

---

---

**ONTARIO INTERNATIONAL AIRPORT  
AIRPORT FACILITIES USE TERMS AND CONDITIONS**

Naming Rates, Charges, Rules and Regulations at Ontario International Airport  
for all Facility Users Using Airport Facility Space  
at Ontario International Airport  
after \_\_\_\_\_, 20\_\_, Except Pursuant to a Lease

# ONTARIO INTERNATIONAL AIRPORT AUTHORITY

1923 E. Avion Avenue, Ontario, CA 91761

(909) 544-5427

## TABLE OF CONTENTS

	<u>Page</u>
1. Consent to Terms of UTC and Scope of UTC .....	1
1.1 Name; Defined Terms .....	1
1.2 Effective Date .....	1
1.3 Use Constitutes Consent .....	1
1.4 Use Does Not Create Any Property Right .....	1
1.5 Modification .....	1
1.6 Facility User Space .....	1
2. Fees and Charges .....	1
2.1 Computation of Fees and Charges .....	1
2.2 Base Charges .....	2
2.3 Periodic Valuation Adjustment .....	2
2.4 Facility User's Records .....	3
2.5 Late Charges .....	3
2.6 No Counterclaim, etc .....	3
2.7 No Waiver; Retroactive Payments .....	3
2.8 Manner of Payment .....	4
3. Uses .....	4
3.1 Permitted Uses .....	4
3.2 Prohibited Uses .....	4
3.3 Other Use Limitations .....	4
4. Alterations, etc .....	4
4.1 OIAA's Consent .....	4
4.2 Alterations .....	5
4.3 Ownership of Improvements and Alterations .....	6
4.4 Notices of Non-Responsibility .....	6
5. Maintenance and Repair by Facility Users .....	6
6. Liens, etc .....	7
7. Compliance with Legal Requirements and Insurance Requirements, etc .....	8

8.	Indemnity; Insurance .....	8
8.1	Indemnity .....	8
8.2	Insurance .....	9
8.3	Carriers; Policy Provisions .....	10
9.	Damage or Destruction .....	10
9.1	Facility User to Restore .....	10
9.2	Facility User to Give Notice .....	11
10.	Eminent Domain .....	11
10.1	Total Taking .....	11
10.2	Awards .....	11
11.	No Purported Assignment or Subletting .....	11
12.	Pipes, Ducts and Conduits; Access to Airport Facility areas, etc .....	11
12.1	Pipes .....	11
12.2	OIAA's Access to Facility User's Areas .....	11
12.3	Emergency Access to Facility User's Areas .....	11
12.4	Changes to Airport Facility .....	12
13.	UTC Violations .....	12
14.	Performance Guaranty .....	13
14.1	Initial Performance Guaranty .....	13
14.2	Increases to Performance Guaranty .....	14
14.3	Purpose; Return .....	15
14.4	Policy Change .....	15
15.	Space Utilization .....	15
15.1	Policy .....	15
15.2	Underutilization .....	15
15.3	Cancellation upon Cessation of Service .....	15
16.	End of Use .....	16
17.	Notices .....	16
17.1	Notice to OIAA .....	16
17.2	Notice to Facility User .....	16
17.3	Delivery .....	16
18.	Utilities .....	17
18.1	Facility User Responsible .....	17
18.2	OIAA Not Liable .....	17
18.3	Interruptions of Service .....	17
19.	Rights of Flight .....	17

20.	Airport and Terminal Management .....	17
20.1	Authority of OIAA at Airport.....	18
20.2	Major Changes .....	18
21.	No Representations .....	18
22.	Communications Equipment and Antennae.....	18
23.	Signs and Advertising Materials.....	18
24.	Other Facility User Restrictions.....	19
24.1	Environmental Matters.....	19
24.2	Security .....	20
24.3	Business License.....	21
24.4	Federal Non-Discrimination Provisions .....	21
24.5	Taxes, Permits and Licenses .....	22
24.6	Laws, Rules and Regulations.....	22
24.7	Ordinance and Code.....	22
24.8	Amendments to Ordinances and Codes .....	22
24.9	Other Government Agreements .....	22
24.1	Federal Government’s Emergency Clause.....	22
24.2	Disadvantaged Enterprises.....	23
24.3	Airport Certification.....	23
25.	Miscellaneous .....	23
25.1	Entire UTC.....	23
25.2	Rights Limited by Law .....	23
25.3	Certain Statutes .....	23
25.4	Approvals.....	23
25.5	Time Periods .....	24
25.6	Measurements .....	24
25.7	Certain Exhibits and Deliveries .....	24
25.8	Other Agreements not Affected .....	24
25.9	Subordination to Government Agreements .....	24
25.10	Captions, etc .....	24
25.11	Waiver of Trial by Jury.....	25
25.12	Survival of Obligations .....	25
25.13	Governing Law .....	25
25.14	Interpretation .....	25
25.15	Attorneys’ Fees .....	25
25.16	Authority .....	25
26.	Definitions.....	25

## SCHEDULES AND EXHIBITS

Schedule 1	Insurance Schedule
Schedule 2	Airport Facilities
Schedule 3	Basic Information Schedule

## Index of Defined Terms

Defined Term	Page
Acknowledgement Letter.....	26
Affiliate.....	26
Aircraft Paving.....	27
Airline.....	26
Airport.....	26
Airport Engineer.....	26
Airport Facility.....	26
Application.....	26
Applied.....	26
Apply.....	26
Automobile Paving Area.....	27
Base Charge.....	27
Basic Information Schedule.....	27
Basic Rates.....	27
Building Area.....	27
Business Day.....	27
CEO.....	27
Commencement Date.....	27
CPI.....	27
CPI Change.....	27
discretion.....	27
Environmental Law(s).....	28
Facility User.....	28
Facility User's Areas.....	28
Facility User's Property.....	28
Guarantor.....	28
Guaranty.....	28
Hazardous Substance(s).....	28
herein.....	29
hereof.....	29
hereto.....	29
hereunder.....	29
Impermissible Lien.....	8
include.....	29
including.....	29
Initial Valuation Date.....	29
Insurance Requirements.....	29
Land Area.....	29
Landing Fee.....	29
Lease.....	29
Legal Requirements.....	29

OIAA.....	29
Passenger Facility Charges .....	29
Performance Guaranty .....	14
Person.....	30
Reimbursement Rate.....	30
Taking .....	30
Taking Date.....	30
Unavoidable Delays .....	30
Underutilized Space .....	15
UTC.....	30
UTC Violation .....	12
UTC Year.....	30
Utilization Standards.....	15
Valuation Adjustment Date.....	2
Valuation Cycle .....	30
Valuation Year .....	30

## PREFACE

This UTC is made by the Ontario International Airport Authority (“OIAA”).

OIAA is the manager of the Ontario International Airport (the “Airport”), and is charged with operating, managing, and enforcing this UTC.

All charges under this UTC shall be payable in cash as they are incurred unless credit arrangements satisfactory to OIAA have been made in advance, including, but not limited to, the payment of all arrears in accounts with OIAA. Any Facility User or other patron in arrears in its accounts with OIAA may be denied the use of Airport Facility space based thereon.

This UTC is published for the benefit of Facility Users, patrons of the Airport, and Airport staff.



**ONTARIO INTERNATIONAL AIRPORT  
AIRPORT FACILITIES USE TERMS AND CONDITIONS**

**1. *Consent to Terms of UTC and Scope of UTC.***

1.1 Name; Defined Terms. This UTC may be referred to as the “Ontario International Airport Airport Facilities Use Terms and Conditions” or this “UTC.” Certain terms used in this UTC and not defined elsewhere in the text of this UTC are used with the meanings specified in Section 26; terms defined elsewhere in the text of this UTC are listed in the Index of Defined Terms appearing following the Table of Contents. This UTC includes the Basic Information Schedule.

1.2 Effective Date. This UTC is effective \_\_\_\_\_, 20\_\_.

1.3 Use Constitutes Consent. Use by any Facility User of space in any Airport Facility after OIAA approval of this UTC, except pursuant to a Lease constitutes (a) consent by the Facility User to the terms and conditions of this UTC, and (b) agreement by the Facility User to pay all charges specified, and to be governed by all rules and regulations contained in this UTC.

1.4 Use Does Not Create Any Property Right. Use by any Facility User of space in any Airport Facility under the terms of this UTC creates no right to or interest in the property, either of occupancy or possession, legal or otherwise. This UTC does not in any way modify or replace the Landing Fee or any other fees, charges, rents, or any other cost based on use of the Airport’s runways, apron, or any other location at the Airport other than its Airport Facility by any entity, including the Facility User. Nothing in this UTC shall be construed as creating, modifying, or furthering any property rights, including, but not limited to, a Lease. Any Facility User using space at any Airport Facility pursuant to this UTC may be required by OIAA, in the exercise of OIAA’s discretion, to terminate its use at any time.

1.5 Modification. OIAA may modify this UTC at any time. Any modification of this UTC shall take effect upon the publication by OIAA of the modification on OIAA’s website.

1.6 Facility User Space. For the purposes of the Basic Information Schedule, the space used by a Facility User in any Airport Facility from time to time under the terms of this UTC shall be determined by OIAA, and OIAA’s determination shall, in the absence of manifest error, be binding on the Facility User.

**2. *Fees and Charges.***

2.1 Computation of Fees and Charges.

2.1.1 Computation of Basic Rates. Any Facility User using any space in any Airport Facility without a Lease shall be subject to this UTC and shall pay fees and charges as set forth in this UTC. The amount of those fees and charges shall be calculated for each calendar month in an amount equal to (i) the applicable Land Basic Rate (calculated as provided in this Section 2.1) for the month multiplied by the square footage of the Land Area for the month; and (ii) the applicable Building Basic Rate (calculated as provided in this Section 2.1) for the month multiplied by the square footage of the Building Area for the month.

The Basic Rates for the calendar month in which a Facility User first uses any space in an Airport Facility pursuant to this UTC is the amount reflected on the Basic Information Schedule as the “Initial Basic Rates”. Initial Basic Rates for each Airport Facility are approved by OIAA, and are determined independently of the issuance of this UTC, to be effective as of the OIAA specified-date.

The Basic Rates are not permanent and will be adjusted for CPI as provided in Section below. In addition, Basic Rates are adjusted once in each Valuation Cycle, which has five (5) Valuation Years. Such periodic adjustment is effective as of each Valuation Adjustment Date as provided in Section 2.3. For the avoidance of doubt, there is no CPI Adjustment under Section 2.1.2 during a year where there is a periodic adjustment under Section 2.3.

2.1.2 CPI Adjustments to Basic Rates. For each Valuation Year (other than the first Valuation Year during a Valuation Cycle), the Basic Rates (as the Basic Rates may previously have been adjusted under this Section 2.1.2 and under Section 2.3) shall be increased effective on July 1 by the CPI Change; provided, however, in no event will the increase to the Basic Rates pursuant to this Section 2.1.2 be less than two percent (2%) or greater than seven percent (7%). In the event that the CPI Change indicates a rate increase in excess of seven percent, the rental rate increase shall be carried over and implemented in the succeeding year or years, as necessary, at a rate not to exceed seven percent per year until the next succeeding Valuation Year during a Valuation Cycle.

## 2.2 Base Charges.

2.2.1 Monthly Installments. Facility Users subject to this UTC will pay installments of Base Charge in advance on the first day of each calendar month during the Facility User’s use of the Facility User’s Areas, without notice or demand. If the Commencement Date is a day other than the first day of a calendar month, the installment of Base Charge for that month shall be payable on the Commencement Date. The Base Charge for any partial calendar month in which a Facility User uses any Airport Facility space shall be prorated at OIAA’s discretion.

## 2.3 Periodic Valuation Adjustment.

2.3.1 Policy. In order to fairly compensate OIAA for the Facility User’s use of space at any Airport Facility, it is the policy of OIAA that charges for any Facility User subject to this UTC be periodically adjusted to fair market rental value. In order, therefore, to implement this policy, the Basic Rates for each Airport Facility shall be adjusted effective on the fifth anniversary of the Initial Valuation Dates specified in Schedule 3 (Basic Information Sheet) for each the Land Basic Rate and the Building Basic Rate, and, effective on every fifth anniversary of each Initial Valuation Date thereafter (the date of each adjustment to the Land Basic Rate or Building Basic Rate is referred to as a “Valuation Adjustment Date”) in accordance with the provisions of Sections 2.3.2.

2.3.2 Procedures. Not later than the date that is thirty (30) days before the next Valuation Adjustment Date, OIAA will (a) determine the Building Basic Rates (or Land Basic Rates, as the case may be) that would be established as of the next Valuation Adjustment Date, and (b) by notice (a “Valuation Notice”) inform the Facility User of the adjusted Building Basic

Rate or Land Basic Rate for the Valuation Cycle beginning on the next Valuation Adjustment Date. If the Land and Building Basic Rates are on separate Valuation Cycles, the Valuation Notice will be given only for the Basic Rate that is subject to a Periodic Valuation Adjustment. The method of determining the Basic Rates reflected in the Valuation Notice will be final and binding upon the Facility User for the Valuation Cycle beginning on the next Valuation Adjustment Date.

2.4 Facility User's Records. OIAA may, at its discretion and with reasonable notice to the Facility User, require the Facility User to provide within ten (10) days after the end of each calendar month, a report containing certain operating statistical and financial data applicable to Airport covering the previous calendar month in such form and content as shall reasonably be specified by OIAA, to [landingreports@flyontario.com](mailto:landingreports@flyontario.com). OIAA may examine (and, in the course of such examination, may copy) and audit the Facility User's books and records for the purpose of verifying the Facility User's charges paid and payable to OIAA under this UTC. The expense of any such examination or audit shall be borne by OIAA, provided that if the Facility User's books and records are not made available to OIAA at a location within fifty (50) miles from the Airport, the Facility User will reimburse OIAA the reasonable out-of-pocket costs incurred by OIAA in inspecting the Facility User's books and records, including travel, lodging and subsistence costs. Except as required by applicable law, OIAA will keep all information obtained from the Facility User's books and records confidential, and OIAA will use good faith efforts to cause OIAA's agents and employees to keep all information obtained from the Facility User's books and records confidential.

2.5 Late Charges. Facility User shall pay all installments of Base Charge or any other cost or charge payable under this UTC within ten (10) days after such amount shall be due. Any amount due not paid in a timely manner shall be subject to a late fee of 1.5% per month (18% per annum) of the overdue amount, or the highest legal rate, whichever is less.

2.6 No Counterclaim, etc. Facility Users subject to this UTC will pay the Base Charge and all additional costs payable under this UTC without notice, demand, counterclaim, setoff, deduction, defense, abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Facility User under this UTC shall in no way be discharged or otherwise affected for any reason, whether foreseen or unforeseen. To the extent permitted by applicable law, all payments by the Facility User to OIAA made hereunder shall be final, and the Facility User will not seek to recover any such payment or any part thereof for any reason.

2.7 No Waiver; Retroactive Payments. The failure by OIAA to timely execute the provisions of this Section 2 relating to the adjustment of the Base Charge or any item of additional charge payable under this UTC shall not be construed as a waiver of OIAA's ability to adjust the Base Charge or to the adjustment of any additional charges otherwise payable under this UTC. If a determination of the adjusted Base Charge is not completed before the relevant Valuation Adjustment Date or if a determination of the adjustment of any item of additional charge is not completed before any relevant date, the Facility User will continue to pay the amounts applicable to the preceding period, and if the Base Charge as of the relevant Valuation Adjustment Date or any item of additional charge as of any relevant date is thereafter determined to be an amount greater than that paid by the Facility User, the adjusted amount shall take effect, and shall promptly be paid by the Facility User, retroactively to the date when the payment would have been due absent the failure to timely complete the determination of the appropriate adjustment. If OIAA

has substantially executed the provisions of this Section 2 relating to the adjustment, OIAA shall be entitled to receive, in addition to all amounts of additional Base Charge and additional charge becoming retroactively effective, interest on the retroactive amounts from the time retroactively due until the date of payment to OIAA, at an annual rate per annum equal to the Reimbursement Rate.

2.8 Manner of Payment. All payments of Base Charge and other amounts payable under the preceding provisions of this Section 2 shall be paid in U.S. dollars without setoff or deduction by mailing to the following address:

Ontario International Airport Authority  
1923 E. Avion Ave  
Ontario, CA 91761

OIAA may from time to time designate any other address to which the payments shall be made. Electronic payments may be arranged upon OIAA approval. As a matter of courtesy, invoices may be sent by OIAA to the Facility User, but notwithstanding any custom of OIAA in sending invoices, the receipt of an invoice shall not be a condition to any payment due to OIAA from the Facility User. All payments, including each payment check and remittance advice, shall include reference to this UTC. No payment by the Facility User or receipt by OIAA of a portion of any sum due under this UTC shall be deemed to be other than a partial payment on account of the earliest sum next due from the Facility User. No endorsement or statement on any check or any letter accompanying a check or other payment from a Facility User shall be deemed an accord and satisfaction or otherwise binding upon OIAA. OIAA may accept any partial payment from the Facility User without invalidation of any notice required to be given under this UTC or otherwise under applicable law.

### 3. *Uses.*

3.1 Permitted Uses. Facility Users subject to this UTC may, subject to any applicable Legal Requirements and to all other applicable provisions of this UTC, use the Facility User's Areas only for the uses reflected on the Basic Information Schedule as the "Permitted Uses".

3.2 Prohibited Uses. Notwithstanding anything in Section 3.1 to the contrary, without the prior consent of OIAA no Facility User subject to this UTC may use any portion of the Facility User's Areas in any manner not specifically permitted.

3.3 Other Use Limitations. Facility Users subject to this UTC must conduct their operations at the Facility User's Areas used pursuant to this UTC in such a manner as to reduce as much as is reasonably practicable any and all activities that interfere unreasonably (whether by reason of noise, vibration, air movement, fumes, odors or otherwise) with the use of other facilities at the Airport.

### 4. *Alterations, etc.*

4.1 OIAA's Consent. Facility Users subject to this UTC have no property interest in any space at any Airport Facility subject to this UTC and therefore may not make any alterations,

installations, additions and improvements in and to the Facility User's Areas (referred to as "Alterations") except as provided in Section 4.2.

4.2 Alterations. Facility Users subject to this UTC (although they have no property interest in any space at any Airport Facility subject to this UTC) may, with OIAA's prior written consent only, make Alterations in the Facility User's Areas. OIAA may condition its consent on any basis, including a condition that the Facility User removes some or all of the Alterations at the Facility User's expense upon the termination of Facility User's occupancy pursuant to this UTC.

4.2.1 Prior to the construction of any improvements, Facility User shall submit to OIAA for concept approval the preliminary plans and estimated construction cost for such improvements. Said approval, subject to the conditions set forth herein, shall be given in a reasonably timely manner. Upon approval by the Executive Director of Facility User's preliminary plans, Facility User shall prepare working drawings and specifications which shall be true and correct developments of the preliminary plans so approved. Facility User shall then submit a written request for construction approval in accordance with OIAA's construction approval process, as may be amended from time to time. The Executive Director's written approval and any conditions related to the construction of the improvements or alterations shall become a part of the construction requirements once the document is fully executed by both parties. Upon receipt of the Executive Director's approval, Facility User shall cause the construction called for by the approved working drawings and specifications to be commenced and completed promptly. No substantial changes, additions, or alterations shall be made in said working drawings or specifications, or in the construction called for thereby, without first obtaining the Executive Director's approval in writing. Upon completion of the improvements, Facility User shall furnish to OIAA, at no charge, three complete sets of "record" drawings, and one complete set in Computer Aided Design (CAD) format which complies with the then current OIAA CAD standards. These drawings must include any applicable permit numbers, the structural and other improvements installed by Facility User in the Facility User's Areas, and the location and details of installation of all equipment, utility lines, heating, ventilating, and air-conditioning ducts and related matters. Facility User shall keep said drawings current by updating them in order to reflect any changes or modifications which may be made in or to the Facility User's Areas.

4.2.2 Facility User shall make no structural improvements, additions, or alterations in, to or upon the Facility User's Areas, nor erect, construct, or place any sign upon said Facility User's Areas, without first obtaining the written consent of the Executive Director. Any conditions, restrictions, or limitations placed upon the approval by the Executive Director shall be conditions of the construction once the document is fully executed by both parties. Facility User shall hold OIAA harmless from liability with respect to any claims regarding any improvements, additions, or alterations made thereto.

4.2.3 For each and every construction or alteration project undertaken on the Facility User's Areas, Facility User shall prepare a construction report. This report shall contain the following elements: (1) type of improvement constructed or altered; (2) floor area or capacity of improvement constructed or altered; (3) total cost of construction or alteration; (4) completion date for construction or alteration; and (5) a copy of the certificate of occupancy. The construction report shall be mailed to OIAA's Commercial Development Group at the address provided in

Section 17 (Notices) hereinbelow not later than sixty (60) days following completion of the construction or alteration.

4.2.4 Facility User shall also keep the Facility User's Areas and any improvements constructed thereon free and clear of liens for labor and material expended by or for Facility User or on its behalf (except when such improvement is constructed by the City of Ontario or OIAA).

4.2.5 To the extent Facility User is subject to Part 77 of the Federal Aviation Administration Regulations, Facility User agrees to comply with the notification and review requirements covered in Part 77 in the event any future structure or building is planned for the Facility User's Areas, or in the event of any planned modification or alteration of any present or future building or structure situated on the Facility User's Areas.

4.2.6 Facility User agrees that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation obstruction contours shown on the contour drawings on file with the Airport Engineer, if applicable. In the event the aforesaid covenants are breached, the City of Ontario or OIAA reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Facility User.

4.3 Ownership of Improvements and Alterations. Ownership of all improvements, other than the Facility User's Property, existing in the Facility User's Areas on the Commencement Date is and shall be in OIAA. Ownership of all Alterations constructed or installed in the Facility User's Areas by or at the direction of a Facility User (whether at OIAA or the Facility User's expense) after the Commencement Date, other than Facility User's Property, shall be and remain in OIAA. Upon the end of its use of the Facility User's Areas, all Alterations constructed or installed in the Facility User's Areas by or at the direction of a Facility User, other than Facility User's Property, shall be left in the Facility User's Areas (without compensation to the Facility User), unless OIAA requests that the Facility User remove some or all of the Alterations, in which case the Facility User will promptly remove them (excluding only painting and other wall coverings) and restore the Facility User's Area to its original condition at the Facility User's expense. All items of Facility User's Property remaining in the Facility User's Areas shall, if not removed by the Facility User within three Business Days following the end of its use of the Facility User's Areas, be deemed abandoned and shall, at OIAA's election (i) be disposed of in any manner selected by OIAA, at the Facility User's expense, or (ii) become the property of OIAA. The Facility User will promptly repair any damage to the Facility User's Areas resulting from the removal of any items of the Facility User's Property.

4.4 Notices of Non-Responsibility. In connection with any Alteration, OIAA may post notices of non-responsibility for the services and material furnished by mechanics, materialmen and other vendors.

**5. *Maintenance and Repair by Facility Users.*** Unless otherwise expressly stated, Facility User is responsible for all maintenance and repair at the Facility User's Areas (including its improvements, if any). Unless the Facility User and OIAA agree otherwise pursuant to a separate written agreement approved by the Executive Director, each Facility User subject to this UTC will

maintain the Facility User's Areas and will make all repairs to the Facility User's Areas and to all the fixtures, equipment and appurtenances therein as and when needed to preserve them in good working order and good and safe condition. Notwithstanding the foregoing, all damage to the Facility User's Areas and the fixtures, equipment and appurtenances therein requiring structural repairs or requiring repairs that affect the Airport Facility systems, and all damage or injury to any Airport Facility system, caused by or resulting from the negligence of the Facility User, its servants, employees, agents, customers, invitees or Facility Users, shall be repaired by OIAA, at the Facility User's expense, payable within 15 days after OIAA's delivery of an invoice therefor. Facility User shall be responsible for any corrective work required by any authority having jurisdiction over Facility User's Areas. All such repairs, maintenance and corrective work shall be at the Facility User's sole cost and expense.

Facility User will provide OIAA with a conceptual maintenance plan for the facility. OIAA staff will meet with the Facility User on a regular basis to review the condition of the Facility and, if necessary, jointly develop a repair action plan. However, the development of a repair action plan shall not relieve the Facility User of its responsibility to proactively fulfill its maintenance responsibilities.

All maintenance, repairs, and replacements by Facility User will be in accordance with applicable prevailing industry standards and in compliance with all manufacturers' recommendations and applicable federal state, and local government rules and regulations.

All damage or injury to the Facility User's Areas or its fixtures, equipment and appurtenances therein or thereto caused by the Facility User's removal of furniture, fixtures or other property, shall be repaired to its condition existing before the damage or injury, or restored or replaced promptly by the Facility User at its expense.

If OIAA determines the Facility User to have failed to maintain equipment in the Facility User's Areas, OIAA may elect to maintain the neglected equipment itself (directly or through third-party contractors and at the Facility User's expense payable promptly after OIAA's delivery of invoices therefor from time to time). In addition, OIAA retains the right, but not the obligation, to make emergency repairs when, in the sole determination of the Executive Director, failure to take immediate action will damage the facilities or disrupt operations. If OIAA performs maintenance or repairs for which Facility User is responsible then Facility User shall pay for such repairs or maintenance, plus and administrative fee in the amount of 15% of OIAA's cost.

6. ***Liens, etc.*** Facility Users subject to this UTC will not permit to be created or to remain, and will discharge (by payment, filing of an appropriate bond or otherwise), any lien, deed of trust, mortgage or other encumbrance affecting the Facility User's Areas or, to the extent caused or created by the act of the Facility User, the Airport or any part thereof, other than (i) any encumbrance affecting the Facility User's Areas or the Airport and arising solely from any act or omission of OIAA or any Person claiming by, through or under OIAA (other than the Facility User or any Person claiming by, through or under the Facility User), and (ii) inchoate liens of mechanics, materialmen, suppliers or vendors, or rights thereto incurred by the Facility User in the ordinary course of business for sums that under the terms of the related contracts are not yet due. Facility Users subject to this UTC have no property rights in the Facility User's Areas and may not, by lien, deed of trust, mortgage or any other encumbrance, hold themselves out as having such

rights or seek to impart such rights to itself or any other party. Notice is hereby given that OIAA shall not be liable for any labor or materials furnished or to be furnished to the Facility User upon credit, and that no mechanics' or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of OIAA in and to the Airport, or the Facility User's Areas. Without limiting the generality of Section 8.1 or the remedies available to OIAA for any violation of this UTC under Section 13, if the Facility User does not, within thirty (30) days following the imposition of any lien, deed of trust, mortgage or other encumbrance that the Facility User is required to discharge (any of the foregoing being referred to as an "Impermissible Lien"), cause the Impermissible Lien to be released of record by payment or posting of a proper bond or otherwise, OIAA shall have, in addition to all other remedies provided by law, the right, but not the obligation, upon ten Business Days' prior notice to the Facility User, to cause the Impermissible Lien to be released by such means as OIAA shall deem proper, including payment in satisfaction of the claim giving rise to the Impermissible Lien. All sums paid by OIAA and all expenses incurred by it in connection with the release of the Impermissible Lien, including costs and attorneys fees, shall be paid by the Facility User to OIAA on demand.

**7. *Compliance with Legal Requirements and Insurance Requirements, etc.*** Use of any Airport Facility pursuant to this UTC requires that the Facility User comply with all current and future Legal Requirements and Insurance Requirements that impose any violation or obligation upon OIAA or the Facility User relating to the Facility User's Areas or the use thereof, at the Facility User's expense. Without limiting the generality of the foregoing, the Facility User will, at the Facility User's expense, comply with any Legal Requirement that requires repairs or alterations within the Facility User's Areas so as to cause the Facility User's Areas to comply with the Americans with Disabilities Act, and any other Legal Requirements regarding access of disabled persons to the Facility User's Areas, including any services, equipment, programs or activities provided by the Facility User. The Facility User will cooperate with OIAA in OIAA's efforts to ensure compliance by the Airport with all applicable Legal Requirements, including Legal Requirements regarding access of disabled persons to the Airport. The Facility User will cooperate with OIAA and participate in and comply with activities organized by OIAA and mandated by any governmental agency, including recycling programs. OIAA will not be liable to the Facility User by reason of any obligation by the Facility User to comply with applicable Legal Requirements.

**8. *Indemnity; Insurance.***

**8.1 Indemnity.** Facility Users subject to this UTC shall indemnify OIAA against and hold OIAA harmless from all expenses (including reasonable attorneys' fees and disbursements), liabilities, losses, damages or fines incurred or suffered by OIAA by reason of (i) any breach or nonperformance by the Facility User, or its agents, employees, contractors, customers, and invitees, of any provision of this UTC to be observed or performed by the Facility User and (ii) the carelessness, negligence or improper conduct of the Facility User, or its agents, employees, contractors and invitees. OIAA will promptly notify the Facility User of any claim asserted against OIAA for which the Facility User may be liable under this Section 8.1 and will promptly deliver to the Facility User the original or a true copy of any summons or other process, pleading, or notice issued in any suit or other proceeding to assert or enforce the claim. If the Facility User becomes aware of any claim asserted against OIAA for which the Facility User may be liable under this Section 8.1, and of which the Facility User has not yet been notified by OIAA under the provisions



of the immediately preceding sentence, the Facility User will promptly notify OIAA of the claim. If any claim, action or proceeding is made or brought against OIAA for which claim, action or proceeding the Facility User would be liable under this Section 8.1, upon demand by OIAA, the Facility User, at its expense, will defend the claim, action or proceeding, in OIAA's name, if necessary, by such attorneys as OIAA shall approve, which approval shall not be unreasonably withheld. Attorneys for the Facility User's insurance carrier are deemed approved for purposes of this Section 8.1 (and if the Facility User's insurance carrier offers the Facility User more than one choice of counsel, the Facility User will select the counsel provided by the insurance carrier that is reasonably acceptable to OIAA). The Facility User shall, in any event, have the right, at the Facility User's expense, to participate in the defense of any action or other proceeding brought against OIAA and in negotiations for and settlement thereof if, under this Section 8.1, the Facility User may be obligated to reimburse OIAA in connection therewith. OIAA in its discretion may settle any claim against it that is covered by the Facility User's indemnity in this Section 8.1, if OIAA shall first have provided notice to the Facility User of OIAA's intention to settle the claim and the material terms of the proposed settlement and if the Facility User does not object to the proposed settlement within five Business Days of its receipt of the notice (or, if the Facility User receives immediate notice of the offer of settlement and its terms, such lesser time as was given as a condition of the settlement offer). In the case of any claim for which OIAA's proposed settlement includes the payment of more than \$100,000, OIAA may settle the claim over the Facility User's objection unless the Facility User furnishes OIAA with either (i) a bond in an amount equal to the claim in a form and from a surety reasonably satisfactory to OIAA, or (ii) other security reasonably satisfactory to OIAA. For the purposes of this Section 8.1 and any other indemnity by the Facility User in this UTC, any indemnity of OIAA shall be deemed to include an indemnity of all of OIAA's officers, employees and agents. In the Facility User's defense, negotiation, compromise, or settlement under this Section of any action against OIAA, OIAA shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom.

8.2 Insurance. Facility Users subject to this UTC will obtain and keep in full force and effect during its use of the Facility User's Areas, at its expense, policies of insurance of the types, with the coverages and insuring the risks specified in the insurance schedule attached to this UTC as Schedule 1. Based on its periodic review of the adequacy of insurance coverages, OIAA may from time to time, but not more than once each year, in the exercise of its reasonable judgment, revise the types of insurance required to be maintained by the Facility User, the risks to be insured and the minimum policy limits, on 30 days' prior notice to the Facility User. All policies of insurance required to be maintained by the Facility User under this Section 8.2 (a) shall be primary and noncontributing with any other insurance benefiting OIAA where liability arises out of or results from the acts or omissions of the Facility User, its agents, employees, officers, assigns or any other Person acting on behalf of the Facility User, and (b) may provide for reasonable deductibles or retention amounts satisfactory to OIAA based upon the nature of the Facility User's operations and the risks insured. Without limiting the generality of Section 8.1, if the Facility User does not furnish OIAA with evidence of insurance and maintain insurance in accordance with this Section 8.2, OIAA may, but shall not be obligated to, procure the insurance at the expense of the Facility User, in which event the Facility User will promptly reimburse OIAA for any amounts advanced by OIAA in procuring the insurance, together with a charge of 15% of the amounts so advanced for OIAA's administrative costs in so doing. The Facility User will provide proof of all insurance required to be maintained by this Section 8.2 by (a) production of certified copies of the

actual insurance policies, (b) use of OIAA's own endorsement forms, (c) broker's letter satisfactory to OIAA in substance and form in the case of foreign insurance syndicates, or by other written evidence of insurance satisfactory to OIAA. The documents evidencing all specified coverages shall be filed with OIAA in duplicate before the Facility User uses the Facility User's Areas. The documents evidencing the coverages shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, and shall bear an original signature of an authorized representative of the carrier. OIAA has the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing any policy of insurance required by this Section 8.2. Policies of insurance issued by non-California admitted carriers are subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations and directives from the California Department of Insurance or other regulatory board or agency. Unless exempted, the Facility User will provide OIAA with proof of insurance from the non-California admitted carriers through a surplus lines broker licensed by the State of California. The Facility User will promptly furnish OIAA with (i) notice of cancellation or change in the terms of any policy of insurance required to be maintained by this Section 8.2, and (ii) copies of any renewals, replacement or endorsements of or to the policies (and, in the case of renewals or replacements, at least 15 days before the expiration of the corresponding existing policy).

8.3 Carriers; Policy Provisions. All insurance policies referred to in Section 8.2 that are carried by Facility Users subject to this UTC shall be maintained with insurance companies of recognized standing and with an A.M. Best rating of A/XII or better. Each insurance policy referred to in Section 8.2 shall also, whether under the express provisions of the policy, by OIAA's own endorsement form or by other endorsement attached to the policy, include OIAA and all of OIAA's officers, employees, and agents, as additional named insureds for all purposes of the policy. Each insurance policy referred to in Section 8.2 (other than policies for workers' compensation, employers' liability and fire and extended coverages) shall contain (a) a "Severability of Interest (Cross Liability)" clause stating "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability", and (b) a "Contractual Endorsement" stating "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under its use of property at Ontario International Airport." Each insurance policy referred to in Section 8.2 shall provide that the insurance provided under the policy shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice, at least thirty (30) days before the effective date, by certified mail, return receipt requested, to OIAA at its address specified in or under the provisions of Section 17.

## 9. *Damage or Destruction.*

9.1 Facility User to Restore. If any Facility User's Areas are damaged or destroyed by fire or other casualty, then, whether or not (i) the damage or destruction shall have resulted from the fault or neglect of the Facility User or any other Person, or (ii) the insurance proceeds shall be adequate therefor, the Facility User will repair the damage, and restore the Facility User's Areas at the Facility User's expense, promptly and expeditiously and with reasonable continuity, to the same or better condition as existed before the casualty and in such a manner as is otherwise consistent with this UTC and the Facility User's uses of the Facility User's Areas, in each case subject to all then existing Legal Requirements; provided, however, that any such repair and

restoration obligation of the Facility User shall be contingent upon OIAA's repair and restoration of the Airport Facility as a whole and all structural components of the Facility User's Areas if necessary. Any repair or restoration by the Facility User of the Facility User's Areas following a casualty shall be considered an Alteration for the purposes of Section 4. If as a result of the repairs or restoration, a new certificate of occupancy shall be necessary for the Facility User's Areas, the Facility User will obtain and deliver to OIAA a temporary or final certificate of occupancy before the damaged portions of the Facility User's Areas shall be used for any purpose.

9.2 Facility User to Give Notice. Facility Users subject to this UTC will give OIAA notice in case of material damage or destruction to the Facility User's Areas promptly after the Facility User becomes aware of the event.

## 10. *Eminent Domain.*

10.1 Total Taking. If there shall occur a whole or partial Taking (other than for temporary use) of any Airport Facility, this UTC shall be either modified or cease to be in effect with respect to the affected Airport Facility at the discretion of the eventual owner.

10.2 Awards. Whether there is a whole or partial Taking, Facility Users subject to this UTC shall not be entitled to receive any portion of OIAA's award in any proceeding relating to any Taking, whether temporary, partial, or whole.

11. *No Purported Assignment or Subletting*. No Property Rights, No Assignment. Because Facility Users subject to this UTC have no property rights in any property at any Airport Facility subject to this UTC, Facility Users subject to this UTC may not attempt to assign, mortgage, encumber sublet, license, nor sublicense the Airport Facility used pursuant to this UTC or any part thereof. Any such purported assignment, mortgage, encumbrance, license, subletting, or sublicensing is void. Notwithstanding the provisions of this Section 11, and without granting any property right or interest in the Facility User's Areas used pursuant to this UTC, in the event the Facility User purports to license, sublet, or sublicense any portion of its Facility User's Areas, the Facility User, sublessee, or subFacility User shall be subject to the same terms and conditions of this UTC as though it were an Facility User itself.

## 12. *Pipes, Ducts and Conduits; Access to Airport Facility areas, etc.*

12.1 Pipes, Ducts and Conduits. OIAA may, at its discretion, erect, use and maintain pipes, ducts and conduits in and through the Airport Facility.

12.2 OIAA's Access to Facility User's Areas. Because Facility Users subject to this UTC have no property rights in the Facility User's Areas, OIAA, its officers, employees, agents and contractors may enter the Facility User's Areas at any time, upon reasonable notice, for the purpose of (i) inspecting the Facility User's Areas and making repairs, restorations or alterations, (ii) inspecting the Facility User's Areas or exhibiting them to prospective tenants or other users, or (iii) doing any other act or thing that OIAA may be obligated or have the right to do.

12.3 Emergency Access to Facility User's Areas. If no authorized representative of the Facility User shall be personally present to when OIAA, its officers, employees, agents and contractors, seek to enter the Facility User's Areas and such an entry shall be urgently necessary

by reason of fire or other emergency, OIAA may forcibly enter the Facility User's Areas without rendering OIAA liable therefor, if, to the extent possible and during and following the entry, OIAA will accord due care to the Facility User's property under the emergency circumstances. OIAA will notify the Facility User of any emergency entry as soon thereafter as practicable.

12.4 Changes to Airport Facility. OIAA may, at its discretion, change the arrangement, design, number and location of entrances, passageways, doors, doorways, corridors, elevators, stairways, restrooms, roads, sidewalks, landscaping and other parts of the Facility User's Areas and the Airport, although OIAA will attempt to avoid unreasonable interference or impairment of the Facility User's use of the Facility User's Areas, except with reasonable notice to the Facility User of the changes.

**13. UTC Violations.** If any one or more of the following events shall occur (each being referred to as a "UTC Violation"):

- a. if the Facility User shall fail to pay any installment of Base Charge or any additional charge on the date the same becomes due and payable and the failure shall continue for more than three days after payment is due; or
- b. if the Facility User shall fail to perform or comply with the provisions of Section 5, and the failure shall continue for more than the number of days specified for the cure thereof in any notice from OIAA to the Facility User of the failure; or
- c. if any insurance required to be maintained by the Facility User under the terms of Section 8 shall be cancelled or terminated or shall expire (and if replacement insurance complying with the terms of Section 8 shall not have been effected prior to the cancellation, termination or expiration), or shall be amended or modified, except, in each case, as permitted by the terms of Section 8; or
- d. if the Facility User shall fail to perform or comply with any term of this UTC (other than those referred to in clauses (a) through (c) of this sentence) and the failure shall continue for more than ten days; or
- e. if the Facility User shall (i) file, or consent by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (ii) make an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts when due, (iii) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any material part of its properties, (iv) be adjudicated insolvent or be liquidated, or (v) take corporate action for the purpose of any of the foregoing; or
- f. if a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Facility User, a custodian, receiver, trustee or other officer with similar powers with respect to the

Facility User or with respect to any material part of its property, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Facility User, or if any petition for any such relief shall be filed against the Facility User and the petition shall not be dismissed within 30 days; or

- g. if the Facility User shall leave the Facility User's Areas without a demonstrable intention to return, whether or not the Facility User continues to pay the Base Charge and additional charges in a timely manner; or
- h. if the Facility User or any of its Affiliates shall be in material breach of the terms of any other tariff imposed by OIAA or any lease, license, permit or contract to which OIAA shall be a party; or
- i. if the Facility User shall fail to pay when due any amount due under the Landing Fee; or
- j. if the Facility User shall fail to remit when due to OIAA any Passenger Facility Charges;

the Facility User shall be considered in violation of the UTC and may be removed from any of its Facility User's Areas without further notice, except that OIAA, in its discretion, may permit a good faith effort by the Facility User either to comply immediately with the terms of this UTC or to bring itself into compliance with the terms of this UTC within a reasonable period of time. In the event OIAA does not choose to exercise such discretion to permit the continued use of the Facility User's Areas, the Facility User will pay, as an additional charge under this UTC, all reasonable costs and expenses incurred by or on behalf of OIAA (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any violation by the Facility User of this UTC. If a UTC Violation shall occur, OIAA may immediately apply all amounts held by OIAA under any Performance Guaranty toward amounts then payable by the applicable Facility User to OIAA. In the event of a removal of the Facility User from the Facility User's Areas at the expense of the Facility User, OIAA may store any Facility User's Property so removed from the Facility User's Areas. OIAA shall be under no liability for or by reason of the Facility User's Property's removal.

#### **14. *Performance Guaranty.***

14.1 Initial Performance Guaranty. It shall be a condition to the use of any Airport Facility under this UTC that the Facility User shall have previously delivered a security deposit (the "Performance Guaranty") to OIAA at the following address:

Ontario International Airport Authority  
Attn: CEO  
1923 E. Avion Avenue  
Ontario, CA 91761

The initial amount of the Performance Guaranty shall be the amount reflected on the Basic Information Schedule as the "Performance Guaranty Amount", which is three times the sum of the amount of the initial estimated monthly installments of Base Charge and any other additional charges. The Performance Guaranty must be in the form of an irrevocable bank letter of credit that meets the requirements of Section 14.1.1 below, provided that if the Performance Guaranty is for an amount equal to or greater than \$5,000.00, the Performance Guaranty may be in the form of a cashier's check; in either case, such irrevocable letter of credit or cashier's check must have been issued by a bank satisfactory to OIAA. The Performance Guaranty shall not be in lieu of any other guaranty required by OIAA, nor shall any other guaranty in favor of OIAA relating to any obligation of the Facility User, whether in connection with this UTC or otherwise, stand wholly or partly in lieu of the Performance Guaranty.

14.1.1 Letter of Credit Requirements. A Performance Guaranty in the form of a letter of credit must meet all of the following requirements:

- a. The letter of credit shall be an irrevocable, stand-by Letter of Credit, issued by a United States Bank;
- b. The letter of credit shall have a minimum term of one (1) year;
- c. The letter of credit shall allow for partial and multiple drawings;
- d. The letter of credit shall name OIAA as beneficiary;
- e. The letter of credit shall state on its face the following exact language:

"This Letter of Credit is available for drawings in favor of the Ontario International Airport Authority ("OIAA") upon OIAA's presentation of the original Letter of Credit and a statement, purportedly signed by the Chief Executive Office, or his/her authorized representative, stating: "(Your Company Name) has violated the terms of occupancy or the Use Terms and Conditions for space at Ontario Airport."

- f. The letter of credit shall be self-renewing and shall further state on its face the following exact language:

"This Letter of Credit shall be deemed automatically renewed on the expiration date stated and every expiration date thereafter, for an additional one-year period, unless the beneficiary is notified via certified mail, 60 days prior to said expiration date, that the letter of credit shall not be renewed."

- g. The letter of credit shall be in a form approved by OIAA.

14.2 Increases to Performance Guaranty. Whenever under the terms of this UTC the monthly amounts payable by the Facility User on account of Base Charge and all other additional charges increase, such that the amount of the aggregate cumulative increase shall exceed ten percent (10%) of the amount of the existing Performance Guaranty, the Facility User will, within 30 days of the delivery by OIAA of a notice requiring that the Performance Guaranty be increased, deliver a new Performance Guaranty to OIAA at the address specified in Section 14.1 (or such

other address as OIAA may from time to time specify for the purpose of this Section 14.2) in the amount of three times the sum of the amount of the then current monthly installments of Base Charge and all other additional charges payable under this UTC. Upon the application by OIAA of any portion of the Performance Guaranty under the terms of Section 13, the Facility User will immediately deliver a new Performance Guaranty to OIAA in the amount of the Performance Guaranty immediately before the application.

14.3 Purpose; Return. The Performance Guaranty shall be held by OIAA as security for the agreement by the Facility User to obey the rules and regulations of this UTC, including the payment of Base Charge and all other additional charges. Upon the permanent vacation of the Facility User's Areas by the Facility User, and provided it has satisfied all of its obligations to OIAA under this UTC, OIAA will return the Performance Guaranty to the Facility User.

14.4 Policy Change. OIAA reserves the right, power and duty to revise and readjust the Performance Guaranty policy and amount at any time throughout the Facility User's use of the Facility User's Areas. Upon the adoption of a revised Performance Guaranty policy by OIAA, such policy shall be applicable to the Facility User.

## 15. *Space Utilization.*

15.1 Policy. Because the Airport is a public facility essential to regional and national transport and economy, as a matter of public policy OIAA requires that space at the facilities of the Airport be fully utilized.

15.2 Underutilization. If OIAA determines that any portion of the Facility User's Areas are not being utilized, and is not likely to become fully utilized within a reasonable period of time to the extent required by the "Utilization Standards" issued by the Executive Director as may be amended from time to time, OIAA may seek and incorporate other Persons to utilize fully the underutilized Facility User's Areas (the "Underutilized Space"). If within ninety (90) days following the delivery of the notice the Facility User subject to this UTC fails to adequately demonstrate to the satisfaction of OIAA that the Underutilized Space is then being, and reasonably anticipated to continue being, utilized to the extent required by the Utilization Standards, OIAA may deliver to the Facility User a notice that it is in violation of this UTC and may be removed from the underutilized Facility User's Areas on a date specified in the notice and not less than thirty (30) days following the date on which the notice is delivered. If OIAA so elects under this Section 15.2, (i) the Facility User will vacate the Underutilized Space on the date specified in OIAA's notice of election in the condition required by the provisions of this UTC, (ii) the Underutilized Space shall be eliminated from the Facility User's Areas, (iii) the Base Charge shall be recalculated after subtracting the square footage of the Underutilized Space from the square footage of the Facility User's Areas immediately before the recapture, (iv) any other additional charge payable for any period from and after the date of the full utilization shall be appropriately adjusted, and (v) any necessary proration of Base Charge and all other additional charges will be made as if, for the Underutilized Space, the date of the full utilization was the last day of the month.

15.3 Cancellation upon Cessation of Service.

15.3.1 **[Applicable to Airline Facility Users Only]** If the Facility User shall for any reason cease regularly scheduled or actual flight services at the Airport, OIAA may immediately remove the Facility User from any Facility User's Areas. In the event of such a cancellation of service, (i) the Facility User will surrender the Facility User's Areas as soon as practicable, in the condition required by the provisions of this UTC, and (ii) the Base Charge and all additional charge will be prorated as of the date of vacancy.

15.3.2 **[Applicable to non-Airline Facility Users Only]** If the Facility User for any reason does not have a valid agreement or license with OIAA to do business on Airport property, OIAA may immediately remove the Facility User from any Facility User's Areas. In such event, (i) the Facility User will surrender the Facility User's Areas as soon as practicable, in the condition required by the provisions of this UTC, and (ii) the Base Charge and all additional charge will be prorated as of the date of vacancy.

**16. End of Use.** Upon its vacancy of the Facility User's Areas, the Facility User will leave the premises broom clean, in good order and in the condition required by the provisions of this UTC, ordinary wear and tear excepted.

**17. Notices.**

17.1 Notice to OIAA. Written notices to OIAA hereunder, shall be sent to the Chief Executive Officer ("CEO") at the following addresses:

**Ontario International Airport Authority**  
Attn: Chief Executive Officer  
1923 E. Avion Avenue  
Ontario, CA 91761

with a copy to:

**Ontario International Airport Authority**  
Attn: General Counsel  
Stephen Larson  
555 South Flower Street Suite 4400  
Los Angeles, CA 90071

and with an electronic copy to [dobusinessatONT@flyontario.com](mailto:dobusinessatONT@flyontario.com).

17.2 Notice to Facility User. Written notices to the Facility User shall be sent to the addresses shown on the Basic Information Schedule under the heading "Facility User Addresses for Notices".

The execution of any such notice by the CEO shall be as effective as to Facility User as if it were executed by OIAA, or by resolution or order of OIAA, and Facility User shall not question the authority of CEO to execute any such notice.

17.3 Delivery. OIAA or the Facility User may from time to time, by notice, designate a different or additional address within the United States or attention designation for



communications intended for it. All such notices, except as otherwise provided herein, may either be delivered personally to CEO with a copy to the General Counsel of OIAA, in the one case, or to Facility User in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail. Such notice may also be delivered by a nationally recognized overnight commercial courier service that requires the recipient's signature for delivery, and shall be effective one (1) business day after delivery by such courier. Any notice or other communication may be given on behalf of OIAA or the Facility User by their respective attorneys, provided that the attorneys represent their capacity as such in the notice or other communication.

## **18. *Utilities.***

18.1 Facility User Responsible. Facility Users subject to this UTC shall be responsible for the payment of all costs of furnishing utilities to the Facility User's Areas (including all charges for water, gas, heat, light, power, telephone, and other utility service used by the Facility User in connection with its use of the Facility User's Areas), including deposits, connection fees and meter installation and rentals required by the supplier of any utility service, and the costs of all equipment and improvements necessary for connecting the Facility User's Areas to utility service facilities. If OIAA agrees that it is impracticable to separately meter a given utility for the Facility User's Areas, then the Facility User shall pay monthly to OIAA, as an additional charge for all utilities that are supplied by OIAA to the Facility User's Areas, at charges which will reflect fully compensatory, non-discriminatory, standard rates established by OIAA from time to time. The Facility User shall also be responsible for the payment of any and all taxes of whatever character that may be levied or charged upon the Facility User's Areas for furnishing utilities to the Facility User's Areas.

18.2 OIAA Not Liable. OIAA will not be liable to the Facility User for any failure, defect, impairment or deficiency in the supply of any utility service furnished to the Facility User's Areas or in any system supplying the service.

18.3 Interruptions of Service. OIAA has the right to interrupt the services provided by the Airport Facility's heating, ventilation, air conditioning, elevator, plumbing and electrical systems or other Airport Facility systems when necessary by reason of accident or emergency or for repairs, alterations, replacements or improvements.

19. ***Rights of Flight.*** OIAA has, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Facility User's Areas, including the right to cause any noise and vibration inherent in the operation of any aircraft through the airspace or landing at, taking off from, or operating at the Airport. The Facility User will not to make any claim against OIAA under any theory of recovery for any interference with the Facility User's use of the Facility User's Areas that may result from noise or vibration emanating from the operation of aircraft at the Airport.

## **20. *Airport and Terminal Management.***

20.1 Authority of OIAA at Airport. The Airport is a public facility essential to regional and national transport and economy and OIAA is a political subdivision with a public responsibility for the proper functioning of the Airport and the terminals. In order to carry out its responsibilities (including its obligations to comply with the requirements of the Federal Aviation Administration, the U.S. Transportation Security Administration, and other Legal Requirements), OIAA must therefore have broad power to regulate activities in the Airport. Accordingly, OIAA may from time to time adopt rules and regulations, and may make other specific orders, for the conduct of operations at the Airport. Facility Users subject to this UTC shall at all times comply with any rules and regulations from time to time so adopted and any specific orders so made by OIAA (and of which the Facility User shall have received a copy in writing), provided only that the rules and regulations are adopted, and the orders made, by OIAA in the good faith discharge of its public responsibilities and do not unreasonably discriminate against the business operations of the Facility User.

20.2 Major Changes. OIAA may make any change to the Airport that OIAA determines may be necessary or desirable. Facility Users subject to this UTC acknowledge that OIAA may undertake various improvements to the Airport during the Facility User's use of the Facility User's Areas, and that the construction of the improvements may interfere with the Facility User's operations at the Facility User's Areas. OIAA will reasonably attempt to mitigate the effects on the Facility User's operations.

21. ***No Representations.*** By virtue of use under this UTC, the Facility User accepts the Facility User's Areas "as is", in their condition and state of repair existing on the date that the Facility User begins to use the Airport Facility subject to this UTC. OIAA makes no representations, express or implied, as to the current condition of the Airport or the Facility User's Areas, or the equipment and systems serving the Airport Facility, the Airport or the Facility User's Areas.

22. ***Communications Equipment and Antennae.*** Facility Users subject to this UTC have no right to install or use any telecommunications equipment or antennae on the roof or exterior of the Airport Facility, unless (a) the installation and use are directly related to the conduct of the Facility User's business at the Facility User's Areas and are in full compliance with OIAA's permit process and telecommunications policies, as established in the discretion of OIAA, and (b) the installation is effected in compliance with the requirements of Section 4. The Facility User will not purport to license or in any other manner attempt to permit any other Person to use any telecommunications equipment or antennae at the Airport Facility. OIAA maintains the right to install or use telecommunications equipment or antennae on the roof or exterior of the Facility User's Areas and to install and attach cables, wires and conduits on, over or under the Facility User's Areas in connection with telecommunications equipment or antennae, or to license or otherwise permit others to do so, without compensation or a credit to the Facility User.

23. ***Signs and Advertising Materials.*** Except as set forth in this Section 23, Facility Users subject to this UTC will not place any signs or advertising materials in any location at the Airport Facility without the prior consent of OIAA, which consent may be withheld in the discretion of OIAA. Any request for the approval of identification signs for the Facility User's operations shall be accompanied by illustrative drawings and design dimensions together with information about the type of identification signs proposed by the Facility User and the locations in which the signs are proposed to be installed. The Facility User will comply with any conditions to the installation

or use of signs to which OIAA may make its consent subject. OIAA may without notice remove any unauthorized signs or advertising materials, and may store them at the Facility User's expense, and may dispose of them if they are not promptly claimed by the Facility User after notice from OIAA.

**24. *Other Facility User Restrictions.***

24.1 Environmental Matters.

24.1.1 Environmental Representation. Facility User is, and will remain during the term of this UTC, in compliance with the Environmental Laws, which compliance includes, but is not limited to, the possession by Facility User of all permits and other governmental authorizations required under the Environmental Laws, and compliance with the terms and conditions thereof.

24.1.2 Storm Water Pollution Prevention. The Facility User shall abide by all regulations pertinent to storm water pollution prevention, including using Best Management Practices (BMPs) to protect storm water inlets from contaminated discharges, and promptly mitigating any discharges to the satisfaction of the regulatory agencies and OIAA.

24.1.3 Air Quality Management. The Facility User shall obtain and abide by all permit conditions related to the use of stationary or mobile equipment that require permitting per the CA Air Resources Board or the local Air Pollution Control District Requirements.

24.1.4 Environmental Indemnity. Except for conditions existing prior to the original operation and use of the Airport by Facility User, Facility User agrees to accept sole responsibility for full compliance with Environmental Laws, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Airport, on the user of the land, or on the user of the improvements. Facility User agrees that any lawsuits, actions, claims, costs, damages, penalties, or fines filed or asserted against or levied on or adjudged against OIAA and/or the Facility User as a result of or relating to: (i) Facility User's alleged or actual noncompliance with any of the provisions in this Section 8, (ii) Facility User's alleged or actual noncompliance with Environmental Law, or (iii) relating to Facility User's generation, use, release or disposal (including arranging for disposal) of Hazardous Substances, shall be the sole responsibility of the Facility User and that Facility User shall indemnify and hold OIAA harmless from all such lawsuits, actions, claims, damages, penalties, or fines. Further, OIAA may, at its option, defend or pay such lawsuits, actions, claims, costs, damages, penalties, or fines resulting from (i)-(iii) above Facility User's non-compliance with any of the terms of this Section 24.1, and Facility User shall indemnify and reimburse OIAA for any such payments or costs.

24.1.5 In the case of any Hazardous Substance spill, leak, discharge, release or contamination by Facility User or its employees, servants, agents, contractors, or subcontractors on the Airport or as may be discharged or released in, on or under adjacent property which affects other property of OIAA or its tenants, Facility User agrees to make or cause to be made any necessary corrective actions to clean up and remove any such spill, leakage, discharge, release or contamination. If Facility User fails to repair, clean up, properly dispose of, or take any other corrective actions as required herein, OIAA may (but shall not be required to) take all steps it

deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, discharge, release or contamination. Any such repair, cleanup, or corrective actions taken by OIAA shall be at Facility User's sole cost and expense and Facility User shall indemnify and pay for and/or reimburse OIAA for any and all costs (including any administrative costs) OIAA incurs as a result of any repair, cleanup, or corrective action it takes.

24.1.6 If Facility User installs or uses already installed underground storage tanks, above-ground storage tanks, pipelines, or other improvements on the Airport for the storage, distribution, use, treatment, or disposal of any Hazardous Substances, Facility User agrees, upon the expiration and/or termination of this UTC, to remove and/or clean up, at the sole option of the CEO, the above-referred-to improvements. Said removal and/or cleanup shall be at the Facility User's sole cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations, as well as with the reasonable directions of the CEO.

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

24.1.8 Survival of Obligations. This Section 24.1 and the obligations herein shall survive the expiration or earlier termination of this UTC.

## 24.2 Security.

24.2.1 The Facility User will fully comply with all Legal Requirements relating to airfield and airport security. The Facility User will maintain and keep in good repair that portion of the Airport perimeter fence, including gates and doors, that are in the Facility User's Areas or controlled by the Facility User. The Facility User will comply fully with applicable provisions of the Transportation Security Administration ("TSA") Regulations, 49 CFR, Part I 500 through I 550, as may be amended from time to time, or any successor statute, including the establishment and implementation of procedures acceptable to OIAA to control access from the Facility User's Areas to air operation areas in accordance with the Airport Security Program required by 49 CFR Part 1542, as may be amended from time to time, or any successor statute. The Facility User will exercise exclusive security responsibility for the Facility User's Areas and, if the Facility User is an Airline, will also exercise security responsibility pursuant to Facility User's TSA-approved Aircraft Operator Standard Security Program used in accordance with 49 CFR, Part 1544, as may be amended from time to time, or any successor statute.

24.2.2 Without limiting the generality of the foregoing, the Facility User will keep gates and doors in the Facility User's Areas and that permit entry to restricted areas at the Airport locked at all times when not in use or under the Facility User's constant security surveillance. The Facility User will report gate or door malfunctions that permit unauthorized entry into restricted areas to OIAA's operations center without delay, and the Facility User will maintain the affected gate or door under constant security surveillance until repairs are affected by the Facility User or

OIAA and the gate or door is properly secured. The Facility User will pay all civil penalties levied by the Federal Aviation Administration for violation of Federal Aviation Regulations pertaining to security gates or doors in the Facility User's Areas or otherwise controlled by the Facility User or violations by Facility User's employees, agents, contractors, or invitees.

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

24.3 Business License. Facility User represents that it has registered its business with the Business License Division of the City of Ontario and has obtained and presently holds from that office any and all business licenses or permits, required by the applicable provisions of the City of Ontario Municipal Code (the "Code"). Facility User shall maintain, or obtain as necessary, all such certificates required of it under said ordinance and shall not allow any such certificate to be revoked or suspended during the term hereof.

#### 24.4 Federal Non-Discrimination Provisions.

24.4.1 Facility User understands and acknowledges that the Airport 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 applicable national, federal, state or local regulatory agency, department, bureau or other governmental entity in the United States (the "Government") making grants in aid to the Airport for certain Airport programs and activities, and that Airport is required under those regulations to include in every agreement pursuant to which any person or persons, other than Airport, operates or has the right to operate any facility on Airport providing services to the public, the following covenant, to which Facility User agrees:

24.4.2 Facility User, in its operation at and use of Airport, covenants that:

- a. 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;
- b. 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;
- c. Facility User shall use the Airport in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as that regulation may be amended; and

- d. Facility User further agrees promptly to provide the Airport, upon written request by the Airport, such information the Airport is required to obtain from Facility User to show compliance with applicable nondiscrimination laws.

24.5 Taxes, Permits and Licenses. The Facility User will pay any and all taxes of whatever character that may be levied or charged upon the Facility User's Areas, or upon the Facility User's improvements, fixtures, equipment, or other property thereon or upon the Facility User's use thereof. The Facility User will also pay all license or permit fees necessary or required by law or regulation for the conduct of the Facility User's business or use of the Facility User's Areas.

24.6 Laws, Rules and Regulations.

24.6.1 Facility User shall be solely responsible for fully complying with any and all: (1) applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by OIAA with respect to the operations of Airport; and (2) applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state and/or local government authority.

24.6.2 Facility User shall be solely responsible for fully complying with any and all applicable present and/or future orders, directives, or conditions issued, given or imposed by the CEO which are now in force or which may be hereafter adopted by OIAA and/or the CEO with respect to the operation of Airport.

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

24.7 Ordinance and Code. Facility User shall fully and adequately comply with all applicable provisions of the Code and ordinances issued by the City of Ontario ("Ordinance").

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

24.9 Other Government Agreements. This Agreement shall be and remain subordinate to the provisions of any existing or future agreements between OIAA and the United States Government or other governmental authority, relative to the operation or maintenance of the Airport, the executive 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.

24.10 Federal Government's Emergency Clause. All provisions of this Agreement shall be subordinate to the rights of the United States to operate the Airport or any portion thereof during time of war or declared national emergency in accordance with established lawful

procedures. Such rights shall supersede any provision of this Agreement that is inconsistent with the operation of the Airport by the United States during a time of war or national emergency.

24.11 Disadvantaged Enterprises. Facility User acknowledges that the provisions of 49 CFR Part 23 (“Airport Concessions Disadvantaged Business Enterprises”) and Part 26 (“Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs”) as said regulations may be amended, and such other similar regulations that may be enacted governing Disadvantaged Business Enterprises, may be applicable to the activities of Facility User under the terms of this Agreement, unless exempted by said regulations, and hereby agrees to comply with the applicable regulations. These requirements may include, without limitation, compliance with Disadvantaged Business Enterprise or Minority Business Enterprise, as such terms are defined in 49 U.S.C. §§ 47107, 47113 and 47123, 49 CFR Parts 23 and 26, or such other statutes or regulations as may be enacted governing minority or disadvantaged business enterprises, participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submissions of various reports and, if so directed, the contracting of specified percentages of goods and services contracts to Minority and Disadvantaged Business Enterprises.

24.12 Airport Certification. Facility User shall not operate at the Airport in a manner that prevents or impairs the OIAA’s ability to meet and maintain compliance with 14 CFR Part 139 (“Certification of Airports”) and other requirements for obtaining, and maintaining, an Airport Operating Certificate from the FAA.

## 25. *Miscellaneous.*

25.1 Entire UTC. This UTC governs the Facility User’s use of any Airport Facility except pursuant to a Lease.

25.2 Rights Limited by Law. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and are intended to be limited to the extent necessary so that they will not render this UTC invalid, illegal, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this UTC or any application thereof shall be invalid or unenforceable, the remainder of this UTC and any other application of the term shall not be affected.

25.3 Certain Statutes. No provision of this UTC shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act, 49 U.S.C. 40103(e) and 40107(a)(4) (Public Law 103-272). The Facility User waives any right or benefit in any way related to the Airport or its operations to which the Facility User would otherwise be entitled as a result of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 49 U.S.C. 4601, *et seq.* (Public Law 91-646), Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260, *et seq.*), or any other Legal Requirement conferring similar rights and benefits.

25.4 Approvals. Any approvals or consents required from or given by OIAA under this UTC shall be approvals of the Department acting as OIAA, and shall not relate to, constitute a

waiver of, supersede or otherwise limit or affect the rights or prerogatives of OIAA as a government, including the right to grant or deny any permits required for construction in the Facility User's Areas or maintenance of the Facility User's Area and the right to enact, amend or repeal Legal Requirements, including those relating to zoning, land use, and building and safety. Any requirement in this UTC that an approval or consent be not unreasonably withheld shall also be deemed to require that the approval or consent be not unreasonably delayed. Any other requirement in this UTC that an approval or consent be obtained shall entitle the party whose approval or consent is required to withhold the approval or consent in its discretion. No approval or consent on behalf of OIAA will be deemed binding upon OIAA unless approved in writing as to form by the OIAA.

25.5 Time Periods. Unless otherwise specified, any reference to "days" in this UTC shall mean calendar days. Time of performance shall be of the essence of this UTC, provided that whenever a day is established in this UTC on or by which either OIAA or the Facility User is required to perform any action (other than the Facility User's obligation to make any payment of money required by this UTC), the time for performance shall be extended by the number of days (if any) during which the party whose performance is required is prevented from performing due to Unavoidable Delays.

25.6 Measurements. All measurements of the Facility User's Building Area shall be made (except as required to the contrary by the express terms of this UTC) under ANSI/BOMA Z65.1-1996 ("Standard for Measuring Floor Area in Office Buildings") or any other consistent methods from time to time adopted by the Airport Engineer. All measurements of land shall be made to City standards or any other consistent methods from time to time adopted by the Airport Engineer. If at any time the Airport Engineer concludes that any measurement proves to have been incorrect, OIAA will promptly disclose the inaccuracy to the affected Facility User, and OIAA and the affected Facility User will promptly make such payments to the other as may be necessary to correct retroactively for the economic effect of the error.

25.7 Certain Exhibits and Deliveries. In order to illustrate the computation of the Base Charge and other financial matters relevant to this UTC, OIAA has delivered or may deliver to the Facility User sample calculations in written or electronic form. In the event of a conflict between the sample calculations and the terms of this UTC, the terms of this UTC shall govern.

25.8 Other Agreements not Affected. The provisions of this UTC shall apply only to the Facility User's Area and shall not modify in any respect any of the rights or obligations of OIAA or the Facility User under any other UTC or other agreement between them. Except as expressly provided in this UTC, no third-party is intended to be a beneficiary of the provisions of this UTC.

25.9 Subordination to Government Agreements. The Facility User's rights under this UTC shall be subordinate to the provisions of any existing or future agreement between OIAA and the United States relating to the development, operation, or maintenance of the Airport.

25.10 Captions, etc. The captions, table of contents and cover page of this UTC are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.



25.11 Waiver of Trial by Jury. Facility Users subject to this UTC do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other relating to any matters arising out of or in any way connected with this UTC, the relationship of OIAA and the Facility User, the Facility User's use of the Facility User's Areas, or any other claims (except claims for personal injury or property damage) or any other statutory remedy.

25.12 Survival of Obligations. Unless expressly provided to the contrary, the obligations of a Facility User hereunder shall survive, to the extent previously accrued, the vacation of Facility User's Areas by any Facility User subject to this UTC.

25.13 Governing Law. Irrespective of the place of execution or performance, this UTC shall be governed by and construed and enforced in accordance with the laws of the State of California.

25.14 Interpretation. Any references in this UTC to a specific Legal Requirement shall be deemed to include a reference to any similar or successor provision.

25.15 Attorneys' Fees. In any action brought by OIAA to enforce the terms of this UTC, if OIAA substantially prevails in the action, OIAA shall be entitled to recover from the Facility User OIAA's reasonable expenses of the action (including reasonable attorneys' fees).

25.16 Authority. The powers of OIAA under this UTC, including the power to interpret and implement the provisions of this UTC, have been delegated to and may be exercised by the CEO, and any notice, election, approval or consent that this UTC by its terms requires or permits OIAA to give may be given by the CEO, in each case as if exercised or given by resolution or order of OIAA. Without limitation of the authority of the OIAA under any specific provision of this UTC (after giving effect to the foregoing provisions of this Section 25.16), the CEO shall have the authority to both:

- (A) bind OIAA to any amendment of this UTC having the effect of increasing or decreasing by not more than \$150,000 in any UTC Year the amounts payable by the Facility User to OIAA under this UTC, provided however, that such authority shall not (without the prior approval or later ratification of OIAA) extend to any amendment of the terms of this UTC if the specific text of this UTC has been presented to and approved by the City Council of the City of Ontario; and
- (B) designate and assign space under this UTC to any Facility User and any schedule(s) to this UTC for the applicable Facility User (whether or not previously approved by OIAA) shall be adjusted to reflect any change in the space so assigned or designated by the CEO for such Facility User.

In taking any action under this UTC, the Facility User shall be entitled to rely on the authority of the Executive Director as specified in this Section 25.16.

**26. Definitions.** The terms defined in this Section 26 shall have, for all purposes of this UTC, the meanings herein specified unless unambiguously required to the contrary by their context.

“Acknowledgement Letter” means an acknowledgement letter regarding use of Airport Facilities pursuant to the UTC, from OIAA to the Facility User.

“Affiliate” means, as to any Person, any Person or group of Persons acting in concert in respect of the Person in question that, directly or indirectly, controls or is controlled by or is under common control with the Person in question. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used referring to any Person or group of Persons shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person or group, whether through the ownership of voting securities or by contract or otherwise.

“Airline” means an Air Carrier or Foreign Air Carrier as defined in 49 U.S.C. § 40102(a)(2) & (a)(21), respectively.

“Airport” means Ontario International Airport in Ontario, California.

“Airport Engineer” means the Chief Airports Engineer of the Airport from time to time, as successors to that position may be designated (by whatever title).

“Airport Facility” means any (i) building and associated land and (ii) land identified in Schedule 2 attached hereto. When the context requires, use of the term “Airport Facility” may mean any building and/or land identified in Schedule 2.

“Apply” “Applied,” or “Application” mean any installation, handling, generation, storing, treatment, application, use, disposal, discharge, manufacture, refinement, presence, migration, emission, abatement, removal, transportation, or any other activity of any type in connection with or involving Hazardous Materials by the Facility User or its officers, employees, contractors, assignees, agents or invitees.

“Base Charge” means the rental payable by the Facility User for the use of the Airport Facility in monthly installments as provided for in Section 2.1 and 2.2.

“Basic Information Schedule” means the schedule containing certain basic information relating to this UTC.

“Basic Rates” means the monthly amount, expressed in U.S. dollars per square foot of (i) Building Area; and (ii) Land Area; (iii) Aircraft Paving Area; and (iv) Automobile Paving Area, by which the Base Charge is computed under the terms of Section 2.

“Building Area” means the Airport Facility building used substantially exclusively by a Facility User pursuant to this UTC, consisting of approximately the number of square feet of building space reflected on the Basic Information Schedule under the heading “Building Area”.

“Business Day” means any day excluding Saturdays, Sundays, and any other day designated as a holiday under the federal laws of the United States or under the laws of the State of California or the City of Ontario.

“CEO” means the Chief Executive Officer of the OIAA.

“Commencement Date” means the first date on which a Facility User uses an Airport Facility pursuant to this UTC.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U), as published from time to time by the U.S. Department of Labor, Bureau of Labor Statistics, for the Los Angeles-Riverside Orange County area, All Items (1982-84 = 100), or, if that index shall cease to be regularly published, such replacement index (adjusted for any difference in base year and absolute amount) as shall from time to time be published by the Bureau. If the U.S. Department of Labor ceases to publish such an index, OIAA will adopt in its place a comparable index published at the time of the cessation by a responsible financial periodical, if any. If there is no comparable index published by a responsible financial periodical, OIAA will adopt any other comparable index available, and make any adjustments required thereto to reflect the 1982-84 = 100 base year. In addition, if the method of calculating the consumer price index changes in any way, for the purposes of this UTC, the CPI shall be determined without giving effect to the new methods, and the CPI shall continue to be calculated in the manner as of the Commencement Date. Any adjustments to the CPI (if it is calculated differently) shall be made by OIAA, subject to the Facility User’s right to reasonably approve the adjustments.

“CPI Change” means the percentage change in the CPI when comparing (a) the CPI in effect for the month of March immediately preceding the first day of the Valuation Year to (b) the CPI in effect for the month of March for the prior year.

“discretion” means sole and absolute discretion; any provision of this UTC referring to the exercise by OIAA or the Facility User of its discretion, whether in those words or words of similar import, shall (unless expressly subject to a different standard) permit the party exercising its discretion to do so in any manner and for any reasons it chooses, and, to the maximum extent permitted by law, the exercise of that discretion is not intended to be reviewable by any judicial or regulatory authority.

“Environmental Law(s)” means all any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws, and/or other orders of any governmental entity regarding: (1) The use, storage, handling, distribution, processing, and/or disposal of Hazardous Substances; or (2) The protection of public health, health and human safety and the environment (including air, water, land, species or natural resources).

“Facility User” means a Person other than a government or political subdivision thereof or a governmental agency.

“Facility User’s Areas” means the Airport Facility used substantially exclusively by an Facility User pursuant to this UTC, consisting of approximately the number of square feet of Land Area, Building Area, Aircraft Paving Area and Automobile Paving Area, reflected on the Basic Information Schedule under the heading “Facility User’s Areas”.

“Facility User’s Property” means all furniture, furnishings, office equipment, books, records, office supplies, computers and related equipment, audio-visual equipment, telephone systems and equipment, art work and rugs installed at or located in the Facility User’s Areas at the

expense of the Facility User and removable without damage to the Facility User's Areas that cannot be readily repaired.

"Guarantor" means, if the Facility User's obligations under this UTC have been guaranteed by any Person, the guarantor under the Guaranty.

"Guaranty" means the guaranty to and in favor of OIAA of the Facility User's obligations under this UTC, if the Facility User's obligations under this UTC have been guaranteed by any Person.

"Hazardous Substance(s)" means any substance (1) the presence of which requires the investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action, policy or common law; (2) which is or becomes defined as a hazardous waste, extremely hazardous waste, hazardous material, hazardous substance, hazardous chemical, toxic chemical, toxic substance, cancer causing substance, substance that causes reproductive harm, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, council, board, or instrumentality of the United States, the State of California, the City of Ontario, or any political subdivision of any of them; (4) the presence of which on the Airport causes or threatens to cause a nuisance upon the Airport or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Airport; (5) the presence of which on adjacent properties could constitute a trespass by Facility User; or (6) without limitation, which contains gasoline, aviation fuel, jet fuel, diesel fuel or other petroleum hydrocarbons, lubricating oils, solvents, polychlorinated biphenyls (PCBs) asbestos, urea formaldehyde or radon gases.

"herein", "hereof", "hereto", "hereunder" and similar terms contained in this UTC refer to this UTC as a whole and not to any particular Section, paragraph or provision of this UTC.

"including" and "include" mean including or include without limiting the generality of any description preceding that term; for the purposes of this UTC the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

"Initial Valuation Date" means the dates as of which the valuation of the Airport Facility was last established, which are reflected on the Basic Information Schedule as the "Initial Valuation Date" for each of the Building Basic Rate and Land Basic Rate.

"Insurance Requirements" means all terms of any insurance policy covering the Facility User or covering or applicable to the Facility User's Areas or any part thereof, all requirements of the issuer of the policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Facility User's Areas or any part thereof or any use or condition of the Facility User's Areas or any part thereof.

“Land Area” means the Airport Facility land used substantially exclusively by a Facility User pursuant to this UTC, consisting of approximately the number of square feet of land reflected on the Basic Information Schedule under the heading “Land Area”.

“Landing Fee” means the landing fees and charges payable by the Facility User under the terms of any operating permit issued by OIAA and held by the Facility User as an Airline or as established by any resolution of OIAA.

“Lease” means a written instrument under which a Facility User is entitled to exclusive possession of a portion of an Airport Facility, or a license to use in common with other Facility Users portions of an Airport Facility, or both, but does not include the possession, occupancy, or use of space in any Airport Facility by reason of holding over (without the express written consent of OIAA, explicitly as to duration) after the expiration of the term specified in any instrument that would otherwise be a “Lease” for the purposes of this definition.

“Legal Requirements” means all laws, statutes, codes, acts, ordinances, charters, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, that now or at any time hereafter may be applicable to the Facility User or to any Airport Facility, or to the Airport or any part thereof.

“OIAA” means the Ontario International Airport Authority, a joint powers authority created by the City of Ontario and San Bernardino County.

“Passenger Facility Charges” means passenger facility charges required to be collected by the Facility User and remitted to OIAA under 14 C.F.R. Part 158 or any similar or successor Legal Requirement.

“Person” means a corporation, an association, a partnership, a limited liability company, an organization, a trust, a natural person, a government or political subdivision thereof or a governmental agency.

“Reimbursement Rate” means, as of any date of determination, the annual rate of interest equal to two per cent per annum in excess of the fixed rate of interest quoted in The Bond Buyer 25 Revenue Bond Index (or, if that index is no longer published, such successor or replacement index or similar index selected by OIAA) for fixed rate bonds having a term remaining to maturity of one year (with no credit enhancement) and bearing interest that is not excluded from gross income for federal income tax purposes.

“Taking” means a temporary or permanent taking by a government or political subdivision thereof or by a governmental agency (or by any other Person exercising the power of condemnation or eminent domain) for public or quasi-public use of all or any part of any Terminal, or any interest therein or right accruing thereto, including, without limitation, any right of access thereto existing on the date hereof, as the result of or in lieu of or in anticipation of the exercise of the right of condemnation or eminent domain. No recapture by OIAA of any portion of the Facility User’s Areas, or exercise by OIAA of any similar right under the terms of this UTC, shall constitute a Taking.

“Taking Date” means, in connection with a Taking, the earlier of the date on which title vests due to the Taking and the date on which possession of the property affected by the Taking is required to be, or is, delivered to or at the direction of the condemning authority.

“UTC” means this UTC and the Schedules and Exhibits hereto, together with the Basic Information Schedule, as amended from time to time.

“UTC Year” means the fiscal year of OIAA, which is currently the year beginning on July 1 and ending on the following June 30, or any other fiscal year as may from time to time be adopted by OIAA.

“Unavoidable Delays” means delays due to strikes, acts of God, interruption of services, enemy action, terrorist acts, civil commotion, shortages of labor or supply or other similar causes beyond the reasonable control of the party whose action is required; but lack of funds shall not be deemed a cause beyond the control of the Facility User.

“Valuation Cycle” means each of the successive five-year periods beginning with the Initial Valuation Date and ending on the day preceding each fifth successive anniversary of the Initial Valuation Date.

“Valuation Year” means each of the five successive one-year periods beginning with the Initial Valuation Date and ending on the day preceding each of the five successive anniversaries of the Initial Valuation Date.

DRAFT

**SCHEDULE 1**

**Insurance Schedule**

See Schedule 1 of the Acknowledgement Letter.

DRAFT

**SCHEDULE 2**

**Airport Facilities**

See Schedule 2 of the Acknowledgement Letter.



DRAFT

**SCHEDULE 3**

**Basic Information Schedule**

See Schedule 3 of the Acknowledgement Letter, which shall contain, among other things, the terms below.

Airport Facility

[name/address of Airport Facility as shown and outlined in red on Airport Engineer's Drawing No. \_\_\_\_\_, sheet \_\_\_ of \_\_\_, dated \_\_\_\_\_, attached]

Commencement Date

[start date of use]

Facility User's Areas

*Land Area:* \_\_\_\_\_ square feet of land

*Building Area:* \_\_\_\_\_ square feet of building space

Initial Basic Rates

*Land Basic Rate:* \_\_\_\_\_ per square foot of Land Area

*Building Basic Rate:* \_\_\_\_\_ per square foot of Building Area

Initial Valuation Date

*Land Basic Rate:* \_\_\_\_\_

*Building Basic Rate:* \_\_\_\_\_

Permitted Uses

[\_\_\_\_\_]

Performance Guaranty Amount

[\_\_\_\_\_]

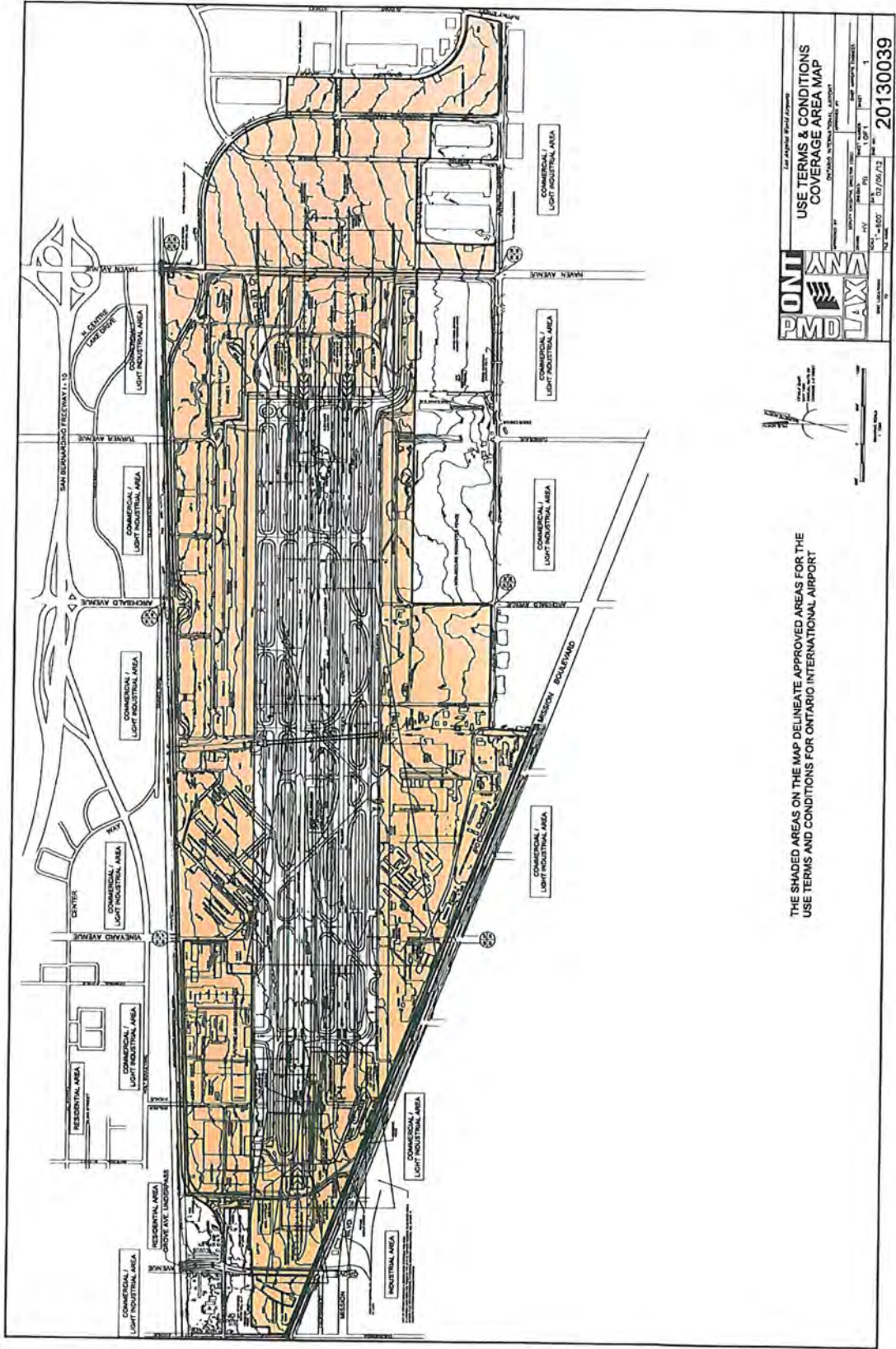
Guaranty

Title and date of instrument of guaranty (if any): \_\_\_\_\_

Identity of Guarantor (if any): \_\_\_\_\_

Facility User's Address for Notices

[ ]



THE SHADED AREAS ON THE MAP DELINEATE APPROVED AREAS FOR THE  
USE TERMS AND CONDITIONS FOR ONTARIO INTERNATIONAL AIRPORT