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[AGREEMENT NUMBER]

Air Carrier Operating Agreement

For

Luis Muñoz Marín International Airport

By and Between

Aerostar Airport Holdings, LLC

And

[AIRLINE LEGAL NAME]

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***EXHIBITS:***

- Exhibit A - Letter of Credit Form
- Exhibit C - Nondiscrimination and Affirmative Action Requirements
- Exhibit D - Records
- Exhibit E - Affiliate Designation
- Exhibit E-2 - Withdrawal of Affiliate Designation
- Exhibit F - Plat of Airport

## AIR CARRIER OPERATING AGREEMENT

Luis Muñoz Marín International Airport

This **AIR CARRIER OPERATING AGREEMENT** dated as of [EFFECTIVE DATE] (“Effective Date”) is made between **AEROSTAR AIRPORT HOLDINGS, LLC** (“Aerostar”), a limited liability company organized under the laws of the Commonwealth of Puerto Rico (the “Commonwealth”); and [AIRLINE LEGAL NAME] (“[AIRLINE]”), a for profit [TYPE OF BUSINESS] organized under the laws of [STATE OF INCORPORATION], duly authorized to do business in Puerto Rico; each a “Party”, and collectively the “Parties”.

WHEREAS, Aerostar entered into a certain Lease Agreement, dated as of July 24, 2012 (the “Lease Agreement”), with the Puerto Rico Ports Authority (the “Authority”), a public corporation and government instrumentality of the Commonwealth, pursuant to which the Authority will grant Aerostar an exclusive lease to use, operate, manage, construct, maintain and improve the Luis Muñoz Marín International Airport (the “Airport”), to provide certain services related to the Airport and to receive the revenues from the Airport on the terms and conditions of the Lease Agreement;

WHEREAS, [AIRLINE] is an air carrier duly certificated by the U.S. Department of Transportation (“DOT”), Federal Aviation Administration (“FAA”) and desires to provide air service at the Airport as a certificated air carrier and to undertake the obligations set forth below; and

WHEREAS, Aerostar is willing to permit [AIRLINE] to provide air service as a duly certificated air carrier at the Airport on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Aerostar and [AIRLINE] agree as follows:

### **ARTICLE 1 TERM OF AGREEMENT**

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall expire on [EXPIRATION DATE], unless earlier terminated as provided herein.

### **ARTICLE 2 USES, RIGHTS AND PRIVILEGES**

#### 2.1 Permitted Operations.

[AIRLINE] and its Affiliates (as defined below) may conduct an Air Transportation Business at the Airport in common with others, only to the extent of and in accordance with certificates issued in accordance with federal law. For the purposes of this Agreement, an “Air Transportation

Business” shall mean the carriage by aircraft of persons or property as a common carrier for compensation or hire and the activities related thereto.

## 2.2 Use of Facilities.

Except as otherwise provided in this Agreement, all applicable Laws, and the rights of Aerostar under this Agreement to monitor [AIRLINE]’s compliance with this Agreement, [AIRLINE], its employees, passengers, guests, customers, agents and invitees shall have the right (in common with other duly authorized users) to the use of all facilities, improvements, equipment and services that have been or may hereafter be designated for common use at or in connection with the Airport, subject to any rules and regulations promulgated by Aerostar (“Airport Rules and Regulations”). Any such use by [AIRLINE] shall be conducted in compliance with the terms and conditions on which such facilities, improvements, equipment and services are made available for use, and only at the times, to the extent, in the manner, and for the purposes for which they are made available for use.

- (a) All terminal facilities shall be used by [AIRLINE] on a common use basis.

## 2.3 Restrictions.

All rights of [AIRLINE] hereunder are subject to the following specific restrictions:

- (a) The grant of such rights does not authorize [AIRLINE] to conduct a separate business at the Airport, but permits [AIRLINE] to conduct such activities only insofar as they are necessary or incidental to the conduct of [AIRLINE]’s Air Transportation Business at the Airport and to the conduct of handling arrangements approved pursuant to Section 2.7 and Section 2.8. It is understood that the loading, unloading, distribution and delivery of cargo, mail or other property to, from and at the Airport is incidental to the Air Transportation Business of an Airline.

- (b) Other than for the provision of air transportation services and except as specifically authorized in other sections of this Agreement, (i) [AIRLINE] shall not use or permit the use of any portion of the Airport facility space for the purpose of selling, offering for sale, dispensing or providing any merchandise, products or services except to their ticketed passengers and the ticketed passengers of the Affiliates and subsidiaries of [AIRLINE] as a service incidental to their respective Air Transportation Businesses or to their respective employees, and any other additional activities as may be approved by Aerostar as provided below (it being understood that this Section 2.3(b)(i) does not prohibit [AIRLINE] from loading, unloading, distributing or delivering cargo, mail or other property to, from and at the Airport in the course of its cargo carriage business), and (ii) nothing contained herein is intended to or shall be construed to authorize or permit [AIRLINE] to conduct any activity or to operate any direct or indirect business operation which competes with any revenue generating activity of Aerostar without the approval of Aerostar.

- (c) Aerostar may, from time to time, and in accordance with the Operating Standards (as defined in the Lease Agreement), temporarily or permanently close roadways, doorways and any other area of the Airport.

- (d) Aerostar may prohibit the use of any portion of the “Airfield Area” (defined as any land identified as “Airfield Area” in Exhibit F and, except as otherwise provided herein, all

facilities, equipment and improvements now or hereafter located thereon, including the runways, taxiways, aprons and facilities at the Airport for the purpose of controlling and assisting arrivals, departures and operations of aircraft using the Airport, such as control towers or other facilities operated and maintained by the FAA or any other Governmental Authority, security fences, service roads, signals, beacons, wind indicators, flood lights, landing lights, boundary lights, construction lights, radio and electronic aids or other aids to operations, navigation or ground control of aircraft whether or not of a type herein mentioned and even though located away from but related to the rest of the Airfield Area) by any aircraft operated or controlled by [AIRLINE] that exceeds the design strength of the paving of the runways and taxiways at the Airport, or any other standard design criteria.

(e) [AIRLINE] shall not do or authorize to be done anything that may interfere with the effectiveness of the drainage and sewage system, water system or any other part of the utility, electrical or other systems installed or located from time to time at the Airport. In addition, [AIRLINE] shall not allow any Hazardous Substance (as defined in Section 7.1) to enter the drainage or sewage system, water system, or any other part of the utility systems, other than in accordance with the terms and limits of all applicable Laws, including Environmental Laws (as defined in Section 7.1).

(f) [AIRLINE] shall not do or authorize to be done anything at the Airport (i) which may knowingly constitute a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement or (ii) which will invalidate or conflict with any insurance policies covering the Airport; *provided* that (A) the restrictions contained in such insurance policies are of a type customarily found in insurance policies for Comparable Public Airports or (B) Aerostar has provided notice of such restrictions to [AIRLINE]. If, by reason of any failure on the part of [AIRLINE] to comply with the provisions of this Agreement, the cost of any such insurance or extended coverage is at any time higher than it otherwise would be, then [AIRLINE] shall pay Aerostar that part of all premiums paid by Aerostar which are charged because of such violation or failure by [AIRLINE]. Hazardous conditions include any threat of danger or damage to human health or the environment.

(g) [AIRLINE] shall not be permitted to conduct training flights except as permitted by Aerostar.

(h) As soon as possible, after obtaining any necessary approval from appropriate Governmental Authorities, [AIRLINE] shall remove any of its disabled aircraft from the Airfield Area upon the request of Aerostar. [AIRLINE] shall place and/or store any such disabled aircraft only in such hangar facilities that [AIRLINE] has a right to use (whether through ownership, lease or license) at the Airport and/or in such storage areas as may be designated by Aerostar, in which latter event such storage shall be only upon such terms and conditions as at that time may be established by Aerostar, consistent with any directives of the FAA and the National Transportation Safety Board. In the event [AIRLINE] fails to remove any of its disabled aircraft as expeditiously as possible, Aerostar may, but shall not be obligated to, cause the removal of such disabled aircraft by any reasonable means without any liability of Aerostar for any injury or damage to such disabled aircraft (except to the extent such injury or damage is determined in a non-appealable decision to be due to or caused by the negligence or willful misconduct of Aerostar); *provided* that Aerostar shall, to the extent practicable, give [AIRLINE] reasonable prior notice of its intent to do

so. If Aerostar removes, or causes another to remove [AIRLINE]'s disabled aircraft, [AIRLINE] shall pay to Aerostar, upon receipt of an invoice, the actual costs incurred for such removal, including the cost of labor.

(i) [AIRLINE] may not load or unload an all-cargo aircraft on the terminal ramp area.

(j) [AIRLINE] shall not use, store, transport, or dispose of any fuels, oil, grease, lubricants, or other Hazardous Substances to, from, within, or upon the Airport in a manner that violates any applicable Law, including applicable Environmental Laws.

#### 2.4 Fees and Charges.

[AIRLINE]'s and its Affiliates' right to conduct operations hereunder is conditioned upon payment of all fees and charges applicable to their operations at the Airport, and to their compliance with all other terms and conditions of this Agreement.

#### 2.5 Affiliate.

(a) For purposes of this Agreement, an airline may be designated as an Affiliate so long as: (i) the airline is a parent or subsidiary of [AIRLINE], or (ii) the airline is directly or indirectly controlled by [AIRLINE] or is under common control with [AIRLINE], or (iii) all operations of the airline at the Airport are controlled by [AIRLINE] or controlled by [AIRLINE] and one or more airlines that are a party to an airport use agreement ("Signatory Airlines") that have also designated the airline as an Affiliate.

(b) An Affiliate shall have the rights afforded [AIRLINE] without payment of any additional charges or premiums, provided [AIRLINE] remains a signatory to this Agreement.

(c) [AIRLINE] may request designation of an airline as an Affiliate by submitting to Aerostar the form attached hereto as Exhibit E-1 along with data and information to demonstrate, to the reasonable satisfaction of Aerostar, compliance with the conditions described above. The designation of Affiliate shall become effective on the first day of the calendar month following at least 15 days from receipt by Aerostar of the form attached hereto as Exhibit E-1.

(d) [AIRLINE] shall be responsible for the actions and charges of its Affiliates as described more specifically in Exhibit E-1.

(e) The withdrawal of the Affiliate designation shall become effective upon the last day of the calendar month following at least 15 days from receipt by Aerostar of the form attached hereto as Exhibit E-2.

#### 2.6 Removal of Airline Property.

(a) The property owned and placed or installed by [AIRLINE] at the Airport shall remain the property of [AIRLINE] and must be removed on or before the expiration of the Term or the expiration of any extension or renewal of the Term at [AIRLINE]'s sole risk and expense. The cost of restoring the Airport, the structure or any fixtures located therein resulting from damage relating to such removal shall be paid for by [AIRLINE]. In the event of the termination

of this Agreement, [AIRLINE] shall have 30 days after such termination during which to remove such property; *provided* that Aerostar shall have the right to assert such lien or liens against the property as Aerostar may by law be permitted, other than liens on aircraft or ground service equipment. After [AIRLINE] has removed all such property or the 30-day period described in the preceding sentence expires, Aerostar and [AIRLINE] shall conduct a walk-through inspection to evaluate the removal of property and the condition of the premises.

(b) If [AIRLINE]'s property is not removed as herein provided, Aerostar may, at its option, deem such property abandoned and keep such property or, after notice to [AIRLINE] and at [AIRLINE]'s sole risk and expense, remove such property to a public warehouse for deposit, or retain the same in Aerostar's possession and after the expiration of 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, including costs of restoration, second to any sum owed by [AIRLINE] to Aerostar, and any balance remaining shall be paid to [AIRLINE]. If [AIRLINE] has deposited a security deposit with Aerostar in accordance with Section 3.9 hereof, Aerostar may retain the Security Deposit until such time as any amount due from [AIRLINE] for all expenses for the removal and sale of [AIRLINE]'s property have been determined and paid in full. Aerostar may immediately deduct restoration expenses and the cost of removal and sale of such property from the Security Deposit.

## 2.7 Ground-handling Services (applicable to Passenger Carriers).

(a) [AIRLINE], if primarily engaged in the carriage of passengers ("Passenger Carrier"), may self-handle using its own personnel to the extent permitted by applicable federal law.

(b) Exclusively as it relates to ground-handling services, [AIRLINE] may use its personnel to handle its Affiliates.

(c) If [AIRLINE] does not exercise its right to self-handle as provided in Section 2.7(a), [AIRLINE] shall obtain any necessary ground-handling services for a fee from (i) a company authorized by Aerostar to provide ground-handling services at the Airport, or (ii) another airline that is also a Signatory Airline with the approval of Aerostar, which approval may be conditioned on, among other matters, the receipt of a concession fee (not to exceed 5% of the amount paid in consideration of such ground-handling services) by Aerostar from the Signatory Airline providing such ground-handling services. [AIRLINE] shall not be responsible, as a result of this Agreement, for any payments that are owed to Aerostar by any provider of ground-handling services as a result of the handling services it provides to [AIRLINE].

(d) [AIRLINE] shall purchase any and all fuel required for its operation at the Airport from a fuel service provider authorized by Aerostar.

## 2.8 Ground-handling Services (applicable to Cargo Carriers).

(a) [AIRLINE], if engaged in the carriage, distribution and delivery of property and/or mail, but not passengers ("Cargo Carrier") may self-handle using its own personnel to the extent permitted by applicable federal law.



(b) Exclusively as it relates to ground-handling services (which may include marshaling, unloading, loading, towing, and weight and balance), [AIRLINE] may use its personnel to handle its Affiliates.

(c) Exclusively as it relates to ground-handling services, [AIRLINE] may, in addition, use its personnel to provide ground-handling to other duly certificated cargo carriers serving the Airport so long as all of the following conditions are met at the time such ground-handling services are provided: (a) such other cargo carrier is subcontracted by [AIRLINE] for service at the Airport; (b) such other cargo carrier is involved, at the time such ground-handling services are provided, in the carriage of property to or from the Airport for [AIRLINE]; (c) [AIRLINE] has uninterrupted custodial control over all of the property being delivered to or from the Airport by such cargo carrier, from its entry to or arrival at the Airport until the departure of the property from the Airport or its delivery to [AIRLINE]; (d) [AIRLINE] provides such ground-handling services to such other cargo carrier free of charge and derives no revenue from the subcontracted cargo carrier as a result; (e) [AIRLINE] separately reports the activity of each such subcontracted cargo carrier to Aerostar in [AIRLINE]'s monthly operations reports described in Section 3.2(a); and (f) [AIRLINE] shall be responsible for paying all fees, rates and charges owed to Aerostar by such subcontracted cargo carrier for its use of the Airport in connection with its subcontract with [AIRLINE] if such subcontracted cargo carrier fails to pay such fees, rates and charges when they are due.

(d) [AIRLINE] shall purchase any and all fuel required for its operation at the Airport from a fuel service provider authorized by Aerostar.

## 2.9 Taxes, Licenses and Permits.

(a) [AIRLINE] shall pay or cause to be paid any and all taxes required to be paid by [AIRLINE] 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 [AIRLINE] hereunder, including all licenses, permits, certificates and other authorizations required under Environmental Laws.

(b) Any taxes associated with or assessed on any personal property of [AIRLINE] located on such premises shall be the obligation of [AIRLINE] and, as such, shall be paid by [AIRLINE] and not by Aerostar.

## 2.10 Performance by Aerostar upon Failure of the Airline.

If [AIRLINE] fails to perform, for a period of 30 days after notice from Aerostar, or fails to commence performance within 30 days after such notice if complete performance is not reasonably possible within 30 days, any obligation required by this Agreement, Aerostar may perform such obligation of [AIRLINE], and charge [AIRLINE] for the reasonable cost to Aerostar of such performance; *provided* that if [AIRLINE]'s failure to perform any such obligation endangers the health or safety of persons or the safety of operations at the Airport and Aerostar so states in its notice to [AIRLINE], Aerostar may perform such obligation of [AIRLINE] at any time after the giving of such notice and charge [AIRLINE] for its reasonable and documented costs of such performance. If [AIRLINE] has deposited a security deposit with Aerostar in accordance with

Section 3.9 hereof, Aerostar may use funds from the deposit to pay for any expenses related to Aerostar's performance of [AIRLINE]'s obligation pursuant to this Section 2.10.

## 2.11 Utilities

Aerostar shall be responsible for providing [AIRLINE] access to all utilities [in common use terminal facilities at the Airport] at no additional cost to [AIRLINE], *provided* however, to the extent that Aerostar separately meters [AIRLINE] for the cost of electricity, Aerostar may charge [AIRLINE] for the cost of electricity that [AIRLINE] directly uses. Aerostar shall provide [AIRLINE] copies of the monthly bills from the utility provider if there is a separate meter installed by the utility provider or, if Aerostar installs a sub-meter, monthly invoices showing the actual meter reading accompanied by copies of invoices from the utility provider showing the actual unit costs of electricity paid by Aerostar.

## **ARTICLE 3 USE FEES AND OTHER CHARGES**

### 3.1 Fees.

Pursuant to this Agreement, Airline shall pay landing fees, aircraft parking fees, passenger fees, and cargo fees set out in the rate card attached hereto (the "Rate Card"), which shall be subject to revision from time to time by Aerostar.

### 3.2 Information on Airline Operations.

(a) *Monthly Report.* For each full or partial calendar month of the Term, not later than 20 days after the end of that month, [AIRLINE] shall submit to Aerostar information regarding its actual operations and the operations of its Affiliates (the "Monthly Report"), certified and signed by an authorized representative of [AIRLINE], which shall include at minimum,

(i) the number and, with respect to an aircraft type, the maximum allowable gross takeoff weight, in 1,000-pound units (rounded to the near 1,000-pound unit), at which aircraft type may take off from an airport, as certificated by the FAA and recited in flight manuals governing that aircraft type ("MAGTOW") of any landing at the Airport of an aircraft except (x) an aircraft which (without being scheduled to do so) lands at the Airport because of meteorological conditions, mechanical or operating causes, or any emergency or precautionary reason, or (y) an aircraft which is owned by and used exclusively in the service of the United States of America or the government of any state, Commonwealth, territory or possession thereof or therein ("Revenue Landings"); and

(ii) the number of terminating and incoming on-line transfer and off-line transfer revenue passengers arriving at the Airport ("Deplaned Passengers") and originating and outgoing on-line transfer and off-line transfer revenue passengers departing from the Airport ("Enplaned Passengers"), itemized by domestic, international and local "Terminal Area" (defined the land and Terminal portion identified as the Terminal Area in Exhibit E, and, except as otherwise provided in this Agreement, all facilities, equipment and improvements now or hereafter located thereon, including all passenger terminal buildings, connecting structures, passenger walkways and tunnels, concourses, hold room

areas, passenger loading bridges and control towers maintained by the Lessee or an Airline), and (iii) any other information reasonably required by the Aerostar. In the event that Aerostar requires additional information, upon demand from Aerostar and within ten (10) business days, [AIRLINE] shall submit such additional information on [AIRLINE]'s or its Affiliate's' activities at the Airport.

### 3.3 Monthly Payments.

[AIRLINE] shall pay,

(a) not later than the date on which the Monthly Report is due, an amount equal to the sum of:

(i) the Parking Fees due from [AIRLINE] for its aircraft parked on Airport grounds not under lease by [AIRLINE] in the immediately prior month as shown in [AIRLINE]'s Monthly Report, calculated based upon the Parking Rates shown in the Rate Card, the MAGTOW of such aircraft and the duration of such parking; *plus*

(ii) the product of (A) the MAGTOW of [AIRLINE]'s aircraft involved in Revenue Landings in the immediately prior month as shown in [AIRLINE]'s Monthly Report *multiplied by* (B) the Landing Rate shown in the Rate Card; *plus*

(iii) the product of (A) [AIRLINE]'s number of Deplaned and Enplaned Domestic Passengers in the immediately prior month as shown in [AIRLINE]'s Monthly Report *multiplied by* (B) the Domestic Terminal Rate shown in the Rate Card; *plus*

(iv) the product of (A) [AIRLINE]'s number of Deplaned International Passengers in the immediately prior month as shown in [AIRLINE]'s Monthly Report *multiplied by* (B) the International Terminal Rate shown in the Rate Card; *plus*

(v) the product of (A) [AIRLINE]'s number of Deplaned and Enplaned Local Passengers *multiplied by* (B) the Local Terminal Rate shown in the Rate Card;

(Each such payment, a "Monthly Payment");

### 3.4 Monthly Invoice

(a) Aerostar shall deliver an invoice to [AIRLINE] on or before the thirtieth (30<sup>th</sup>) day of each month for [AIRLINE]'s and any of [AIRLINE]'s Affiliate's activity that occurred during the preceding month as set forth in the Monthly Report described in Section 3.2(a).

### 3.5 Place of Payment.

All amounts due from [AIRLINE] hereunder shall be paid to Aerostar at the office of Aerostar or at such other place as may be hereafter designated in writing by Aerostar.

### 3.6 Fines.

Upon demand from Aerostar and within ten (10) business days, [AIRLINE] shall pay any and all fines assessed in accordance with Aerostar's Airport Rules and Regulations by Aerostar on [AIRLINE], Airline's Affiliates or [AIRLINE]'s employees for violations of Aerostar's Airport Rules and Regulations, subject to any applicable appeal provisions regarding the contesting of such fines.

### 3.7 Additional Payments.

Upon demand from Aerostar and within ten (10) business days, [AIRLINE] shall pay other charges related or incidental to [AIRLINE]'s or any of its Affiliates' use and occupancy of the Airport as set forth elsewhere in this Agreement. Any such assessment shall be substantially similar to the rates, fees, and charges imposed on other air carriers that make similar use of the Airport, subject to reasonable classification.

### 3.8 Late Payments.

In the event that any payment required to be made under this Agreement is not paid in full when due, [AIRLINE] shall pay interest on such overdue and unpaid amount at a rate equal to 300 basis points higher than either (a) the rate of interest announced by the *Wall Street Journal* or its successors as the so called "Prime Rate," or (b) if at any time a "Prime Rate" is not announced, the rate of interest charged by banks to their most credit-worthy customers, commencing on the date such payment was due.

### 3.9 Security Deposit.

(a) At the commencement of this Agreement, [AIRLINE] shall not be required to deposit a Security Deposit (as defined below) with Aerostar if:

(i) (x) [AIRLINE] has provided regularly scheduled flights to and from the Airport during the eighteen (18) months prior to the effective date of this Agreement without the occurrence of any act or omission, beyond applicable cure periods, that would have been an event of default enumerated in Section 10.1 of this Agreement if this Agreement had been in effect during that period and (y) no act or omission has occurred that constitutes a default by [AIRLINE] under any of its material agreements; and

(ii) [AIRLINE] has a credit rating at or above the "investment grade" rating (currently Ba3 for Moody's Investors Services, Inc., BB- for Standard & Poor's Rating Service and Fitch Investors Service).

(b) Unless [AIRLINE] has satisfied the conditions of Section 3.9(a), then concurrent with the execution of this Agreement, [AIRLINE] shall deposit with Aerostar a security deposit ("the Security Deposit") in the form of a bond, letter of credit from a bank reasonably acceptable to Aerostar, or cash, or such other form of security as Aerostar may deem acceptable, in an amount equal to three (3) months of fees due to Aerostar from [AIRLINE] and its Affiliates pursuant to Section 3.1 hereof. The Security Deposit shall be held as security for the full and faithful performance of every provision of this Agreement to be performed by [AIRLINE]. In the event

that [AIRLINE] obtains a letter of credit as its Security Deposit, the letter of credit shall be in the form attached hereto as Exhibit A or in another form mutually acceptable to Aerostar and [AIRLINE]. Airline shall be obligated to maintain the Security Deposit in effect until the passing of twenty-four (24) consecutive months without the occurrence of any act or omission, beyond applicable cure periods, that constitutes an event of default as enumerated in Section 10.1 of this Agreement.

(c) Notwithstanding the foregoing, if an event of default occurs and remains uncured for the applicable cure period, if any, for such event of default as described in Section 10.1 hereof, [AIRLINE] may be required to deposit a Security Deposit with Aerostar until such time as [AIRLINE] has operated at the Airport for eighteen (18) consecutive months without the occurrence of any act or omission, beyond applicable cure periods, that would have been an event enumerated as an event of default in Section 10.1 of this Agreement.

(d) If [AIRLINE] or any of its Affiliates default with respect to any provision of this Agreement Aerostar may use, apply or retain all or any part of this Security Deposit for the payment of any fee or charge, or for the payment of any other amount which Aerostar may spend or become obligated to spend by reason of [AIRLINE]'s or its Affiliates' default or failure to compensate Aerostar for any "Loss" (defined as, with respect to any Person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by Aerostar, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual) which Aerostar may suffer by reason of such default. If any portion of said Security Deposit is so used or applied, [AIRLINE] shall, within ten (10) business days after written demand therefor, restore the Security Deposit to the amount required under this Section 3.9(b). [AIRLINE]'s failure to restore the Security Deposit shall be a material breach of this Agreement. Aerostar shall not be required to keep this Security Deposit separate from its general funds, and [AIRLINE] shall not be entitled to interest on such Security Deposit. Upon termination of [AIRLINE]'s operations at the Airport, the Security Deposit or any balance thereof shall be returned to [AIRLINE] within a reasonable time after the complete termination of [AIRLINE]'s operations, provided, however, that Aerostar may retain the Security Deposit until such time as any amount due from [AIRLINE] for all fees and charges for its operations at the Airport has been determined and paid in full. [AIRLINE] shall not assign nor encumber its contingent rights in the Security Deposit, and neither shall Aerostar nor its successors or assigns be bound by any such assignment or encumbrance.

### 3.10 No Abatement.

[AIRLINE] shall pay all fees, charges and other payments due hereunder without notice, demand, abatement, deduction or offset.

### 3.11 Passenger Facility Charges.

(a) Aerostar expressly reserves the right to impose Passenger Facility Charges ("PFCs") on airline passengers for the use of the Airport in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Part 158, as they may be amended from time to time (the "PFC Regulations").

(b) [AIRLINE] shall hold in trust for Aerostar the net principal amount of all PFCs that are collected by [AIRLINE] or its agents on behalf of Aerostar. For the purposes of this Section 3.9, net principal amount shall mean the total principal amount of all PFCs that are collected by [AIRLINE] or its agents on behalf of Aerostar, reduced by any amount that [AIRLINE] is permitted to retain pursuant to 49 U.S.C. § 40117 and Section 158.53(a) of the PFC Regulations. PFCs collected by [AIRLINE] shall be remitted to Aerostar.

(c) If [AIRLINE] fails to remit the net principal amount of all PFCs to Aerostar within the time limits established by the PFC Regulations, [AIRLINE] shall be deemed to be in default pursuant to Section 10.1 hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of the lower of one and one-half percent (1.5%) per month or the highest rate allowable under applicable law from the due date until paid.

(d) Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 CFR Part 158 regarding Passenger Facility Charges. In the event that a conflict exists between such federal regulation and this Agreement, the federal regulation shall govern.

#### **ARTICLE 4 RECORDS AND REPORTING REQUIREMENTS**

##### 4.1 Submission and Update of Records.

(a) Concurrently with the execution of this Agreement, [AIRLINE] shall submit to Aerostar the following information, which it represents is true and accurate and which it shall update in the event of any material changes thereto:

(i) a copy of the FAA air carrier certification and DOT certificate under which [AIRLINE] and any Affiliates are operating at the Airport; and

(ii) separate copies of [AIRLINE]'s and Affiliates' current scheduled plan of operations at the Airport, to be updated on a quarterly basis, which shall include for each day and for each flight: the aircraft type, the time of arrival and departure, and the destination after departure from the Airport (if a departure), or the scheduled points of origin (if an arrival);

(b) Aerostar shall consider all information received from [AIRLINE] about the future scheduled plans of operations of [AIRLINE] or any of its Affiliates as confidential and proprietary information and shall not release such information to other airlines or to the general public without the prior express written consent of [AIRLINE], except as required by law.

(c) Concurrently with the execution of this Agreement and so long as this Agreement remains in full force, [AIRLINE] shall submit to Aerostar, and keep current, any documentation concerning [AIRLINE]'s and its Affiliates' compliance with all applicable federal, state, Commonwealth, and local environmental laws, statutes, ordinances, and Airport Rules and Regulations. A current list of required documentation is contained in Exhibit D.

(d) Upon demand from Aerostar and within ten (10) business days, Airline shall submit any other documentation which Aerostar may from time to time reasonably request concerning

[AIRLINE]'s and its Affiliates' compliance with all applicable federal, state, Commonwealth, and local environmental laws, statutes, ordinances, rules and regulations, including but not limited to laws regarding the use, storage, transportation and disposal of Hazardous Substances.

#### 4.2 Books and Records.

[AIRLINE] shall maintain books and records sufficient to describe and document its operations and the operations of its Affiliates at the Airport and its performance of the terms of this Agreement, and to support the informational filings required hereunder. Such records shall include, without limitation, monthly operations reports, passenger, cargo and operations statistics and copies of applicable environmental licenses, permits, approvals or manifests relating to the use, storage, generation, transportation or disposal of Hazardous Substances or solid waste. All such books and records shall be kept in accordance with [AIRLINE]'s normal document and record retention policy, but in all events for a period of at least five (5) years. Aerostar, its employees or its agents shall have the right, upon ten (10) days advance notice to Airline, to examine and audit such books and records.

### **ARTICLE 5 OPERATION OF THE AIRPORT, DAMAGE TO AUTHORITY PROPERTY**

#### 5.1 Airport Operations.

Pursuant to Section 2.2 [AIRLINE] has the right (in common with other duly authorized users) to the use of all facilities, improvements, equipment, and services designated for common use at the Airport. [AIRLINE] acknowledges that Aerostar, the FAA, or other governmental agencies may undertake construction, repair or other activities related to the overall management and operation of the Airport. Such construction, repair or other activities may require temporary closure of the Airport or accommodation by [AIRLINE] and its Affiliates. [AIRLINE] and its Affiliates and Aerostar agree to take all steps reasonably necessary to cooperate in the event that such accommodation is required. [AIRLINE] agrees that although it may be inconvenienced and partially impaired by such accommodation, no liability shall attach to Aerostar, its officers, agents, or employees by reason of such inconvenience or impairment, and [AIRLINE] and its Affiliates waive any right to claim damages of any kind including direct, indirect or consequential damages or other consideration resulting from such inconvenience or impairment, including any claim for set off or reduction of payments hereunder.

#### 5.2 Damage.

Any damage to property of Aerostar caused by the negligent operations of [AIRLINE] or its Affiliates shall be repaired and restored to the conditions existing prior to such damage in accordance with reasonable specifications satisfactory to Aerostar. Said repair shall be performed according to Aerostar's direction either by [AIRLINE] at its expense, or by Aerostar, in which case [AIRLINE] agrees to pay Aerostar for reasonable expenses incurred in connection with such repair upon presentation of an invoice from Aerostar to [AIRLINE] as an additional payment in accordance with Section 3.7.

**ARTICLE 6**  
**INDEMNIFICATION AND INSURANCE**

6.1 Indemnification.

(a) [AIRLINE] shall indemnify, save, hold harmless, and defend Aerostar, its officials, agents and employees, and its successors and assigns, individually and collectively, and the Puerto Rico Ports Authority, its officials, agents and employees, and its successors and assigns, individually and collectively from and against any claim, action and Loss (including, but not limited to, reasonable attorney fees, disbursements, court costs, and expert fees) due to or caused by injury to persons, including death, or damage to property arising out of, resulting from, or incident to this Agreement, or arising from [AIRLINE]'s or any of [AIRLINE]'s Affiliates' or [AIRLINE]'s contractor's use and occupancy of or work at the Airport and actions undertaken pursuant to this Agreement or any other carrier's Air Transportation Business which is conducted at the Airport on behalf of [AIRLINE], except to the extent such injury or damage is due to or caused by the negligence or willful misconduct of Aerostar, its officers, employees, agents, successors, or assigns.

(b) Aerostar shall indemnify, save, hold harmless, and defend [AIRLINE], its officials, agents and employees, and its successors and assigns, individually and collectively, from and against any claim, action and Loss (including reasonable attorney fees, disbursements, court costs and expert fees) due to or caused by injury to persons, including death, or damage to property arising out of, resulting from, or incident to this Agreement to the extent that such injury or damage is caused by the negligence or willful misconduct of Aerostar, its officers, employees, agents, successors, or assigns.

(c) To the extent that any claim, action and Loss (including reasonable attorneys' fees, disbursements, court costs, and expert fees) pursuant to this Section 6.1, arose during the term of this Agreement the provisions of this Section 6.1 shall survive the expiration, termination or early cancellation of this Agreement for a period of five (5) years following the date of such expiration, termination or early cancellation of this Agreement.

(d) Any final judgment, after any applicable appeal process, rendered against any party by a court of competent jurisdiction for any cause for which the other party is liable hereunder shall be conclusive against such party as to liability and amount upon the expiration of the time for appeal therefrom.

6.2 Insurance.

(a) Without limiting [AIRLINE]'s obligation to indemnify Aerostar, as provided for in Section 6.1, [AIRLINE] shall procure and maintain, or cause to be procured, in force at all times during the Term of this Agreement a customary policy or policies of insurance insuring [AIRLINE] and [AIRLINE]'s Affiliates against the liabilities outlined below, subject to policy terms and conditions, for injuries to persons (including wrongful death) and damages to property caused by [AIRLINE]'s or any of [AIRLINE]'s Affiliates' use and occupancy of the Airport or otherwise caused by [AIRLINE]'s or any of [AIRLINE]'s Affiliates' activities and operations on the Airport, the policy limits thereof to be in the minimum as set forth herein.



(i) Comprehensive Airline Liability Insurance. [AIRLINE] shall maintain comprehensive airline liability insurance.

(A) The comprehensive airline liability insurance and, if necessary, commercial umbrella insurance shall be at a limit of not less than three hundred million dollars (\$300,000,000) for each occurrence and in the aggregate.

(B) The comprehensive airline liability insurance shall include, with aggregates where applicable, but not limited to, coverage for Commercial/Comprehensive General Liability, Bodily Injury and Property Damage to Third Parties, Passenger Liability, Personal Injury and Advertising Injury Liability, Contractual Liability, Passengers' Checked and Unchecked Baggage Liability (with limits of not less than twenty-five million dollars (\$25,000,000)), Premises, Operations, Independent Contractors, Products-Completed Operations Liabilities, and Cargo Legal Liabilities. Explosion, Collapse and Underground Property Damage Liability Coverage shall not be excluded.

(C) The comprehensive airline liability insurance shall include coverage for mobile or other ground vehicle equipment operated on those parts of the Airport that are not accessible to the public and are designated as restricted areas with a limit of not less than ten million dollars (\$10,000,000) for each occurrence. Mobile or other ground vehicle equipment shall include, but not be limited to, baggage tugs, aircraft pushback tugs, provisioning trucks, air stair trucks and belt loaders.

(D) The comprehensive airline liability insurance shall apply as primary insurance with respect to any other insurance afforded to Aerostar. There shall be no endorsement or modification of the policy to make it excess over other available insurance. If the policy states that it is excess or *pro rata*, the policy shall be endorsed to be primary with respect to Aerostar as an additional insured.

(ii) Aircraft Liability Insurance. [AIRLINE] shall maintain aircraft liability insurance with a limit of not less than three hundred million (\$300,000,000), with aggregates where applicable, for bodily injury or death, personal injury, and property damage for all owned, operated, maintained, non-owned, leased, or hired aircraft, including passenger coverage. The aircraft liability insurance may be included in the comprehensive airline liability insurance policy.

(iii) Commercial Automobile Liability Insurance.

(A) [AIRLINE] shall maintain automobile liability insurance with a limit of not less than five million dollars (\$5,000,000) for each accident for vehicles operated in restricted areas at the Airport.

(B) [AIRLINE] shall maintain automobile liability insurance with a limit of not less than five million dollars (\$5,000,000) for each accident for vehicles operated in areas at the Airport other than restricted areas.

(C) Such insurance shall cover liability arising out of any automobile owned or operated by [AIRLINE], Airline's Affiliates or their respective employees during the course of their employment.

(iv) Workers' Compensation, Unemployment and Disability Insurance. [AIRLINE] shall maintain workers' compensation insurance. Coverage shall be at statutory limits as required by the laws of the Commonwealth. [AIRLINE] shall also maintain proof of unemployment and disability insurance as required by the laws of the Commonwealth.

(v) Commercial Property Insurance. [AIRLINE] shall maintain all-risk property insurance covering the full value and full replacement cost of [AIRLINE]'s and any of Airline's Affiliates' property and [AIRLINE]'s and any of [AIRLINE]'s Affiliates' improvements and betterments.

(b) The aforesaid amounts and types of insurance shall be reviewed from time to time by Aerostar and may be adjusted by Aerostar if Aerostar reasonably determines such adjustments are necessary to protect Aerostar's interests. [AIRLINE] shall furnish Aerostar, prior to the commencement of the Term hereof, with a certificate or certificates of insurance as evidence that the required insurance is in force. Aerostar reserves the right to inspect, and [AIRLINE] agrees to offer for Aerostar's inspection, for good cause, a certified, complete copy of each insurance policy, including endorsements and riders. Aerostar shall be named as an additional insured on each such liability insurance policy or policies to the extent of Airline's obligations assumed under this Section 6.1, subject to policy terms, conditions, limitations, warranties and exclusions. Said policies shall be issued by insurance companies of nationally recognized financial responsibility with a Best's Guide rating of no less than A-(VII) or of internationally recognized and favorable reputation in the aviation marketplace and shall be approved by Aerostar, such approval will not be unreasonably withheld. Said policies shall be in a form and content reasonably satisfactory to Aerostar and shall provide for thirty (30) days advance written notice to Aerostar prior to the cancellation of or any adverse material change in such policies. In no event shall any insurance referred to herein be cancelled by [AIRLINE] without the prior written consent of Aerostar. [AIRLINE]'s failure to provide or maintain the required insurance coverage as set forth herein shall be grounds for immediate termination of this Agreement, at Aerostar's option.

(c) By requiring insurance herein, Aerostar does not represent that coverage and limits will necessarily be adequate to protect [AIRLINE] or any of [AIRLINE]'s Affiliates, and such coverage and limits shall not be deemed as a limitation on [AIRLINE]'s liability under the indemnities granted to Aerostar in this Agreement.

(d) As indicated above, [AIRLINE] may use commercial umbrella liability insurance so that Airline has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Agreement, provided that the coverage provided under the umbrella policy meets the requirements for the primary policies as set forth in this Agreement.

(e) In addition to any applicable requirements contained in the Airport Rules and Regulations or imposed by the laws of the Commonwealth or of the United States, [AIRLINE]

shall, within a reasonable time, notify Aerostar of any accident or event which occurs at the Airport as a result of or in connection with [AIRLINE]'s or any of [AIRLINE]'s Affiliates' performance of this Agreement, which results in or might reasonably be expected to have resulted in bodily injury, personal injury or property damage (an "Incident"). Additionally, [AIRLINE] shall send a written report of any Incident to Aerostar within twenty-four (24) hours or as soon as possible, but no more than four (4) business days after [AIRLINE] has notice of the Incident. Initial notification of Incidents and written reports shall be sent separately to Luis Muñoz Marín International Airport Terminal D Ground Level Aerostar Offices. In the event that Aerostar causes an Incident at the Airport that impacts [AIRLINE] or any of [AIRLINE]'s Affiliates and results in a claim, Aerostar shall, within a reasonable time, notify [AIRLINE] of said Incident.

### 6.3 Additional Insured

The following entities shall be named as Additional Insured under the Comprehensive Airline Liability Policy, Aircraft Liability Insurance Policy, and Commercial Automobile Liability Insurance:

AEROSTAR AIRPORT HOLDINGS, LLC  
PO BOX 38085  
SAN JUAN, PR 00937-1085

PUERTO RICO PORTS AUTHORITY  
PO BOX 362829  
SAN JUAN, PR 00936-2829

CITIBANK, NA AS COLLATERAL AGENT  
CITIBANK AGENCY & TRUST  
388 GREENWICH STREET  
NEW YORK, NY 10013

### 6.4 Endorsements

[AIRLINE] must include, in favor of the Additional Insured, an endorsement of Notice of Cancellation with thirty (30) day prior notification, endorsement of Waiver of Subrogation, endorsement of Hold Harmless and Primary and Noncontributory endorsement. Said endorsement are detailed below:

- a. **Waiver of Subrogation:** The insurer hereby waives its right of subrogation against any affiliated, associated and/or subsidiary corporation or companies and/or any partners, officers, and/or individuals connected therewith. This insurance shall not be invalidated, should the insured warrant in writing prior to a loss, any or all rights of recovery against any party for loss occurring to the property described herein.
- b. **Hold Harmless:** [AIRLINE], for itself, agents, employees, and successor assigns and agrees to save and hold harmless the Aerostar Airport Holdings, LLC, the Puerto Rico Ports Authority, and Citibank, NA from and against any and all claims, demands and/or suits whether judicial or extrajudicial for any cause whatsoever arising out of or related to the

execution of the contract described below, and its insurers shall defend the owner from such claims, demands and/or suits and shall bear all the expenses for such defense contemplated within the coverages and limits provided by this policy.

- c. **Notice of Cancellation:** The coverage of this policy cannot be amended with the purpose of reducing the protection below the limits herein specified or any other circumstance, nor can the same be canceled without the previous written notification to Aerostar Airport Holdings, LLC, the Puerto Rico Ports Authority and Citibank, NA, within thirty (30) days in case of non-renewal of the policy.
- d. **Primary and Noncontributory:** This insurance is primary and without the right of contribution from any other insurance as may be carried by the Additional Insured.

#### 6.5 Waiver of Subrogation.

Aerostar and [AIRLINE] hereby mutually waive any and all rights of recovery against the other party arising out of damage or destruction of the buildings, Airport, or any other property from causes included under any property insurance policies to the extent such damage or destruction is covered by the proceeds of such policies and whether or not such damage or destruction shall have been caused by the parties, their officers, employees or agents, but only to the extent that the insurance policies then in force permit such waiver. All policies of property insurance shall contain, to the extent available, this waiver of subrogation provision and the cost of such provision shall be borne by the primary insured.

## ARTICLE 7 COMPLIANCE ENVIRONMENTAL LAWS

### 7.1 Definitions.

For purposes of this Agreement, the following terms shall have the following meanings:

(a) “Environmental Law” or “Environmental Laws” means applicable laws, ordinances, statutes, rules and regulations of local, state and federal entities, including any lawful regulations of Aerostar (whether now existing or hereinafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental matters, spill prevention, contamination, clean-up or disclosures, and any judicial or administrative interpretations thereof, including any judicial or administrative order or judgments, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, (“CERCLA” or “Superfund”); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (“RCRA”); the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (“CWA”); the Safe Drinking Water Act (14 U.S.C. § 401 *et seq.*); the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* (“TSCA”); the Hazardous Materials Transportation Act, 49 U.S.C. §§ 100 *et seq.* (“HMTA”); the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. pt. 61.145; the Environmental Policy Act of Puerto Rico, Act No. 9 of June 18, 1970, or any other applicable federal or state statute or municipal ordinance regulating the generation, storage, use, containment, release or disposal of any Hazardous Substances or providing for the protection, preservation or enhancement of the natural environment; any rules or regulations promulgated pursuant to any of the foregoing statutes

or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, storm water drainage and underground and above ground storage tanks, and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulation.

(b) “Hazardous Substance” or “Hazardous Substances” means any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant by any Environmental Law, including, but not limited to, asbestos in any form or asbestos-containing materials, polychlorinated biphenyls (“PCBs”), petroleum, petroleum products, or crude oil or any fractions or derivatives thereof, jet fuel, natural gas, source material, radioactive materials or wastes, special nuclear material and byproduct materials regulated under the Atomic Energy Act (42 U.S.C. § 2011, et seq.), pesticides regulated under the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. § 136, et seq.), and any hazardous substance or waste, toxic or dangerous substance, including any material defined or treated as a “hazardous substance,” “hazardous waste,” “toxic substance” or “contaminant” (or comparable term) under any Environmental Laws.

(c) “Release” or “Released” means any spilling, leaking, pumping, pouring, emitting, discharging, leaching, dumping or disposing of Hazardous Substances into or on any property or the environment.

## 7.2 Restrictions on Hazardous Substances.

(a) [AIRLINE] and its Affiliates shall not allow the Release, by [AIRLINE] or its Affiliates, on the Airport of any Hazardous Substance that is in violation of any Environmental Law. [AIRLINE] shall not allow any Hazardous Substance first Released by [AIRLINE] or its Affiliates during the Term on the Airport to migrate off the Airport or allow the Release, by [AIRLINE] or its Affiliates, of any Hazardous Substances into adjacent surface water, soils, underground waters or air in violation of any Environmental Law.

(b) At the reasonable written request of Aerostar, [AIRLINE] shall provide Aerostar with [AIRLINE]’s and its Affiliates’ USEPA Waste Generator Number and any other information reasonably requested by Aerostar.

(c) [AIRLINE] shall promptly notify Aerostar in writing and orally should [AIRLINE] or its Affiliates become aware of: (1) any Release by [AIRLINE] or its Affiliates of any Hazardous Substances on any real property at, adjoining, or in the vicinity of, the Airport in violation of any Environmental Law; (2) any notice given to [AIRLINE] or its Affiliates from a regulatory agency or any third party with respect to any Release or threat of Release of any Hazardous Substances with respect to the Airport; (3) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged Release by [AIRLINE] or its Affiliates of any Hazardous Substances or other environmental contamination, liability or problem with respect to the Airport; or (4) any enforcement notice provided to [AIRLINE] or its Affiliates from any regulatory agency regarding Hazardous Substances at the Airport and any correspondence from Airline or its Affiliates with any regulatory agency regarding Hazardous Substances at the Airport.

(d) In the event that any notice or correspondence is received or issued by Airline or by its Affiliates pursuant to this Section 7.2, [AIRLINE] shall provide Aerostar with a copy of such notice or correspondence upon such receipt or issuance. If any applicable Environmental Law requires [AIRLINE] to file any notice or report of a Release or threatened Release of Hazardous Substances on, under or about the Airport, [AIRLINE] shall file such notice or report and shall provide a copy of the same to Aerostar. To the extent practicable, [AIRLINE] shall provide a copy to Aerostar prior to submitting such notice or report to the appropriate Governmental Authority.

(e) In addition to any remedy provided in this Agreement, Aerostar shall be entitled to full reimbursement from [AIRLINE] whenever Aerostar reasonably incurs any costs attributable to [AIRLINE]'s or its Affiliates' Release of Hazardous Substances at the Airport, including but not limited to costs of cleanup or other remedial activities, fines or penalties assessed against Aerostar, reasonable attorney fees, disbursements, court costs, and expert fees, and injuries to third persons or other properties in accordance with applicable laws and regulations.

### 7.3 Compliance and Remediation.

[AIRLINE] and its Affiliates shall at all times conduct their business at the Airport in compliance with all applicable Environmental Laws. In the event that [AIRLINE] or its Affiliates are in violation of any Environmental Law concerning the presence, use, Release or threat of Release of Hazardous Substances or any other Environmental Law (whether or not pertaining to Hazardous Substances), the Airline shall, within reasonable time, take such action as is reasonably necessary to remedy and cure the violation. Such work shall be performed at [AIRLINE]'s expense (to the extent of [AIRLINE]'s responsibility under the applicable Environmental Laws) after [AIRLINE] submits to Aerostar a written plan for completing such work and receives the prior approval of Aerostar (to the extent practicable and authorized by applicable Law). Aerostar shall have, at Aerostar's expense and using consultants and representatives of its choice, the right to review and inspect all such work. Specific cleanup levels for any environmental remediation work shall be designed to meet all of the applicable Environmental Laws.

### 7.4 Remedies.

If [AIRLINE] or its Affiliates, because of actions that occur during the Term, are in violation of any Environmental Law concerning Hazardous Substances at the Airport and [AIRLINE] does not act, within reasonable time, to take such action as is reasonably necessary to remedy and cure the violation, Aerostar has the right, but not the obligation, to act in place of [AIRLINE] ([AIRLINE] hereby appoints Aerostar as its agent for such purposes) and to take such action reasonably necessary to cure the violation. If Aerostar has a reasonable belief that [AIRLINE]'s or its Affiliates' actions or inactions present a threat of violation or a threat of damage to the Airport or harm to the public, Aerostar reserves the right to enter onto the portion of the Airport used by [AIRLINE] or its Affiliates and take such corrective or mitigation action as Aerostar deems reasonably necessary. All reasonable costs and expenses incurred by Aerostar in connection with any such actions, to the extent caused by Airline's or its Affiliates' violation of Environmental Law, shall become due and payable by [AIRLINE] thirty (30) days after presentation of an invoice. Nothing in this Agreement shall reduce or otherwise limit Aerostar's rights and remedies with respect to environmental contamination that predates the effective date of this Agreement.

#### 7.5 Vacating of Airport.

Prior to vacating the Airport, in addition to all other requirements under this Agreement, [AIRLINE] shall, as required by applicable Environmental Laws, remove any Hazardous Substances placed on the Airport during the Term by Airline or by its Affiliates or as a result of [AIRLINE]'s or its Affiliates' use or occupancy of the Airport and shall demonstrate such removal to Aerostar's reasonable satisfaction. This removal and demonstration shall be a condition precedent to Aerostar's return of any portion of the Security Deposit to [AIRLINE] upon termination or expiration of this Agreement.

#### 7.6 Environmental Indemnity.

Without limiting any indemnities provided in this Agreement for other than environmental matters, except for Excluded Environmental Claims, as hereinafter defined, [AIRLINE] agrees to defend, indemnify and hold harmless Aerostar from and against any and all claims, causes of action, regulatory demands, liabilities, fines, penalties and other losses, including without limitation clean-up or other remedial costs (and including reasonable attorneys' fees, disbursements, court costs and expert fees), arising from the Release by Airline or its Affiliates of any Hazardous Substance from the Airport to other properties or into the surrounding environment or from any other violation of applicable Environmental Laws, whether made, commenced or incurred during the Term, or made, commenced or incurred after the expiration or termination of this Agreement, directly attributable to Airline's or its Affiliates' actions at the Airport during the Term or any holdover period. For purposes of this Section, "Excluded Environmental Claims" shall mean any claims, causes or action, demands, liabilities, fines, penalties, costs, expenses or any other liabilities, to the extent caused by or arising from (A) the migration of Hazardous Substances Released prior to the commencement of the Term not attributable to [AIRLINE] or any of [AIRLINE]'s Affiliates or [AIRLINE]'s or any of [AIRLINE]'s Affiliates' activities on the Airport; or (B) the movement of Hazardous Substances onto or under the Airport from other premises due to leaching or the flow of groundwater, provided that Airline or its Affiliates are not otherwise responsible for the off-Airport Release that introduced the migrating Hazardous Substances into the environment. The provisions of this Section 7.6 shall survive the expiration, termination or early cancellation of this Agreement.

### **ARTICLE 8 COMPLIANCE WITH OTHER LAWS, RULES AND REGULATIONS**

#### 8.1 Observance and Compliance with Laws.

(a) [AIRLINE] and its Affiliates shall, at its sole cost and expense, comply with all present and future laws, statutes, ordinances, rules and regulations, orders, judgments, decrees, licenses and permits of all applicable federal, state, Commonwealth, and local government or quasi-governmental authorities, subdivisions, departments and agencies, including all rules, regulations and directives of the FAA, TSA, any successor agency to the FAA or TSA, and with the rules, regulations and requirements of Aerostar's and [AIRLINE]'s insurance underwriters. [AIRLINE] shall obtain and maintain any permits necessary for it and its Affiliates to operate as air carriers at the Airport and shall, upon demand from Aerostar and within ten (10) business days,

pay all fines, penalties and damages that may arise out of or be imposed because of its failure to comply with the provisions of this Section 8.1.

## 8.2 Preemption.

(a) Notwithstanding any provision of this Agreement to the contrary, any requirement that is imposed on [AIRLINE] in this Agreement or by any agreement, law, ordinance, rule or regulation shall not apply to [AIRLINE] to the extent that such requirement is or would otherwise be preempted by federal law, including Airline Deregulation Act (49 U.S.C. § 41713).

## 8.3 Required Permits.

[AIRLINE] represents and warrants that it holds all certificates, permits, licenses or other entitlements required by any federal, state, Commonwealth, or local ordinance, law, rule, regulation or policy (collectively, the "Permits") in order to enable [AIRLINE] and any Affiliate to operate as a commercial air carrier at the Airport, and that the same shall be kept current, valid and complete. [AIRLINE] agrees that it and its Affiliates shall at all times abide by and conform with all terms of the Permits and that it shall give notice to Aerostar of any additions, renewals, amendments, revocations or suspensions of such Permits that affect the conduct of Airline's or Affiliates' operations at the Airport. In the event that [AIRLINE] or its Affiliates have a good faith dispute with any governmental entity as to the necessity of a Permit, does not hold such Permit and is diligently attempting to pursue such dispute to completion, then [AIRLINE] shall not be in default of this provision. If it is determined that [AIRLINE] or its Affiliates are required to obtain such Permit upon resolution of the dispute, then [AIRLINE] must obtain such Permit within a reasonable time.

## 8.4 Compliance with FAA Standards

(a) [AIRLINE] and Aerostar shall comply, and shall cause their contractors to comply, with all applicable Laws, including the following:

(i) *Prohibition Against Exclusive Rights.* Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct an Air Transportation Business as prohibited by 49 U.S.C. §§ 40103 and 47107, and associated grant agreements, and Aerostar reserves the right to grant to others the privileges and right of conducting any or all activities of an aeronautical nature.

(ii) *Government Inclusion.* [AIRLINE] and Aerostar covenant and agree that this Agreement shall be subordinated to the provisions of any existing or future agreement or assurances between Aerostar and the United States Government, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the approval to impose or use PFCs for the development of the Airport. Upon request, Aerostar shall provide copies at no cost to [AIRLINE] of any documentation related to the imposition or use of PFCs. [AIRLINE] further agrees that it shall not cause Aerostar to violate any assurances made by Aerostar to the federal government in connection with the granting of such federal funds or approvals.



(iii) *Non-Discrimination and Affirmative Action.* This Agreement involves the use of or access to space on, over or under real property acquired or improved under the Airport Development Aid Program of the FAA, and therefore involves activity that serves the public. [AIRLINE] and Aerostar, for themselves, their personal representatives, successors in interest and assigns, as part of the consideration hereof, do hereby covenant and agree, as a covenant running with the land, that (i) each shall abide by the non-discrimination and affirmative action provisions set forth on Exhibit C to this Agreement; and (ii) that [AIRLINE] and Aerostar shall use the premises in compliance with all other applicable requirements imposed by or pursuant to regulations of the United States Department of Transportation.

(b) [AIRLINE] agrees to furnish services in the United States in compliance with applicable federal law and on a fair and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; *provided* that [AIRLINE] may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions.

(c) No Party hereby waives any right to file a complaint with the United States Department of Transportation with respect to matters not covered by this Agreement or the Lease Agreement.

#### 8.5 Non-Contravention.

Aerostar and [AIRLINE] acknowledge and agree that nothing contemplated in this Agreement obligates Aerostar or [AIRLINE] to take any action that would cause Aerostar to violate any Law, lose its Airport Operating Certificate or violate a TSA-approved Airport Security Program.

#### 8.6 Airport Rules and Regulations.

[AIRLINE] and its Affiliates shall observe and obey, and require Airline's and its Affiliates' guests, officers, employees, agents, suppliers and invitees to observe and obey, the Airport Rules and Regulations of Aerostar, except to the extent, if any, that those Rules and Regulations are inconsistent with the explicit terms of this Agreement. [AIRLINE], its Affiliates, and each of their officers, employees, agents, suppliers and invitees shall submit to the enforcement of Aerostar's Rules and Regulations by administrative procedures conducted by Aerostar's management, to the extent that the same are in customary usage at the Airport, or by enforcement on complaint of Aerostar or appropriate prosecuting officers in the courts of the Commonwealth.

### **ARTICLE 9 ASSIGNMENT**

#### 9.1 Corporate Consolidations.

In circumstances where the cessation of the corporate existence of [AIRLINE] resulting either from a merger or consolidation of [AIRLINE] into or with another corporation or a dissolution or liquidation of [AIRLINE] following a transfer of all or substantially all its assets as an entirety, the surviving corporation shall assume the rights, duties, and obligations hereunder and the Agreement shall be assigned to the surviving corporation or entity.

## 9.2 Other Assignments.

Except as allowed in Section 9.1, this Agreement may not be assigned or delegated without the express, prior written consent of Aerostar, [which consent shall not be unreasonably withheld].

## **ARTICLE 10 DEFAULT AND REMEDIES**

### 10.1 Event of Default.

Any one or more of the following shall constitute an event of default by [AIRLINE]:

(a) [AIRLINE], discontinues its Air Transportation Business at the Airport for a period of sixty (60) consecutive days or longer, unless [AIRLINE]'s regular schedule (which has been previously provided to Aerostar) only contemplates service at the Airport during selected months of each year, or, after exhausting or abandoning any further appeals, [AIRLINE] shall be prevented for a period of 30 consecutive days by action of any Governmental Authority from conducting its Air Transportation Business at the Airport; or

(b) [AIRLINE] fails to report its activity or its Affiliates' activities (or, if [AIRLINE] is a cargo carrier, the activity of any subcontracted airlines) or fails to pay any amounts due to Aerostar pursuant to this Agreement, *provided* that [AIRLINE] may cure such event of default within ten (10) business days after receipt of written notice from Aerostar that said reporting or amounts are due, *provided further, however*, with respect to the payment of amounts due that before [AIRLINE] may cure such event of default more than three (3) times in any twelve (12) month period [AIRLINE] must first have made a Security Deposit consistent with and subject to the terms of Section 3.9(c); or

(c) [AIRLINE] fails to provide or to renew or replace the Security Deposit on or before the date on which the same is required hereunder or Aerostar makes any proper demand on the issuer of such Security Deposit that is not honored; or

(d) [AIRLINE] fails to maintain the insurance required pursuant to this Agreement; or

(e) [AIRLINE] or any of its Affiliates fail to comply with the Airport Rules and Regulations (after applicable cure periods, if any, that are provided under the Airport Rules and Regulations); or

(f) [AIRLINE] fails to comply with, perform or observe any other obligation, term or condition contained in this Agreement; provided that [AIRLINE] may cure said event of default within thirty (30) days after notice from Aerostar thereof, unless the default is of such a nature that it cannot be cured within such thirty (30) day period, in which event there shall be no event of default, provided [AIRLINE] shall commence the curing of such event of default within said thirty (30) day period and promptly and diligently prosecutes the curing of the same to completion within ninety (90) days of the date of such notice from Aerostar; or

(g) [AIRLINE] fails to pay any fees and charges pursuant to this agreement, including the obligation to timely remit PFCs to Aerostar when due; or

(h) [AIRLINE] fails to pay any fees and charges pursuant to any other agreements with Aerostar (after applicable notice and cure periods, if any, provided by such other agreements) or fails to pay rentals, fees and charges pursuant to the existing tariff methodology;

(i) the dissolution or liquidation of [AIRLINE], *provided however* that the term “dissolution or liquidation of [AIRLINE],” as used in this Section 10.1, shall not be construed to include the cessation of the corporate existence of [AIRLINE] resulting either from a merger or consolidation of [AIRLINE] into or with another corporation or a dissolution or liquidation of [AIRLINE] following a transfer of all or substantially all its assets as an entirety, if the conditions permitting such actions contained in Section 9.1 are met; or

(j) the admission by [AIRLINE] of insolvency or bankruptcy or the inability of [AIRLINE] to pay its debts as they mature or the making by [AIRLINE] of an assignment for the benefit of creditors or the application by [AIRLINE] for or the consent to the appointment of a trustee, custodian, or receiver for [AIRLINE], or for the major part of its property; or

(k) the appointment of a trustee, custodian or receiver for [AIRLINE] or for the major part of its property without discharge thereof within sixty (60) days after such appointment; or

(l) the institution by or against [AIRLINE] of bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under any chapter of the Federal Bankruptcy Code, as amended, or other proceedings for relief under bankruptcy law or similar law of any country for the relief of debtors (other than bankruptcy proceedings instituted by [AIRLINE] against third parties), and if instituted against [AIRLINE], the allowance against [AIRLINE] or the consent thereto by [AIRLINE], or the failure by [AIRLINE] to have such proceedings dismissed, stayed or otherwise nullified within sixty (60) days after such institution; or

(m) if a levy under execution or attachment has been made against all or any portion of the Airport or any interest therein as a result of an encumbrance created, incurred, assumed or suffered to exist by [AIRLINE], or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of Aerostar.

## 10.2 Remedies Upon an Event of Default

(a) If an event of default with respect to [AIRLINE] described in Section 10.1(j) and Section 10.1 (k) has occurred, any fees and amounts payable hereunder shall automatically become immediately due and payable and this Agreement shall be deemed terminated and any obligation of Aerostar under this Agreement shall automatically terminate.

(b) If an event of default other than an event of default with respect to [AIRLINE] described in Section 10.1 (j) and Section 10.1 (k) shall occur and not be curable or adequately cured as defined in Section 10.1, Aerostar at its sole election, at any time, may, by notice to [AIRLINE], declare [AIRLINE] to be in default and pursue one or more of the following:

(i) require [AIRLINE] to deposit a Security Deposit with Aerostar in accordance with Section 3.9 hereof;

(ii) if [AIRLINE] is in default by reason of the failure to pay any monies, Aerostar is entitled to (without obligation to do so) make payment on behalf of [AIRLINE] of such monies, and any amount so paid by Aerostar shall be payable by [AIRLINE] to Aerostar within three business days after demand therefor;

(iii) Aerostar is entitled to cure [AIRLINE]'s default (but this shall not obligate Aerostar to cure or attempt to cure the default or, after having commenced to cure or attempted to cure the default, to continue to do so), and all costs and expenses reasonably incurred by Aerostar in curing or attempting to cure the default, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by [AIRLINE] to Aerostar within three business days of demand; *provided* that (i) Aerostar shall not incur any liability to [AIRLINE] for any act or omission of Aerostar or any other Person in the course of remedying or attempting to remedy any default by [AIRLINE] and (ii) Aerostar's cure of any default shall not affect Aerostar's rights against [AIRLINE] by reason of the default;

(iv) Aerostar is entitled to seek to recover its Losses arising from such default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt.

(v) Aerostar is entitled to, subject to applicable Law, distrain against any of [AIRLINE]'s goods situated at the Airport (other than the Airline's aircraft and any passenger luggage or cargo) and [AIRLINE] waives any statutory protections and exemptions in connection therewith;

(vi) Aerostar is entitled to exercise any of its other rights and remedies provided for hereunder and

(vii) pursue any other legal or equitable right or remedy that it may have.

### 10.3 Remedies Cumulative.

No remedy provided to Aerostar or [AIRLINE] is intended to be exclusive of any other available remedy, but each such remedy shall be cumulative. No delay or omission to exercise any right upon default shall impair any such right or be construed to be a waiver thereof, but any such right may be exercised from time-to-time and as often as may be expedient, and the exercise of any one right or remedy shall not impair the right of Aerostar or [AIRLINE] to any or all other remedies.

## **ARTICLE 11 TERMINATION**

### 11.1 Aerostar's Right to Terminate.

Aerostar may terminate this Agreement pursuant to the provisions specified under Section 10.2 hereof. In addition, subject to applicable non-discrimination requirements imposed by 49 U.S.C. § 47107(a)(3) or otherwise mandated by law, Aerostar may terminate this Agreement without cause at any time by providing not less than ninety (90) days prior written notice to [AIRLINE], in which event this Agreement shall expire on the date set forth in such notice.

#### 11.2 Termination by [AIRLINE LEGAL NAME]

[AIRLINE] may terminate this Agreement without cause at any time by providing not less than ninety (90) days prior written notice to Aerostar, in which event this Agreement shall expire on the date set forth in such notice.

#### 11.3 Survival of Obligations.

If this Agreement is terminated, for cause or otherwise, [AIRLINE] shall remain liable for any and all monies and damages, indemnification, and other obligations, which may be due or sustained as a result of [AIRLINE]'s or its Affiliates' operations at the Airport, provided such obligation arose while [AIRLINE] was a signatory to this Agreement, and all costs, fees and expenses (including, without limitation, reasonable attorneys' and experts' fees and other expenses) incurred by Aerostar in pursuit of its remedies hereunder. Nothing in this Agreement shall be deemed to impair whatever rights Aerostar may otherwise have with respect to [AIRLINE] or any of its Affiliates.

#### 11.4 Force Majeure.

(a) No Party hereto shall be liable to any other Party for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its reasonable control (a "Force Majeure Event"), including fire, tornado, hurricane, Named Windstorm, flooding, earthquake or other natural disaster, bomb scares, explosions, fires, terrorist acts, any response to the foregoing by a Governmental Authority, strikes, boycotts, picketing, slow-downs, work stoppages, or other labor actions affecting Aerostar or its contractors, or [AIRLINE] or its contractors, except to the extent that such failure, delay or interruption results from failure on the part of Aerostar or [AIRLINE] to use reasonable care to prevent, or, after such failure, delay or interruption, use its commercially reasonable efforts to cure, such failure, delay or interruption; *provided* that nothing in this Section 11.4 is intended or shall be construed to abate, postpone or in any respect diminish [AIRLINE]'s obligations to make any payments due to Aerostar pursuant to this Agreement. It is expressly understood that a Force Majeure Event will not include any of the following events: (i) economic hardship; (ii) changes in market conditions; (iii) changes in Law except as set forth in Section 11.4(b); (iv) delays caused by Affiliates of the Parties, *provided* that such delay was not caused by a Force Majeure Event; (v) [AIRLINE]'s capacity reductions at the Airport or other airports; and (vi) any weather conditions that are ordinarily or customarily encountered or experienced at or in the vicinity of the Airport, including any storm that is comparable to any storm in length or severity of its effect on the Airport that has occurred on or around the Airport within 10 years prior to the Effective date ("Ordinary Storm"), but excluding any tornado, hurricane or storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration's National Hurricane Center or similar body until sustained wind speeds drop below the parameter for naming storms ("Named Windstorm").

(b) Aerostar 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, materially restricted or rationed by any Law or Governmental Authority.

(c) The Party claiming a Force Majeure Event shall, within five business days after it knows of the occurrence of the Force Majeure Event, give the other Party notice describing the details of the cause and nature of the Force Majeure Event, the anticipated length of delay due to the Force Majeure Event and any other effect on the Party's performance of its obligations hereunder. Within 15 days after initial notification, such Party shall provide sufficient proof of the occurrence and duration of such Force Majeure Event to the other Party and shall thereafter provide the other Party with periodic supplemental updates to reflect any change in information given to the other Party as often as requested by the other Party. The Party claiming the Force Majeure Event shall give notice to the other Party of (i) the cessation of the relevant Force Majeure Event and (ii) the cessation of the effects of such Force Majeure Event on the performance of its obligations under this Agreement as soon as practicable after becoming aware of each such cessation.

(d) Except as otherwise provided herein, the performance by the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, and in the event that such Party is required to start or complete an action during a specific period of time, such start date or period for completion shall be extended, on the condition that (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Force Majeure Event, and (ii) the Party claiming the Force Majeure Event continually uses its commercially reasonable efforts to alleviate and mitigate the cause and effect of the Force Majeure Event and remedy its inability to perform.

## **ARTICLE 12 MISCELLANEOUS**

### 12.1 Contractual Right.

[AIRLINE]'s rights under this Agreement shall be contractual rights only and shall not be deemed to create a property interest of [AIRLINE] in such Agreement or in Aerostar's property, nor shall it be deemed to create any right to use or occupy any specific areas of the Airport, whether as a leasehold or otherwise.

### 12.2 No Waiver.

No waiver or failure to complain by Aerostar of any action, non-action or default on the part of [AIRLINE] in the performance of any of the terms, covenants, or conditions hereof to be performed, kept or observed shall be or be construed to be a waiver of any other or subsequent default in the performance of any of the terms, covenants and conditions. No acceptance of payments by Aerostar shall constitute a waiver of any right of Aerostar on account of any failure of [AIRLINE] to carry out its obligations hereunder.

### 12.3 Non-discrimination and Affirmative Action.

With respect to its exercise of all uses, rights and privileges at the Airport, [AIRLINE] and its Affiliates shall abide by the Non-discrimination and Affirmative Action provisions described in Exhibit C.

12.4 Notice.

Whenever by the terms of this Agreement notice shall or may be given, the same shall be adequately given if in writing and delivered by hand to an authorized representative of the other party, or sent by overnight courier, registered or certified mail, postage prepaid:

If intended for Aerostar, to:

Attention Chief Legal Officer  
Legal Department  
Aerostar Airport Holdings, LLC  
P.O. Box 38085  
San Juan, PR 00937-1085

If intended for [AIRLINE], addressed to:

Attention [NOTICES AGENT], [AGENT TITLE]  
[AIRLINE LEGAL NAME]  
[AIRLINE POSTAL ADDRESS]

All notices shall be effective upon receipt unless specified elsewhere in this Agreement.

12.5 Subordination. This Agreement shall be and remain subordinate to:

(a) the provisions of any existing or future agreements between Aerostar and the United States government or other Governmental Authority, relative to the operation and 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 for the development of the Airport, to the extent that the provisions of any such existing or future agreements are generally required by the United States or other Governmental Authority of other civil airports receiving such funds.

12.6 No Personal Liability.

No member, officer or employee of Aerostar or of [AIRLINE] shall be personally liable under any term or provision of this Agreement or because of any breach thereof or because of its execution or attempted execution.

12.7 Entire Agreement.

This Agreement, including exhibits attached hereto at the time of its execution, constitutes the entire agreement between the parties, and all prior agreements covering the rights and privileges set out herein are superseded by this Agreement. If any provision of this Agreement shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless one or both parties would be substantially and materially prejudiced thereby.

12.8 Amendments.

This Agreement may be amended only by a written instrument executed by both Aerostar and [AIRLINE].

#### 12.9 Applicable Law.

(a) This Agreement shall be deemed to have been made in, and shall be construed in accordance with, the Laws of the Commonwealth without regard to conflict of laws principles.

#### 12.10 Authorization to Operate; Consent to Service of Process and Jurisdiction.

(a) [AIRLINE] warrants that it is a duly organized and validly existing corporation or other business entity under the laws of the state shown on the signature page hereof. [AIRLINE] warrants that it is, and throughout the term of this Agreement it will continue to be, duly qualified to do business in the Commonwealth.

(b) All judicial proceedings brought against [AIRLINE] or Aerostar with respect to this Agreement may be brought in any court of competent jurisdiction having situs within the boundaries of the Commonwealth (including the United States District Court for the District of Puerto Rico) and by execution and delivery of this Agreement, [AIRLINE] and Aerostar each 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. Aerostar and [AIRLINE] each irrevocably designates and appoints the representative designated on the signature page hereto under the heading "Agent for Service of Process" as its agent for service of process, such service being hereby acknowledged by such representative to be effective and binding service in every respect. The agent may be changed only upon the giving of notice by [AIRLINE] to the other Parties of the name and address of a new Agent for Service of Process that works within the geographical boundaries of the Commonwealth and is employed by the Lessee or [AIRLINE], as the case may be. [AIRLINE] and the Lessee each 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.

#### 12.11 WAIVER OF RIGHT TO TRIAL BY JURY

EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND



REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 12.11 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12.12 Consequential Damages.

Aerostar and its directors, officers, agents or employees shall not be liable to [AIRLINE] or any third party claiming through [AIRLINE] for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Agreement or the operation of [AIRLINE] at the Airport or from any other cause.

12.13 Collection of Attorneys' Fees.

In the event that either party prevails in any court proceeding brought to enforce any of its rights under this Agreement or to collect fees or charges, such party shall be entitled to reimbursement of its reasonable attorneys' fees from the other party.

12.14 Work in Harmony.

[AIRLINE] covenants that its employees at the Airport shall be able to work in harmony with all elements of labor employed at the Airport. In the event that Aerostar reasonably determines that it is necessary for public safety or the efficient operation of the Airport to post police details or take other actions as a result of the inability of [AIRLINE]'s or any of its Affiliates' employees to work in harmony with other elements of labor employed at the Airport, [AIRLINE] shall reimburse Aerostar for all reasonable costs incurred by Aerostar in doing so.

12.15 No Third Party Beneficiaries. 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.

**[SIGNATURE PAGE FOLLOWS]**

Executed under seal as of the dates appearing below, as of the date first written above.

**[AIRLINE LEGAL NAME]**

**AEROSTAR AIRPORT HOLDINGS, LLC**

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

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

Name: [AIRLINE LEGAL PERSON]

Name: Jorge Hernández

Title: [LEGAL-PERSON TITLE]

Title: Chief Executive Officer

*EXHIBITS:*

Exhibit A - Letter of Credit Form

Exhibit C - Nondiscrimination and Affirmative Action Requirements

Exhibit D - Records

Exhibit E - Affiliate Designation

Exhibit E-2 - Withdrawal of Affiliate Designation

Exhibit F - Plat of Airport

EXHIBIT A

FORM OF LETTER OF CREDIT

BENEFICIARY:

Aerostar Airport Holdings, LLC  
P.O. Box 38085  
San Juan, PR 00937-1085

APPLICANT:

[AIRLINE LEGAL NAME]  
[AIRLINE POSTAL ADDRESS]

Gentlemen:

We hereby establish an irrevocable letter of credit in favor of the Beneficiary for the account of the Applicant for a sum of \_\_\_\_\_ and 00/100 U.S. Dollars (\$\_\_\_\_\_.00) available by Beneficiary's draft(s) drawn on ourselves at sight effective \_\_\_\_\_ and expiring on \_\_\_\_\_.

Drafts must be accompanied by:

1. A statement purportedly signed by an authorized officer of the Beneficiary certifying that the Applicant has failed to faithfully perform one or more of its obligations to the Beneficiary under a certain Air Carrier Operating Agreement for the Luis Muñoz Marín International Airport (the "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_ by and between the Beneficiary and the Applicant; and
2. A statement purportedly signed by an authorized officer of the Beneficiary as to (i) the amount of damages or expenses which, in his or her determination, the Beneficiary has suffered or incurred as a result of such failure by the Applicant, and/or (ii) the amount of any fees, charges or others sums past due and remaining unpaid from the Applicant to the Beneficiary under the Agreement, together with the amount of any interest thereon to the extent required or allowed under the Agreement; and
3. The original of this credit.

Each draft must indicate the name of the issuing banks the credit number and date of this letter of credit.

If a drawing is made by the Beneficiary hereunder at or prior to 11:00 a.m. local time at our branch where such drawing is made, on a business day, payment shall be made to the Beneficiary or its designee of the amount specified, in immediately available funds, not later than 3:00 p.m., such local time, on the same business day or such later time and business day as the Beneficiary may

specify. If a drawing is made by the Beneficiary after 11:00 a.m., such local time, on a business day, payment shall be made to the Beneficiary or its designee of the amount specified, in immediately available funds, not later than 3:00 p.m., such local time, on the next business day thereafter, or such later time and business day as the Beneficiary may specify.

Except so far as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce, Publication No. 400 (1983 Revision), except that, notwithstanding the provisions of Article 19 thereof to the contrary, if this letter of credit would have otherwise expired by its terms during a period when our business has been interrupted by Acts of God or other causes beyond our control, our obligations hereunder shall continue for 30 days following the date of our resumption of normal business operations.

We hereby agree with you that all drafts drawn under and in compliance with the terms of this letter of credit will be duly honored on presentation to us.

[*Bank*]

By:  
Name:  
Title:

Hereunto duly authorized

## EXHIBIT C

### NON-DISCRIMINATION AND AFFIRMATIVE ACTION

#### **Federal Nondiscrimination Regulations.**

Airline and its Affiliates understand and acknowledge that the Authority has given to the United States of America, acting by and through the FAA, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act 1964 and by 49 CFR Part 21 as a condition precedent to the Government making grants in aid to the Authority for certain Airport programs and activities, and that the Authority is required under those Regulations to include in every agreement pursuant to which any person or persons other than the Authority operates or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which the Airline and its Affiliates agree:

The Airline and its Affiliates, in their operation at and use of Airport, covenant that:

- (i) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (ii) In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
- (iii) It shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as that regulation may be amended.

The Airline and its Affiliates further agree to promptly provide to the Authority, upon written request by the Authority, such information that the Authority is required to obtain from the Airline or its Affiliates to show compliance with applicable nondiscrimination laws.

#### **Affirmative Action.**

The Airline and its Affiliates assure that they will undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Airline and its Affiliates assure that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Airline and its Affiliates assure that they will require that their covered sub-organizations provide assurances to the Airline or such Affiliate, as applicable, and that they will require assurances from their sub-organizations, if required by 14 CFR Part 152, Subpart E, to the same effect.

**Government of Puerto Rico Nondiscrimination Laws and Regulations.**

The Airline and its Affiliates, in their operation at and use of the Airport, agree to abide by and comply with any and all present and future laws, statutes, ordinances, rules and regulations, orders, judgments and decrees of the Government of Puerto Rico relating to nondiscrimination or affirmative action.

## **EXHIBIT D**

### **RECORDS**

Concurrently with the execution of this Agreement, [AIRLINE] shall submit to Aerostar the following information:

- (A) FAA Air Carrier Certificate/DOT Certificate
- (B) Airline's Current Scheduled Plan of Operations
- (C) Form SC 2888 from the Puerto Rico Department of Treasury
- (D) Form SC 6096 from the Puerto Rico Department of Treasury
- (E) No debt certificate from Municipal Income Collecting Center (CRIM)
- (F) Certificate of F.S.E. Agency
- (G) Corporate resolution authorizing the company's representative to sign the Agreement
- (H) Corporate certificate and a copy of Articles of Incorporation, Resident Agent
- (I) Good Standing certificate from the Department of State
- (J) Business Authorization certificate issued by the Department of State (Foreign Corporations)
- (K) Labor Department certificates of proof of payment of unemployment, insurance

## EXHIBIT E-1

### AFFILIATE DESIGNATION

[AIRLINE] hereby notifies Aerostar of its designation of \_\_\_\_\_ named below as an Affiliate as of the Designation Commencement Date. The "Designation Commencement Date" shall be the first day of the calendar month following at least 15 days from receipt by Aerostar of this designation.

In connection with such designation, [AIRLINE] hereby certifies as follows:

1. [AIRLINE] is a parent or subsidiary of \_\_\_\_\_, OR \_\_\_\_\_ is directly or indirectly controlled by [AIRLINE] or is under common control with [AIRLINE], OR all operations of \_\_\_\_\_ at the Airport are controlled by [AIRLINE] or controlled by [AIRLINE] and one or more Signatory Airlines that have also designated \_\_\_\_\_ as an Affiliate. Data and information to demonstrate compliance with one of the conditions described is attached hereto.
2. [AIRLINE] will serve as a financial guarantor for all charges incurred by Affiliate at the Airport during the "Designation Term" defined as the Designation Commencement Date until the Designation Withdrawal Date as defined on Exhibit E-2.
3. [AIRLINE] will be responsible for ensuring that Affiliate complies with all of the terms and conditions of the Agreement to the same extent that [AIRLINE] is responsible for compliance with the terms and conditions of the Agreement during the Designation Term including, but not limited to, the environmental provisions of the Agreement.
4. [AIRLINE] will be responsible for the actions and any and all charges of any Affiliate at the Airport during the Designation Term, including but not limited to, the insurance and indemnification provisions of the Agreement.
5. The Affiliate will remain designated as such until the Designation Withdrawal Date, such withdrawal to be completed pursuant to the form attached hereto as Exhibit E-2.

#### Submission Date:

**Airline:** [AIRLINE LEGAL NAME]

**Affiliate:** \_\_\_\_\_

Please return two (2) originals of this document to:  
Aerostar Airport Holdings, LLC  
P.O. Box 38085  
San Juan, PR 00937-1085  
Attention Chief Legal Officer

**[AIRLINE LEGAL NAME]**

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

Name: [AIRLINE LEGAL PERSON]

Title: [LEGAL-PERSON TITLE]



Aerostar hereby acknowledges that [AIRLINE] has designated \_\_\_\_\_ as an Affiliate of [AIRLINE] as of \_\_\_\_\_, the Designation Commencement Date.

**AEROSTAR AIRPORT HOLDINGS, LLC**

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

Name:

Title:

Please return one (1) original of this document to:

[AIRLINE LEGAL NAME]

[AIRLINE POSTAL ADDRESS]

Attention [NOTICES AGENT]

**EXHIBIT E-2**

**WITHDRAWAL OF AFFILIATE DESIGNATION**

[AIRLINE] hereby notifies Aerostar of its withdrawal of the designation of the below-listed airline as an Affiliate of [AIRLINE] as of the Designation Withdrawal Date. The "Designation Withdrawal Date" shall be the last day of the calendar month following at least 15 days from receipt by Aerostar of this designation.

Airline's obligations, solely as they relate to the said Affiliate listed below, shall be of no further force and effect after the Designation Withdrawal Date. However, all of [AIRLINE]'s obligations with respect to the Affiliate, which were incurred during the Designation Term and prior to the Designation Withdrawal Date, shall survive this Withdrawal of Affiliate Designation and shall be satisfied in full by [AIRLINE] within thirty (30) days of the Designation Withdrawal Date hereof.

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

**Airline:** \_\_\_\_\_

**Affiliate:** \_\_\_\_\_

Please return two (2) originals of this document to:  
Aerostar Airport Holdings, LLC  
  
P.O. Box 38085  
San Juan, PR 00937-1085  
Attention: Chief Legal Officer

**[AIRLINE LEGAL NAME]**

By: \_\_\_\_\_  
Name: [AIRLINE LEGAL PERSON]  
Title: [LEGAL-PERSON TITLE]

Aerostar hereby acknowledges that [AIRLINE] has withdrawn its designation of \_\_\_\_\_ as an Affiliate of [AIRLINE] as of \_\_\_\_\_, the Designation Withdrawal Date.

Please return one (1) original of this document to:  
  
[AIRLINE LEGAL NAME]  
[AIRLINE POSTAL ADDRESS]  
  
Attention [NOTICES AGENT]

**AEROSTAR AIRPORT HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT F**  
**PLAT OF AIRPORT**

