, within ninety (90) days of substantial completion unless the CDA has formerly approved an alternate time frame. The items listed below are required to support maintenance of accurate facility records and future construction:

- One full-size hardcopy of final as-built drawings
- One CD/DVD of CAD files either in AutoCAD or Microstation format

- One CD/DVD of all image files in PDF format
- One PDF of the finalized SAM Construction Checklist
- One PDF of all O&M manuals for equipment being maintained by the CDA
- One PDF of the building permit (both sides) with all required rough and final inspection sign-offs
- One PDF of the preventative maintenance schedule listing the systems and equipment that require preventative maintenance, scope of maintenance to be performed, frequency, and which entity is responsible
- All concession tenant projects are required to include one PDF of the tenant certified statement detailing the final improvement cost including change orders. All other tenant projects shall be required to provide this information at the CDA's request.
- All concession tenant projects are required to include one PDF documenting the project's Minority Business Enterprise (MBE)/Women-owned Business Enterprise (WBE) participation as well as the City of Chicago residency. All other tenant projects shall be required to provide this information at the CDA's request.

### **SAFETY**

All contractors and subcontractors and the work they perform are subject to the CDA Construction Safety Manual. The contractor's Safety Representative's credentials must comply with the requirements as outlined in the most recent CDA Construction Safety Manual and must be approved prior to beginning any work on the project. Copies of the Safety Representative's resume, OSHA card, AED/CPR card, Site Specific Safety Plan/Job Hazard Analysis (JHA), Incident Notification Plan and any other documentation as required by the CDA Construction Safety Manual must be submitted to CDA or its representatives at the Pre-Construction Meeting.

### **SECURITY ID BADGING**

All companies conducting business at the Airport and having an operational need for access to the Secured Area, Security Identification Display Area (SIDA), Air Operations Area (AOA), and/or the Sterile Area must be properly registered as a "Tenant" in the Airport ID Badging and Access Control System, or be sponsored by a registered Tenant, before its employees may be issued ID Badges, and its vehicles issued airfield vehicle permits. Tenants that are companies servicing an existing Airport Tenant must be sponsored by that Airport Tenant. All companies must be in compliance with the CDA – Identification Badge Regulations and Practices containing Policies and Procedures and Rules and Regulations of the CDA.

Registration of companies as Tenants in the system, and employee screening/ID Badging procedures, are a lengthy, but mandatory process. The Tenant should keep this in mind when scheduling a project. Tenants are advised to begin this process at the earliest opportunity, become familiar with required procedures, and allow adequate lead time, to preclude delays. Tenants or their contractors must know all access codes for required door access prior to starting the badging process.

Airport ID badges, driving privileges, and airfield vehicle permits are as crucial to this process as are required construction permits. Tenants' failure to understand, or comply with, ID Badging and vehicle permit/operating regulations can impose significant and costly project delays.

Requirements, and detailed instructions, for obtaining required badges, driving privileges, and permits are provided in the CDA **Identification Badge Regulations and Practices** and in the

Ground Motor Vehicle Operation Regulations Manual. These documents are available on request from CDA. *See ID Badging website:* [www.flychicago.com/badging](http://www.flychicago.com/badging)

Tenants must review and understand these procedures thoroughly, before attempting to obtain badges, driving privileges, or vehicle permits. Companies must complete the Employer Information and Authorization Form to register as Tenants and designate an authorized Signatory (required if the Tenant is not already established as a Tenant in the ID Badging System). Signatories must be established in accordance with the rules defined in the Handbook, which typically requires 2 business days to accomplish upon submittal.

The Access Control and Photo ID Badge Application is required to register company employees.

The Company Vehicle Access Form-AIRFIELD must be completed to register the company vehicles.

NOTE: CARE Plus acts as "Tenant" for ID Badging purposes for those Tenants that are airfield construction companies under contract to the City. Such construction companies do not need to register as Tenants themselves but shall instead contact CARE Plus, and contact/proceed to ID Badging only as directed by CARE Plus. The above directives should be reviewed and understood before contacting CARE Plus.

CARE Plus may be reached at:

CARE Plus  
P.O. Box 66790, AMF O'Hare  
Chicago, IL 60666  
Attn: Lisa Kleopa  
(773) 894-3828  
[lkleopa@careplusllc.org](mailto:lkleopa@careplusllc.org)

However, Tenants who already have established ID Badge accounts as Tenants shall continue to obtain ID Badges in the manner previously established.

Airport ID Badges and vehicle permits must be returned at the conclusion of each project.

### **ID Badges for Secured Areas**

Any employee who works at the Airport and has operational duties requiring access to a Secured Area is required to obtain an ID badge. Requirements for obtaining an ID badge include the following: a successful completion of the Access Control and Photo ID Badge Application; favorable results of an FBI fingerprint-based Criminal History Records Check (CHRC); favorable results of a TSA Security Threat Assessment (STA); successful completion of the Security Identification Display Area (SIDA) training; and an understanding and commitment to follow federal and CDA regulations listed in the Handbook.

Depending on individual training and testing requirements, issuance of an individual employee badge typically requires a minimum of two visits, per applicant, with approximately 1-3 hours per visit, not including travel to CARE Plus and ID Badging. In addition, the required fingerprint-

based investigations CHRC and STA typically require a minimum of 10 business days, per employee, to accomplish.

Applicants seeking airfield-driving privileges within the Airport airfield perimeter (AOA or Secured Area) must be trained and tested and, therefore, must be thoroughly familiar with the Ground Motor Vehicle Operation Regulations Manual to obtain the driving privileges.

**Airfield Vehicle Permits.**

If a project involves driving on the airfield, all vehicles driven on the movement or non-movement area (ramp, service roads, runways and taxiways) must be properly insured and registered with the ID Badging Office. While in these areas, registered vehicles must have a valid Vehicle Permit sticker affixed to the lower left (driver's side) of the windshield of the vehicle. All documentation should be submitted at least 15 business days before the expiration or new issue date of the Vehicle Permit with a valid Certificate of Insurance covering the vehicles identified, with a minimum amount of \$5,000,000 of vehicle liability insurance.



## CITY COUNCIL

### CITY OF CHICAGO

**COUNCIL CHAMBER**  
CITY HALL SECOND FLOOR  
121 NORTH LA SALLE STREET  
CHICAGO, ILLINOIS 60602  
TELEPHONE: 312-744-6828  
FAX: 312-744-1024



### COMMITTEE MEMBERSHIPS

AVIATION  
(CHAIRMAN)

BUDGET & GOVERNMENT OPERATIONS

HEALTH & ENVIRONMENTAL PROTECTION

RULES & ETHICS

ECONOMIC, CAPITAL & TECHNOLOGY  
DEVELOPMENT

WORKFORCE DEVELOPMENT & AUDIT

FINANCE

## MICHAEL R. ZALEWSKI

**ALDERMAN, 23RD WARD**  
6247 SOUTH ARCHER AVENUE  
CHICAGO, ILLINOIS 60638  
TELEPHONE: (773) 582-4444  
MZALESKI@CITYOFCHICAGO.ORG

April 18, 2018

To the President and Members of the City Council:

Your Committee on Aviation begs to leave report and recommend that your Honorable Body pass the proposed ordinance(s) transmitted herewith.

**A meeting was held on April 17, 2018 in Room 201A, second floor at City Hall to consider the following ordinance(s):**

**O2018-3039 Fuel system lease agreement with ORD Fuel Co. LLC at Chicago O'Hare International Airport Emanuel (Mayor)**

**O2018-3040 A substitute Agreement with Chicago Airlines Terminal Consortium (CATCo) for work related to City-owned aeronautical operations, equipment and systems, and facilities lease at Chicago O'Hare International Airport Emanuel (Mayor)**

**These ordinances was passed unanimously viva voce of the members.**

Respectfully submitted,

Michael R. Zalewski  
Chairman  
Committee on Aviation