

## RESOLUTION NO. 3677

**A RESOLUTION** of the Port Commission of the Port of Seattle establishing a rates and charges methodology and other policies for the use of facilities at Seattle-Tacoma International Airport; and authorizing the Managing Director, Aviation Division to calculate Airline rates and charges in accordance with said methodology, and implement all other provisions of this Resolution.

**WHEREAS**, the Port owns and operates the Seattle-Tacoma International Airport (the “Airport”) and has the authority to fix, establish, adjust, maintain and collect rates and other charges for the use of the Airport by Airlines;

**WHEREAS**, the Port intends to establish fair and reasonable compensatory rates under this Resolution that comply with all applicable federal requirements;

**WHEREAS**, as owner of the Airport, the Port is further authorized to adopt all necessary rules, regulations and resolutions for the management, government and use of any properties under its control;

**NOW, THEREFORE, BE IT RESOLVED** by the Port Commission of the Port of Seattle that:

**Article 1.     **Consent to Terms of Resolution.****

1.1     Effective Date. This Resolution is effective as of January 1, 2013.

1.2     Use Constitutes Consent. Use by any Airline of the Airfield or Terminal after January 1, 2013 constitutes (a) consent by the Airline to the terms and conditions of this Resolution, and (b) agreement by the Airline to pay all charges specified by, and to be governed by all rules and regulations contained in, this Resolution.

1.3     Use Does Not Create Any Property Right. Use by any Airline of space in the Terminal or other Airport facility under the terms of this Resolution creates no right to or interest in property, either of occupancy or possession, legal or otherwise. Any Airline using space at the Terminal pursuant to this Resolution may be required by the Port, in the exercise of the Port’s sole discretion, to terminate its use at any time.

1.4     Modification. The Port may modify this Resolution at any time. Any modification of this Resolution shall take effect upon the effective date of the Commission-approved modification. The Port shall publish such Commission-approved modification on the Port’s website.

1.5 Airline Space. The Port, in its sole discretion, shall determine what space within the Terminal may be used by each Airline, and the Port's determination shall be binding on each Airline. The Port may assign office, ticket counter, storage, VIP lounge and other space to each Airline as Exclusive Use Space. All other space in the Terminal, including Gates, will only be assigned for use by Airlines as Common Use Space.

1.6 Letter of Authorization. Each Airline desiring to use the Airport after this Resolution is adopted shall deliver to the Port a duly executed Letter of Authorization. Each Airline's Letter of Authorization will contain the Port's assignments of Exclusive Use Space, if any, for the Airline's use.

## **Article 2. Defined Terms**

The following terms shall have the following meanings wherever used in this Resolution:

“AAAC” shall mean the Airline Airport Affairs Committee at the Airport.

“Aeronautical User” shall mean an Airline or any other Person engaged in an activity that involves, makes possible or is required for the safety of, or is otherwise directly related to, the operation of aircraft and includes providers of services related directly and substantially to the movement of passengers, baggage, mail and cargo on the Airport, but does not include any government or political subdivision thereof or a governmental agency.

“Airfield” shall mean the total area comprised of the Airfield Apron Area, Airfield Movement Area and Airfield Commercial Area.

“Airfield Apron Area” or “Apron” shall mean the paved areas surrounding the Terminal used by Passenger Carriers, including taxi lanes used for circulation and ramp areas used for parking and the remote parking areas designated for Airlines, not including Airfield Commercial Area ramps and taxi lanes.

“Airfield Commercial Area” shall mean the land, taxi lanes, ramps and facilities outside the Airfield Movement Area, Aprons and Terminal used primarily for cargo activities and aircraft maintenance.

“Airfield Movement Area” shall mean all landing areas, runways, taxiways, adjacent field areas and related support facilities (e.g. field lighting, navigational aides and cart roads).

“Airline” shall mean a carrier certificated by the Secretary of Transportation as a Passenger Carrier under 49 U.S.C. § 41102 or a Cargo Carrier under 49 U.S.C. § 41103 operating to or from the Airport.

“Airline Support Systems and Equipment” shall mean various systems and equipment provided by the Port to support Airline operations at the Airport including but not limited to Common Use Baggage Claim and Baggage Makeup Systems, Passenger Loading Bridges and utility systems and services, airport operating or information technology systems, and electric ground service equipment ("EGSE") charging stations and infrastructure.

“Airline Support Systems and Equipment Costs” shall mean all the Capital Costs and O&M Expenses allocable to Airline Support Systems and Equipment.

“Airport” shall mean the realty and improvements owned by the Port and generally known and designated as the “Seattle-Tacoma International Airport.” The improvements on the realty consist of the runways, aircraft taxiways and aprons, the passenger and freight terminal buildings, hangars, vehicle roadways and parking facilities, and all other improvements on such realty. The term “Airport” shall also include any adjacent or nearby realty hereafter acquired for purposes of the Airport by the Port and all improvements hereafter constructed on such realty.

“Baggage System Costs” shall mean all Capital Costs and O&M Expenses allocable to the Common Use Baggage Make-up System and the Common Use Baggage Claim System.

“Capital Costs” shall mean all capital costs of the Airport, including the following:

- (a) Debt service (net of PFC’s) allocable to revenue bond-funded Capital Improvements.
- (b) Amortization allocable to Capital Improvements funded with airport revenue, based on the economic life for each Capital Improvement and calculated using an interest rate set to equal comparable published average borrowing costs for debt financings by comparable public entities during the calendar year when such Capital Improvement is put in service.
- (c) Debt service coverage, if for any given Fiscal Year the Port determines, in its sole discretion, that a charge for debt service coverage is necessary to maintain total Airport debt service coverage at no less than 1.30 times the sum of debt service for that Fiscal Year.

“Capital Improvement” shall mean any improvement or item or related group of items acquired, purchased, leased or constructed to improve, maintain or develop the Airport, as well as any extraordinary or substantial expenditure whose object is to preserve, enhance or protect the Airport that, in accordance with generally accepted accounting principles and the Port’s Capitalization Guidelines consistently applied, is capitalized by the Port.

“Common Use Baggage Claim Areas” shall mean the space in the Terminal (excluding the FIS Area) designated by the Managing Director to be used in common with other Airlines for the delivery of inbound baggage to arriving passengers, including the areas where Common Use Baggage Claim Systems are located.

“Common Use Baggage Claim System” shall mean equipment that delivers inbound baggage to arriving passengers.

“Common Use Baggage Makeup Areas” shall mean the space in the Terminal designated by the Managing Director to be used in common with other Airlines for the transportation and sorting of outbound baggage for delivery to departing aircraft and includes the areas where

Common Use Baggage Makeup Systems are located and where in-line baggage screening takes place.

“Common Use Baggage Makeup System” shall mean equipment that sorts outbound baggage for delivery to departing aircraft.

“Common Use Gates” shall mean the space in the Terminal designated by the Managing Director to be used in common with other Airlines for passenger holdrooms and gate areas.

“Common Use Passenger Loading Bridge” shall mean a passenger loading bridge and related equipment owned by the Port and serving a Common Use Gate.

“Common Use Space” shall mean the space in any Terminal designated by the Managing Director to be used in common by one or more Airlines or otherwise benefitting one or more Airlines for operations and include, without limitation, Common Use Gates, Common Use Ticket Counters, Common Use Baggage Makeup Areas and Common Use Baggage Claim Areas.

“Common Use Ticket Counters” shall mean the space in the Terminal designated by the Managing Director to be used in common with other Airlines for ticket counters and associated queuing space.

“Deplaned Domestic Passengers” shall mean the actual number of passengers, not including the flight crew (but including other non-revenue passengers), disembarking from a domestic flight at the Terminal and shall also include passengers clearing customs and immigration in the country that his or her flight originated from, disembarking from an international flight at the Terminal.

“Deplaned International Passengers” shall mean the actual number of passengers, not including the flight crew (but including other non-revenue passengers) and passengers clearing customs and immigration in the country that his or her flight originated from, disembarking from an international flight at the Terminal.

“Enplaned Passengers” shall mean the actual number of passengers, not including the flight crew (but including other non-revenue passengers), but including both originating and connecting passengers, embarking on a flight at the Terminal.

“Exclusive Use Space” shall mean any office space, ticket counter, kiosk space, storage area, VIP Lounge, employee break room or other areas of the Terminal used exclusively by an Airline as assigned by the Managing Director.

“FAA” shall mean the Federal Aviation Administration or successor agency.

“FIS Facility” shall mean the Federal Inspection Services Facility located in the Terminal.

“Fiscal Year” shall mean the twelve (12) month period beginning January 1 and ending December 31 of any year or any other period adopted by the Port for its financial affairs.

“Gate” shall mean space in the Terminal comprised of a passenger loading bridge and a passenger holdroom.

“Gross Revenues” means the selling price, whether for cash or credit, of all alcoholic beverages or other beverages, and any related food service items sold at the VIP Lounge, but shall exclude any sales or other excise tax imposed upon the purchaser and collected by the Airline as agent for the taxing body imposing the tax and billed to the purchaser as a separate item.

“Inbound Checked Bags” shall mean the actual number of inbound bags or other checked items delivered on the Common Use Baggage Claim System.

“Landing” shall mean the arrival of an Airline’s aircraft within the Airfield Movement Area (including non-revenue Landings).

“Landing Fees” shall mean the Landing Fees described in section 6.2.

“Managing Director” shall mean the Managing Director of Aviation for the Port of Seattle or his or her designee.

“Maximum Gross Landed Weight” shall mean the maximum weight in thousand pound units at which each aircraft operated by an Airline is authorized by the FAA to land at the Airport.

“Operations and Maintenance Expenses” or "O&M Expenses" shall mean operations and maintenance expenses of the Airport.

“Other Airfield Movement Area Revenue” shall mean revenue derived from fees charged for the use of the Airfield Movement Area other than Landing Fees.

“Outbound Checked Bags” shall mean the actual number of outbound bags or other checked items delivered on the Common Use Baggage Makeup System.

“Passenger Carrier” shall mean an air carrier certificated by the Secretary of Transportation under 49 U.S.C. § 41102.

“Passenger Facility Charges” or “PFC’s” shall mean passenger facility charges remitted to the Port under 49 U.S.C. § 40117 and 14 C.F.R. Part 158 as they may be amended from time to time.

“Person” shall mean 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.

“Public Area” shall mean sidewalks, concourses, corridors, lobbies, passageways, restrooms, elevators, escalators and other similar space made available by the Port from time to time for use by passengers, Port and Airline employees and other members of the public, as designated by the Managing Director.

“Ramp Tower Revenues” shall mean all revenues received by the Port from payments of Ramp Tower Fees.

“Rentable Space” shall mean any areas in the Terminal that are available for use by Airlines, other Aeronautical Users, concessionaires or Port or other governmental users on an exclusive or common use basis, as designated by the Managing Director, and shall include Security Checkpoint Areas, but shall not include Open Storage space.

“RON Parking Revenues” shall mean all revenues received by the Port from payments for the use of remote parking areas for RON Parking.

“Security Checkpoint Area” shall mean an area used for passenger security screening and associated queuing space as designated by the Managing Director

“Security Deposit” shall mean a cash deposit or letter of credit provided by an Airline to the Port to secure compliance with this Resolution.

“Terminal” means Gates, ticket counters, baggage claim areas, baggage makeup areas, Security Checkpoint Areas, office space, storage areas, concourses, lobbies, VIP lounges, the FIS Facility, employee break rooms and Public Areas located within the “drip-line” of the passenger terminal building at the Airport. For purposes of this definition, the “drip-line” shall mean the footprint (improved or unimproved) inside the outer limits of the passenger terminal building, which in all cases should not extend beyond the roof-drip line.

“Terminal Rents” shall mean the amounts charged by the Port for the use of Terminal facilities as described in Article 6.

“Turn” shall mean the active arrival and departure of an aircraft from a Gate and may be measured in halves. The movement of an empty aircraft to or from a Gate shall not constitute half a “Turn.”

“VIP Lounge” shall mean any Exclusive Space assigned to and used by Airline to provide premium services to its passengers.

**Article 3. Permissible Uses of Airport.** Subject to the provisions of this Resolution, the Airport Rules and Regulations and the Port’s Procedures for Assignment of Gates, Ticket Counters, Baggage Makeup Devices and Baggage Claim Devices, which may be amended from time to time, an Airline, by paying the Port all required rents, charges and fees, and complying with the responsibilities and obligations required in this Resolution, shall have the right to use the Airport, in common with other authorized users and solely for the purpose of transporting persons, property, mail or cargo by aircraft, which may include:

3.1 To land aircraft at or take off aircraft from the Airport in the operation of its business, and in connection therewith an Airline may use certain Airport facilities, including the Airfield and Terminal.

3.2 To operate an air transportation business for the carriage of persons, property, baggage, cargo, express and mail, including but not limited to the following categories of flights: revenue, training, test, inspection, emergency and charter.

3.3 The hiring and training of personnel in the employ of or to be employed by an Airline, and the training of an Airline's contractors.

3.4 Other uses incidental to the operation of an air transportation business, including the handling of reservations and the handling, ticketing and billing of passengers.

3.5 The ticketing, boarding, unboarding and billing of passengers, the use of the passenger holding areas as waiting areas for such passengers and the use of the Apron while the Gate is used by an Airline.

3.6 Operational staging of equipment for fueling, servicing, loading, or unloading and line maintenance of aircraft.

3.7 Emergency line maintenance of aircraft on the ramp, after obtaining the Port's prior permission and so long as it does not interfere with another Airline's operations.

3.8 The servicing by an Airline or others of an Airline's aircraft on the Airfield Apron Area or the Airfield Commercial Area, including an Airline's servicing of its code-share partners and affiliates, and other equipment by truck or otherwise, with gasoline, fuel, or other propellants, de-icing or other supplies including food and beverages required by an Airline.

3.9 The landing, taking off, flying, taxiing, towing, parking, loading or unloading of an Airline's aircraft on the Airfield.

3.10 The loading and unloading of any property, cargo, express mail, and carriage of employees, in Port designated areas on the Airfield Apron Area or Airfield Commercial Area, by such motor vehicles or other manner of conveyance as an Airline may require in the operation of an air transportation business.

3.11 The installation, maintenance and operation by an Airline of aircraft air-conditioning equipment, auxiliary power, start-up and miscellaneous support equipment reasonably necessary for an Airline's operations and not otherwise provided by the Port, but only where such use is permitted by the Port on the Airfield Apron Area or Airfield Commercial Area.

**Article 4. Restrictions on an Airline's Use of the Airport.** Notwithstanding the grant of rights and other uses permitted of an Airline under this Resolution, an Airline shall not:

4.1 Store or park equipment at the Airport other than in areas assigned to an Airline by the Port for such use or in areas where an Airline has received the prior written approval of the Port.

4.2 Conduct any commercial activity at the Airport other than permitted in this Resolution unless otherwise authorized in writing by the Port.

4.3 Conduct or permit the sale of food or beverages to passengers at Gates.

**Article 5. Airline Space.**

5.1 The Managing Director shall assign and reassign space in and about the Terminal, Airfield Apron Area and Airfield Commercial Area as the Managing Director in his or her sole discretion determines is necessary for each Airline's operations at the Airport, after considering the space needs of each Airline, concessions and the traveling public and consistent with the Airport's Procedures for Assignment of Gates, Ticket Counters, Baggage Makeup Devices and Baggage Claim Devices. Assigned space pursuant to this Resolution may include Exclusive Space and Common Use Areas.

5.2 In assigning space in the Terminal, including Gates, the Managing Director shall specify the use that is authorized in a letter of authorization. The Managing Director is authorized to terminate an Airline's use of any particular Airport space, including Gates.

5.3 Upon termination of an Airline's space assignment as authorized under this Resolution or if Airline shall otherwise cease to use any space assigned to it by the Port, Airline shall leave the space in the same or better condition as when assigned to and accepted by Airline. In the event Airline has damaged or otherwise altered the space without the Port's permission, the Port may use Airline's Security Deposit to repair or otherwise restore the space to its original condition.

5.4 The space assignment provisions of this Resolution do not prohibit the Managing Director from entering into Exclusive Space and ground leases with a term of one (1) year or longer for facilities associated with Airline's operations, including hangars, cargo buildings, VIP lounges, and other facilities deemed appropriate by the Managing Director for a term lease, so long as the grant of such leases is done in a non-discriminatory manner.

**Article 6. Calculation of Rates and Charges.**

6.1 Generally.

6.1.1 An Airline using the Airport shall be subject to the compensatory rates and charges set forth in this Article 6. There are three types of rates and charges set forth in this Article: (1) Landing Fees and Ramp Tower Fees for the use of the Airfield (described in Sections 6.2 and 6.10 below); (2) Terminal Rents for the use of various kinds of space and equipment in the Terminal (described in Sections 6.3 and 6.5 through 6.9 below); and (3) FIS Fees, for the use of the FIS Facility (described in Section 6.4 below). In calculating the revenue requirements used to derive each of these kinds of

rates and charges, the Port shall exclude any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants or PFC's, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed or is required to be reimbursed to the Port by an individual Airline in connection with projects undertaken by the Port at the request and for the benefit of an individual Airline. Illustrative calculations displaying how rates and charges will be calculated under the methodology set forth in this Article 6 are attached as Exhibit A through Exhibit J.

6.1.2 Airline Consultations on Proposed Rates and Charges. No later than November 1 of each year, the Managing Director shall provide each Airline then currently operating scheduled passenger or cargo service at the Airport with a complete copy of the then proposed rates and charges, calculated in accordance with this Article 6, for the succeeding Fiscal Year. The Managing Director shall consult with the AAAC concerning the then proposed rates and charges. No later than December 1 of each year, the Managing Director shall make any revisions to the proposed rates and charges as the Managing Director determines, in his or her sole discretion, to be warranted as a result of consultation with the AAAC or otherwise, and shall provide written notice to each Airline then currently operating scheduled passenger or cargo service at the Airport of the new rates and charges to be effective on January 1 of the following calendar year. A copy of the notice shall be posted on the Port's website.

6.2 Calculation of the Landing Fee. Each year the Port shall calculate the estimated Landing Fee for the next Fiscal Year as follows:

6.2.1 The Airfield Movement Area Requirement shall be computed as the total of budgeted Capital Costs and O&M Expenses allocable to the Airfield Movement Area, less Other Airfield Movement Area Revenue, for the following Fiscal Year.

6.2.2 The estimated Landing Fee shall then be calculated by dividing the Airfield Movement Area Requirement by the estimated total Maximum Gross Landed Weight ("MGLW") for the following Fiscal Year. The Port may use historical MGLW or forecasts of MGLW that reflect reasonable management judgment in calculating the estimated Landing Fee.

6.2.3 Each Airline shall pay to the Port Landing Fees for its use of the Airfield Movement Area calculated for each calendar month by multiplying the Landing Fee by the Airline's total Landed Weight for the preceding month.

6.3 Calculation of Terminal Rents. Each year the Port shall calculate estimated Terminal Rents for the next Fiscal Year as follows:

6.3.1 The Terminal Building Requirement shall be computed as the total of the budgeted Capital Costs and O&M Expenses allocable to the Terminal for the following Fiscal Year. The Terminal Building Requirement shall not include Common Use Baggage System Costs, Passenger Loading Bridge Costs, Airline Support System and Equipment Costs or Capital Costs and O&M Expenses allocated to the FIS Facility.

6.3.2 The estimated Terminal Rental Rate shall then be calculated by dividing the Terminal Building Requirement by the estimated total amount of Rentable Space. The Port may use the actual amount of Rentable Space in the immediately preceding Fiscal Year in calculating the estimated Terminal Rental Rate.

6.3.4 Each Airline occupying Exclusive Use Space shall pay to the Port Terminal Rent for its use of such space calculated for each calendar month by multiplying the square footage of such space by the estimated Terminal Rental Rate.

6.4 Calculation of the FIS Rate. Each year the Port shall calculate the estimated FIS Rate for the next Fiscal Year as follows:

6.4.1 The estimated FIS Requirement shall be computed as the sum of (a) the total of the budgeted Capital Costs and O&M Expenses allocable to the FIS Facility; and (b) the total of the budgeted Capital Costs and O&M Expenses allocable to the Common Use Baggage Claim Area serving the FIS Facility; less (c) any estimated revenue from the rental of space in the FIS Facility to governmental agencies, for the following Fiscal Year.

6.4.2 The estimated FIS Rate shall then be calculated by dividing the FIS Requirement by the estimated total number of Deplaned International Passengers for the following Fiscal Year. The Port may use the actual number of Deplaned International Passengers in the immediately preceding Fiscal Year or forecasts that reflect reasonable management judgment in calculating the estimated FIS Rate.

6.4.3 Each Airline using the FIS shall pay to the Port FIS Fees for its use of the FIS Facility calculated for each calendar month by multiplying the FIS Fee by the Airline's total Deplaned International Passengers for the preceding month.

6.5 Calculation of Common Use Gate Turn Fees. Each year the Port shall calculate the estimated Common Use Gate Turn Fees for the next Fiscal Year as follows:

6.5.1 The estimated Common Use Gate Requirement shall be computed as the sum of (a) the product of the estimated Terminal Rental Rate times the total square footage of all Common Use Gates; (b) the product of the estimated Terminal Rental Rate times the total square footage of the Security Checkpoint Area; (c) the total of the Capital Costs and O&M Expenses allocable to Airline Support Systems and Equipment other than Baggage Systems and Passenger Loading Bridges; and (d) the O&M Expenses allocable to airline realignment projects, for the next Fiscal Year.

6.5.2 The Port shall then calculate three separate Common Use Gate Turn Fees for use of Common Use Gates by the three different classes of aircraft shown in the table below.

- Class 1: Wide Body (dual-aisle aircraft)
- Class 2: Narrow Body (single-aisle aircraft, over 100 seats)
- Class 3: Regional and Commuter (aircraft with 100 or fewer seats)

The charges for use of Common Use Gates by aircraft within each of these classes shall bear the following relativities to each other:

Relative Charge per Turn

Class 1:	2.00x
Class 2:	1.00x
Class 3:	.50x

For rate-setting purposes, the charges per Turn for each of these three classes of aircraft will be calculated (normalized) so that expected aggregate Common Use Gates Turn Fees equal the Common Use Gate Requirement.

6.5.3 Each Airline using any Common Use Gates shall pay to the Port Common Use Gate Turn Fees for its use of Common Use Gates calculated for each calendar month by multiplying the applicable Common Use Gate Turn Fee by the number of the Airline's Turns in each designated aircraft class at the Terminal for the preceding month.

6.5.4 Notwithstanding the provisions of Section 6.5.3, an Airline shall not be charged Common Use Gate Turn Fees for the use of any given Common Use Gate on any given day that exceed the daily Gate Turn Fee Cap. The daily Gate Turn Fee Cap shall equal eight (8) times the Common Use Gate Turn fee for a Narrow Body aircraft.

6.6 Calculation of Common Use Baggage Claim Rate. Each year the Port shall calculate the estimated Common Use Baggage Claim Rate for the next Fiscal Year as follows:

6.6.1 The estimated Common Use Baggage Claim System Requirement shall be computed as the sum of (a) the product of the estimated Terminal Rental Rate times the total square footage of the Common Use Baggage Claim Area; and (b) the Capital Costs and O&M Expenses allocable to the Common Use Baggage Claim System (excluding the Capital Costs and O&M Expenses allocable to the Common Use Baggage Claim System serving the FIS Facility).

6.6.2 The estimated Common Use Baggage Claim Rate shall then be calculated by dividing the Common Use Baggage Claim System Requirement by the estimated total annual number of Inbound Checked Bags. The Port may use the actual number of Inbound Checked Bags in the most recent year for which Inbound Checked Bags data are available or forecasts that reflect reasonable management judgment in calculating the estimated Common Use Baggage Claim Rate.

6.6.3 Each Airline shall pay to the Port Common Use Baggage Claim Fees for its use of the Common Use Baggage Claim Area calculated for each calendar month by

multiplying the Common Use Baggage Claim Rate by the Airline's total Inbound Checked Bags for the preceding month.

6.7 Calculation of Common Use Baggage Makeup Rate. Each year the Port shall calculate the estimated Common Use Baggage Makeup Rate for the next Fiscal Year as follows:

6.7.1 The estimated Common Use Baggage Makeup System Requirement shall be computed as the sum of (a) the product of the estimated Terminal Rental Rate times the total square footage of the Common Use Baggage Makeup Area; and (b) the Capital Costs and O&M Expenses allocable to the Common Use Baggage Makeup System.

6.7.2 The estimated Common Use Baggage Makeup Rate shall then be calculated by dividing the Common Use Baggage Makeup System Requirement by the estimated total annual number Outbound Checked Bags. The Port may use the actual number of Outbound Checked Bags in the most recent year for which Inbound Checked Bags data are available or forecasts that reflect reasonable management judgment in calculating the estimated Common Use Baggage Makeup Rate.

6.7.3 Each Airline shall pay to the Port Common Use Baggage Makeup Fees for its use of the Common Use Baggage Makeup Area calculated for each calendar month by multiplying the Common Use Baggage Makeup Rate by the Airline's total Outbound Checked Bags for the preceding month.

6.8 Calculation of Common Use Ticket Counter Rate. Each year the Port shall calculate the estimated Common Use Ticket Counter Rate for the next Fiscal Year as follows:

6.8.1 The estimated Common Use Ticket Counter Requirement shall be computed as the product of the estimated Terminal Rental Rate times the total square footage of all of the Common Use Ticket Counter Space.

6.8.2 The estimated Common Use Ticket Counter Rate shall then be calculated by dividing the Common Use Ticket Counter Requirement by the estimated total annual number of hours of use of Common Use Ticket Counters. The Port may use the actual number of hours of use of Common Use Ticket Counters in the immediately preceding Fiscal Year or forecasts that reflect reasonable management judgment in calculating the estimated Common Use Ticket Counter Rate.

6.8.3 Each Airline shall pay to the Port Common Use Ticket Counter Fees for its use of the Common Use Ticket Counters calculated for each calendar month by multiplying the Common Use Ticket Counter Rate by the Airline's total hours of use of Common Use Ticket Counters for the preceding month.

6.9 Calculation of Passenger Loading Bridge Rate.

6.9.1 Each year the Port shall calculate the estimated Passenger Loading Bridge Rate for the next Fiscal Year by dividing the sum of the budgeted Capital Costs and O&M Expenses allocable to Passenger Loading Bridges by the estimated total number of

Turns on Gates with Port-owned Passenger Loading Bridges. The Port may use the actual number of Turns on such Gates in the immediately preceding Fiscal Year or forecasts that reflect reasonable management judgment in calculating the estimated Passenger Loading Bridge Rate.

6.9.2 Each Airline shall pay to the Port Passenger Loading Bridge Fees for its use of Passenger Loading Bridges calculated for each calendar month by multiplying the Passenger Loading Bridge Rate by the Airline's total number of Turns on Gates with Port-owned Passenger Loading Bridges.

6.10 Calculation of the Ramp Tower Fee.

6.10.1 Each year the Port shall calculate the estimated Ramp Tower Fee for the next Fiscal Year by dividing the budgeted O&M Expenses allocable to the Ramp Tower by the estimated total number of Landings for the following Fiscal Year. The Port may use actual historical Landings or forecasts that reflect reasonable management judgment in calculating the estimated Ramp Tower Fee.

6.10.2 Each Airline shall pay to the Port Ramp Tower Fees for the services of the Ramp Tower calculated for each calendar month by multiplying the Ramp Tower Fee by the Airline's total Landings for the preceding month.

6.11 Calculation of the Apron Fee. Each year the Port shall calculate the estimated Apron Fee for the next Fiscal Year as follows:

6.11.1 The Airfield Apron Area Requirement shall be computed as the total Capital Costs and O&M Expenses allocable to the Airfield Apron Area, less Ramp Tower Revenues and RON Parking Revenues.

6.11.2 The estimated Apron Fee shall then be calculated by dividing the Airfield Apron Area Requirement by the estimated total MGLW for Passenger Carriers for the following Fiscal Year. The Port may use historical MGLW or forecasts of MGLW that reflect reasonable management judgment in calculating the estimated Apron Fee.

6.11.3 Each Passenger Carrier shall pay to the Port Apron Fees for its use of the Airfield Apron Area calculated for each calendar month by multiplying the Apron Fee by the Airline's total Landed Weight for the preceding month.

6.12 Mid-year Adjustments. If it appears to the Port on the basis of information it is able to accumulate during the course of any Fiscal Year that the budgeted Capital Costs or O&M Expenses or projected levels of Airline activity it has used to calculate the rates and charges set forth in Section 6 are likely to vary significantly (higher or lower) from actual results, the Port may make adjustments to such rates and charges at mid-year or at such other time during the calendar year (a) as the need for such an adjustment becomes apparent to the Port or (b) the variance between the budgeted Capital Costs or O&M Expenses or projected levels of Airline activity and actual results is expected to be ten percent (10%) or more. The Port shall provide the AAAC with at least thirty (30) days advance written notice ("Mid-Year Adjustment Notice")

of any adjustments to be made under this Section 6.12. The AAAC may, within fifteen (15) days of receipt of the Mid-Year Adjustment Notice, request a meeting with the Port to review the information that the Port used as the basis for an adjustment under this Section 6.12 and if the AAAC does so, the Port shall meet with the AAAC within fifteen (15) days of the AAAC's request.

6.13 Annual Adjustments-to-Actual. Within sixty (60) days after completion of the audit for the preceding Fiscal Year, the Port shall recalculate the rates and charges as set forth in this Section 6 on the basis of actual Capital Costs and O&M Expenses, Airline activity and other factors affecting the prescribed calculations and shall determine the amount of any overpayment (credit) or underpayment (deficit) due to or from each Airline. Any resulting credit will be issued to the Airline, and any resulting debit will be invoiced to and payable by the Airline.

## **Article 7.     **Payments.****

7.1     Each Airline shall pay to the Port all of the rates and charges required under this Resolution, and all other applicable fees, including utilities, as set forth in the Seattle-Tacoma International Airport Tariff No. 1 ("Airport Tariff"), as it may be amended from time to time, or as set forth in other fee schedules adopted by the Port. Beginning as of the Effective Date, each Airline shall make payments to the Port on a monthly basis as follows:

7.1.1     All payments of Terminal Rents for the use of Exclusive Use Space shall be made in advance no later than the first (1<sup>st</sup>) day of the month without awaiting an invoice from the Port.

7.1.2     Each Airline shall provide to the Port by no later than the tenth (10<sup>th</sup>) day of each and every month Airline's Monthly Activity Report for the preceding month. When submitting its Monthly Activity Report to the Port, each Airline shall simultaneously pay to the Port the Landing Fees and Apron Fees due for the preceding month. In the event an Airline fails to provide to the Port the required information on its landings in a timely Monthly Activity Report required under this Resolution, the Port shall determine the Landing Fee and Apron Fee payments due based on the most recently reported month's activity (subject to reconciliation in a later billing cycle).

7.1.3     The Port shall invoice each Airline as of the twentieth (20<sup>th</sup>) day of each month for the charges associated with Airline's use of Common Use Space and the FIS Facility during the preceding month. Each Airline's payment of charges for the use of Common Use Space and the FIS Facility shall be due and payable upon Airline's receipt of the Port's invoice. In the event an Airline fails to provide to the Port the required information on its use of Terminal facilities in a timely Monthly Activity Report required under this Resolution, the Port shall determine the charges due for Airline's use of Common Use Space and the FIS Facility based on the most recently reported month's activity (subject to reconciliation in a later billing cycle).

7.2     All payments of rates and charges due under this Resolution shall be made to the Port at the payment address the Managing Director may from time to time designate in writing. All amounts shall be paid in lawful money of the United States, free from all claims, demands,

set-offs or counterclaims of any kind. No payments may be made by credit card. Any amounts owed by Airline that are not paid when due shall be subject to a service charge equal to the lesser of, the rate of one and one-half percent (1½ %) per month or the maximum rate permitted by law. The Port's acceptance of any payment from an Airline shall not constitute a waiver of Airline's default on the overdue amount or prevent the Port from exercising any of its rights and remedies.

7.3 Passenger Facility Charges. The Port may impose passenger facility charges ("PFCs") in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Pt. 158, as they may be amended from time to time (the "PFC Regulations"). Airline shall hold in trust for the Port the net principal amount of all PFCs that are collected by Airline or its agents on behalf of the Port pursuant to 49 U.S.C. § 40117 and the PFC Regulations. For purposes of this Resolution, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of the Port, reduced by any amount that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations. PFCs collected by the Airline shall be remitted to the Port at the payment address the Director may from time to time designate in writing.

7.4 Payment of VIP Lounge Percentage Fees. On or before the fifteenth (15<sup>th</sup>) day of each calendar month, each Airline shall pay to the Port the following percentage fees on the sale of all alcoholic beverages or other beverages, and any related food service items sold at or within the VIP Lounge: eighteen percent (18%) of the Gross Revenues received by the Airline from beer and wine sales, eighteen percent (18%) of the Gross Revenues received by Airline from all liquor sales and fourteen percent (14%) of the Gross Revenues received by Airline from all other (if any) sales incurred during said preceding month. Each Airline shall submit to the Port, together with the required payment, a detailed statement showing Gross Revenues received by the Airline from all alcoholic beverages or other beverages, and any related food service items sold at or within the VIP Lounge during the preceding calendar month. The monthly statements shall show such reasonable detail and breakdown as may be required by the Port.

## **Article 8. Monthly Activity Report.**

8.1 Each Airline shall provide the Port with information for the Port's Flight Information Management System ("FIMS") meeting Aviation Information Data Exchange ("AIDX") standards, including scheduled, real time and updated data on a per-flight basis. Each Airline shall provide to the Port the following information about the Airline's operations and activities at the Airport.

8.1.1 For each arriving flight: (a) flight number and Airport Gate or remote parking stand utilized; (b) aircraft registration (tail number) and aircraft type (make, model and series); (c) flight routing; (d) actual time of arrival at the Airport (landing) and actual time of arrival at the Gate (aircraft parked at the Gate).

8.1.2 For each departing flight: (a) flight number and Airport Gate or remote parking area utilized; (b) aircraft registration (tail number) and aircraft type (make, model and series); (c) flight routing; and (d) actual time of departure from Gate (aircraft pushback) and actual time of departure from Airport (takeoff).

8.2 Each Airline shall provide to the Port, on or before the tenth (10<sup>th</sup>) day of each and every month, an accurate summary report of Airline's operations at the Airport during the preceding month ("Monthly Activity Report"). Each Airline's Monthly Activity Report shall be provided via the Port's secure web portal or in another format prescribed by the Port and shall include at least the following information:

8.2.1 Landings: (a) the total number of revenue Landings, domestic and international reported separately; (b) the total number of non-revenue Landings, domestic and international reported separately; (c) the total number of cargo Landings, domestic and international reported separately; and (d) each aircraft's Maximum Gross Landed Weight, aircraft type (make, model and series), seating capacity, configuration, designation as passenger or cargo operation and registration (tail number).

8.2.2 Passengers: (a) the total number of Enplaned Passengers including total revenue and non-revenue Enplaned Passengers and trade route information; (b) the total number of Deplaned passengers, including total revenue and non-revenue Deplaned Passengers, the total number of Deplaned Domestic Passengers and Deplaned International Passengers and trade route information.

8.2.3 Bags: (a) the total number of Outbound Checked Bags; (b) the total number of Inbound Checked Bags; (c) the total number of international Inbound Checked Bags; and (d) the total number of plane-to-plane bag transfers.

8.2.4 Air Freight: by trade route: (a) inbound belly (pounds or kilograms); (b) inbound freighter (pounds or kilograms); (c) inbound airmail; (d) outbound belly (pounds or kilograms); (e) outbound freighter (pounds or kilograms); and (f) outbound airmail.

8.2.5 Gates: (a) the number of daily Turns on each Common Use Gate; and (b) for each Common Use Gate used, the time in and time out of each Turn, the aircraft type (make, model and series) and aircraft registration or tail number.

8.3 The Managing Director may, after giving the AAAC no less than ninety (90) days written notice, require the reporting of additional information concerning each Airline's operations at the Airport as reasonably necessary for the management of the Airport.

## **Article 9.     **Audit.****

Each Airline shall maintain separate and accurate daily records of the Airline's operations at the Airport for a period of three (3) years after the close of each calendar year, provided, however, that in the event the Port gives an Airline written notice of a claim for payment under this Resolution, the Airline shall retain all of its records relating to its daily operations at the Airport that might pertain to the claim until the claim has been finally resolved. All such books and records, including current and detailed records of all receipts in connection with items sold at any VIP Lounge which are material or relevant in computing and verifying the required percentage fees shall be kept in accordance with generally accepted accounting principles, consistently applied, showing in detail all business done or transacted in, on, about or from or

pertaining to the Airport, and shall be sufficient to permit the Port to calculate and verify the Landing Fees, Terminal Rents and other charges due pursuant to this Resolution. Upon the Managing Director's written request, each Airline shall make available to the Port or its auditors any and all books, records and accounts pertaining to its operations under this Resolution. If the requested books, records and accounts are not made available at the Airport, and the Port or its auditors are required to travel elsewhere to review them, Airline shall reimburse the Port for the reasonable costs of such review.

**Article 10. Airline Responsibilities.**

Each Airline understands and agrees that by its use and occupancy of Airport space, the Airline shall, at its sole expense, consistent with Airport requirements and to the satisfaction of the Managing Director comply with the following:

10.1 The Airline shall maintain its assigned Airport space, including the fixtures and equipment in such space, in a clean, neat, safe, and sanitary condition, and in good order, at all times, except for damages or loss due to reasonable wear and tear, fire or other casualty or other cause beyond the Airline's control.

10.2 An Airline shall not store nor allow accumulation of trash or debris on any portion of its assigned space, and shall not use the Port provided trash containers without the express written consent of the Managing Director. All requirements of the State of Washington relating to health or sanitation adopted by any legal authority with jurisdiction, including the Port, shall be fully met by the Airline, and the Airline upon request shall give access for inspection purposes to any duly authorized representative of any such legal authority or of the Port.

10.3 Where space is assigned to the Airline as Exclusive Use Space, the Airline shall be responsible for: (i) redecorating and painting the interior of the space, replacing electric light bulbs, worn carpeting or other floor coverings, curtains, draperies, blinds or other furnishings and equipment as their conditions may require; and (ii) providing janitorial services, carpet cleaning, maintenance and repair and window washing in such Exclusive Use Space.

10.4 Each Airline shall be responsible for any damage, other than normal wear and tear, to the Port's Airline Support Systems and Equipment resulting from Airline's activities or operations in Common Use Space.

**Article 11. Airline Improvements.** An Airline shall make no alterations, additions, improvements to, or installations on the space assigned to it by the Port without first obtaining the written consent of the Managing Director. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures) shall be installed by an Airline, they shall at once become part of the realty and become the property of the Port, without reimbursement by the Port to the Airline. Moveable furniture, equipment and all trade fixtures shall be and remain the property of the Airline.

## **Article 12. Compliance with Laws**

12.1 General Laws. At all times, an Airline shall, with respect to its operations at the Airport, comply with all applicable present and future federal, state and local laws, rules, regulations and ordinances, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health and safety; (ii) the environment; and (iii) disabled access, including the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*

12.2 Airport Rules and Regulations; Airport Procedures for Assignment of Gates, Ticket Counters, Baggage Makeup Devices and Baggage Claim Devices. By using the Airport for its operations, an Airline shall be subject, as may be applicable, to the Airport's Rules and Regulations and to the Airport Procedures for Assignment of Gates, Ticket Counters, Baggage Makeup Devices and Baggage Claim Devices, as they are now or may in the future be adopted by the Port.

12.3 Except in the case of emergency Rules and Regulations, the Port shall give Airlines written notice and opportunity to comment on any proposed Rules and Regulations that would affect the Airlines' operations at the Airport before such proposed Rules and Regulations are adopted by the Port.

12.4 The Airport Procedures for Assignment of Gates, Ticket Counters, Baggage Makeup Devices and Baggage Claim Devices may be amended from time to time after consultation with the Airlines.

## **Article 13. Indemnification - Liability Insurance**

13.1 Indemnification of Port by an Airline. Except where, and to the extent, caused by the negligence of the Port, its agents, employees, contractors, officers, directors or predecessors in interest, an Airline, by its use of or operations at the Airport, understands and acknowledges that the Port and its officers, employees and agents, shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage may be caused, sustained or alleged to have been sustained by the Airline or by others, including but not limited to all persons directly or indirectly employed by the Airline, or any agents, contractors, subcontractors, licensees and invitees of the Airline, as a result of any condition (including existing or future defects in the Airport) or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Airline's use or occupancy of the Airport space and of areas adjacent thereto. An Airline must defend (with counsel reasonably acceptable to the Port) and hold and save the Port harmless from all liability and expenses (including attorney's fees, costs, and all expenses of litigation) in connection with any such actual or alleged injury or damage, except where, and to the extent, caused by the negligence or intentional wrongdoing of the Port, its agents, employees, contractors, officers, directors or predecessors in interest. Any final judgment rendered against the Port for any cause for which an Airline is liable hereunder shall be conclusive against the Airline as to liability and amount upon the expiration of the time for appeal therefrom.

13.2 Industrial Insurance Laws. An Airline shall comply with the statutory requirements of Chapter 51 of the Revised Code of Washington (“RCW”) regarding workers compensation coverage for its employees.

13.3 Liability Insurance. By using space and conducting operations at the Airport, Airline acknowledges and agrees that, as a condition of such use, it shall provide, pay for and maintain with companies, reasonably satisfactory to Port the following forms of insurance:

13.3.1 Aircraft liability insurance on each aircraft, including all owned, non-owned and hired aircraft, and commercial general liability insurance covering bodily injury, personal injury, property damage, product/completed operations, premises liability and contractual liability. Insurance liability limits shall not be less than \$500 million per occurrence for each aircraft and not less than \$10 million per occurrence for commercial general liability insurance. Insurance shall be placed with companies reasonably satisfactory to the Port in terms of financial strength, rating and solvency. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent endorsement acceptable to the Port), and shall be furnished with appropriate written evidence to establish that Airline’s insurance obligations as required by this Article have been and continue to be met, and that the insurance coverage required by this Article is not subject to cancellation, nonrenewal or material reduction in coverage without at least thirty (30) days’ advance written notice to the Port.

13.3.2 Automobile liability insurance. Commercial automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers in the minimum single limit of \$5 million for operations outside the Airfield Area and \$10 million for operations inside the Airfield Area and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify. The policy shall specifically be endorsed to cover all “mobile equipment” utilized by the Airline at the Airport. The Port shall be named as an additional insured using an appropriate policy form or endorsement, and shall be furnished with appropriate written evidence to establish that Airline’s insurance obligations as required by this Resolution have been and continue to be met, and that the required insurance coverage is not subject to cancellation, nonrenewal or material reduction in coverage without at least thirty (30) days’ advance written notice to the Port.

13.3.3 The inclusion of the Port as an additional insured shall not create any premium liability for the Port. The liability insurance required by this Resolution shall not contain a deductible or self-insured retention in excess of \$10,000 without the prior written approval of the Port. All deductibles and self-insured retentions shall be paid by, assumed by, for the account of, and at Airline’s sole risk. To the extent that Airline relies on excess or “umbrella” policy of insurance to satisfy the requirements of this Resolution, any such policy shall be no less broad than the underlying policy, shall have the same inception and expiration dates as the underlying policy, and shall include a drop-down provision.

13.4 Other Forms of Insurance. An Airline shall also obtain all other forms of insurance required for its particular use of the Airport or as required by law.

13.5 Additional Insurance. In the event of cancellation of any required insurance at any time during an Airline's operations at the Airport, or any change not reasonably acceptable to the Port, including an erosion in available limits below those specified in this Resolution, the Port reserves the right to provide additional insurance and charge the cost of any premiums for such coverage to the Airline. The Port's right includes, but is not limited to, the Port purchasing higher limits for its own insurance program to account for an erosion in limits by an Airline.

13.6 No Representation of Adequacy. The Port makes no representation that limits or forms of insurance coverage specified or required under this Resolution are adequate to cover an Airline's property or an Airline's liabilities or obligations under this Resolution.

13.7 Port's Right to Request Information from Insurance Company. If at any time the Port requests a written statement from the insurance company as to any impairments to the aggregate limit, an Airline shall promptly authorize and have delivered such statement to the Port. An Airline authorizes the Port and its insurance consultant to confirm with the Airline's insurance agents, brokers and insurance companies all information furnished the Port, as to the Airline's compliance with the Port's insurance requirements.

13.8 Primary Coverage. All insurance policies required under this Resolution shall be endorsed to state that the Airline's policy is primary and not contributory with any insurance carried by the Port.

13.9 Waiver of Subrogation. Each Airline (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) by conducting operations at the Airport agrees to release the Port from liability and waive all right of recovery against the Port for any loss to real or personal property located anywhere on or about the Airport from perils which can be insured against under a standard form commercial property or fire insurance policy (specifically including hull insurance or the like) with extended perils coverage endorsements generally available in Washington at the time the loss occurs. The effect of the release and waiver of the right to recover damages shall not be limited by whether Airline has actually obtained such insurance, by the amount of insurance carried, or by any deductibles applicable thereto. If an Airline's applicable insurance policies do not allow it to waive the insurer's rights to recovery, Airline shall cause each insurance policy to be endorsed to allow the waiver of subrogation required by this Resolution.

13.10 Increase in Cost of Insurance. An Airline shall not use its assigned space at the Airport in any manner not contemplated by this Resolution so as to increase the existing rates of insurance. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures in which the Airline occupies space, shall be paid by the Airline to the Port.

#### **Article 14. Discrimination**

14.1 Federal Nondiscrimination Regulations. Each Airline must comply with the requirements of Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21 that with respect to its operations at the Airport: (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 furnishings of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) it shall use the Airport and any assigned space in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federal 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. Each Airline shall promptly provide the Port, upon written request by the Port, such information the Port is required to obtain from the Airline to show compliance with applicable nondiscrimination laws.

14.2 Affirmative Action. Each Airline by conducting operations at the Airport assures that it will undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Each Airline further assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Each Airline further assures that it will require that its covered sub organizations provide assurances to Airline that they will require assurances from their sub organizations, if required by 14 CFR Part 152, Subpart E, to the same effect.

#### **Article 15. Security Deposit**

15.1 Each Airline shall obtain and deliver to the Port at the address designated by the Director, a Security Deposit to guarantee timely payment by the Airline of all rates, charges and rents now or in the future payable as provided under this Resolution, including fees for services subject to tariffs such as utilities and parking. The amount of the Security Deposit shall be equivalent to three (3) months of estimated charges for such Airline's use of the Airport including all of the charges set forth in Article 6 of this Resolution. The Port may adjust the amount of the required Security Deposit as an Airline's operations and use of Airport space decreases or increases. The amount, form, provisions and nature of the Security Deposit, including if appropriate the identity of the surety or other obligor thereunder, shall at all times be subject to the Port's approval.

15.2 The Security Deposit shall be made in advance of an Airline using space at the Airport and shall be by cash, letter of credit, surety bond or other instrument acceptable to the Port and shall remain in place at all times so long as the Airline uses space at the Airport. The Port shall not pay interest on the Security Deposit, and the Port shall not be required to keep the Security Deposit separate from its other accounts. No trust relationship is created with respect to the Security Deposit. If an Airline ceases operations at the Airport and is not in default of any of its obligations as provided in this Resolution or the Rules and Regulations, then any cash deposit shall be paid to the Airline, without interest, within thirty (30) days after the Airline ceases operations at the Airport; otherwise the Port shall, in addition to any and all other rights and remedies available under this Resolution or at law or equity, retain the Security Deposit. The Port may apply all or part of the Security Deposit to any unpaid sum due pursuant to this Resolution. If the Port depletes the Security Deposit in this way, the Airline shall restore the Security Deposit within ten (10) days after the receipt of the Port's written request to do so. Notwithstanding the foregoing, in the event the Port depletes the Security Deposit and an unpaid

sum remains due under this Resolution, the Port shall have the right to recover the total of such unpaid sum through the rates and charges mechanism set forth in this Resolution; provided, however, this shall not release nor in any way affect the liability of the Airline for such unpaid sums.

## **Article 16. Environmental Standards**

16.1 Definitions. For purposes of this Article 16, the following terms shall have the following meanings:

“Environmental Law” means any environmentally related state or federal law, regulation, ordinance, permit or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect.

“Hazardous Substances” means any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant by any Environmental Law.

“Release” means any spilling, leaking, pumping, pouring, emitting, discharging, leaching, dumping or disposing into or on any property or the environment. Petroleum spills of less than five (5) gallons are excluded unless water or soil are impacted.

16.2 Restriction on Hazardous Substances. Each Airline shall not allow the presence or Release on the Airport of any Hazardous Substance that is in violation of any Environmental Law. Airline shall not allow any Hazardous Substances to migrate off the Airport or allow the Release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air in violation of any Environmental Law. At the reasonable written request of the Port, an Airline shall provide the Port with Airline’s USEPA Waste Generator Number. Each Airline shall immediately notify the Port in writing should the Airline become aware of: (1) any Release of any Hazardous Substances or the occurrence of any other environmental problem or liability with respect to the Airport or any real property adjoining or in the vicinity of the Airport; (2) any notice given to the Airline from any third party with respect to any Release or threat of Release of any Hazardous Substances; or (3) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized Release of any Hazardous Substances or other environmental contamination, liability or problem with respect to the Airport. In addition to any remedy provided in this Resolution, the Port shall be entitled to full reimbursement from an Airline whenever the Port incurs any reasonable costs directly attributable to the Airline’s use or management of Hazardous Substances at the Airport, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, and injuries to third persons or other properties.

16.3 Compliance and Remediation. Each Airline shall at all times conduct its operations at the Airport in compliance with all applicable Environmental Laws and if the Airline or any Airport space assigned to the Airline is in violation of any Environmental Law concerning the presence, use, Release or threat of Release of Hazardous Substances or any other Environmental Law (whether or not pertaining to Hazardous Substances), Airline shall promptly take such action as is reasonably necessary to remedy and cure the violation.

16.4 Port Remedies. If an Airline, or any Airport space assigned to an Airline, because of actions that occur during the Airline's use, is in violation of any Environmental Law concerning Hazardous Substances and the Airline does not act promptly to take such action as is reasonably necessary to remedy and cure the violation, the Port has the right, but not the obligation, to come onto the Airport space occupied by the Airline, to act in place of the Airline (the Airline hereby appoints the Port as its agent for such purposes) and to take such action reasonably necessary to cure the violation. If the Port has a reasonable belief that an Airline's actions or inactions present a threat of violation or a threat of damage to its assigned Airport space, the Port reserves the right to enter onto the Airline's assigned space and take such corrective or mitigating action as the Port deems reasonably necessary. All reasonable costs and expenses incurred by the Port in connection with any such actions shall become due and payable by the Airline thirty (30) days after presentation of an invoice to the extent caused by the Airline's violation of Environmental Law.

16.5 Environmental Inspection. The Port will give an Airline forty eight (48) hour advance notice to conduct an annual environmental inspection of Airport space assigned to the Airline. The Port shall conduct the inspection in a manner that does not unduly interfere with the Airline's operation. In addition, the Port may access the Airport space assigned to an Airline at any reasonable time upon reasonable notice for the purpose of conducting environmental testing. Prior to conducting environmental testing, the Port shall provide written notice to the Airline concerning the planned testing procedures and locations. The results of such testing shall be provided to the Airline as well. In the event of an emergency, the Port shall have access, without prior notice, to an Airline's assigned space for any necessary environmental response activities, including environmental testing needed in response to the emergency.

16.6 End of Airline's Use of Airport Space. Prior to ending its use of Airport space, an Airline shall remove any Hazardous Substances placed on the Airport space by the Airline, or as a result of the Airline's use of the Airport space and shall demonstrate such removal to the Port's reasonable satisfaction. This reasonable removal and demonstration shall be a condition precedent to the Port's return of any portion of the Security Deposit to an Airline in the event the Airline ceases to operate at the Airport, provided the Airline is otherwise entitled to such under the provisions of this Resolution.

16.7 Environmental Indemnity. Without limiting any indemnities provided in this Resolution for other than environmental matters, and except for Excluded Environmental Claims, as defined below, each Airline by conducting operations at the Airport agrees that it shall defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation clean-up or other remedial costs (and including actually incurred reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Airport space assigned to the Airline or at the Airport, or the Release of any Hazardous Substance from space assigned to the Airline to other properties or into the surrounding environment or from any other violation of Environmental Law, directly attributable to the Airline's actions during the Airline's use of Airport space. For purposes of this Resolution, "Excluded Environmental Claims" shall mean, any claims, causes of

action, demands, liabilities, fines, penalties, costs, expenses or any other liabilities, to the extent caused by or arising from (A) the migration of Hazardous Substances not first Released during an Airline's use of Airport space; and (B) the movement of Hazardous Substances first Released outside an Airline's assigned space onto or under an Airline's assigned space due to leaching or the flow of groundwater, provided that the Airline is not otherwise responsible for the Release outside the Airline's assigned space that introduced the migrating Hazardous Substances into the environment.

#### **Article 17. Miscellaneous Provisions**

17.1 SEC Rule 15c2-12. An Airline, upon request by the Port, shall provide the Port with such information as the Port may reasonably request in writing to comply with the Port's continuing disclosure requirements under SEC Rule 15c2-12 as it may be amended from time to time, provided, however, that the Airline may in lieu of providing the requested information direct the Port to an Airline or SEC website where the requested information is then currently available.

17.2 Taxes. By using the Airport, an Airline recognizes and understands that the Airline's use of Airport space may create a possessory interest subject to property taxation, including state leasehold tax, and that the Airline may be subject to the payment of property taxes levied on such interest. An Airline shall be liable for, and shall pay all taxes payable for, or on account of, the activities conducted by the Airline on the Airport and all taxes on the personal property of the Airline on the Airport and any taxes on the Airline's assigned space and any taxes levied in lieu of a tax and any taxes levied on, or measured by, the Terminal Rents and other charges payable under this Resolution, whether imposed on the Airline or on the Port. An Airline shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port that are levied on, or measured by, the Terminal Rents or other charges payable under this Resolution, an Airline shall pay to the Port with each payment an amount equal to the tax levied on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from an Airline shall be payable by the Airline to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved, provided that the Airline shall be entitled to a minimum of ten (10) days written notice of the amounts payable by it.

17.3 Liens and Encumbrances. By its use of Airport space, an Airline agrees that it shall keep all Airport space assigned to it free and clear of any liens and encumbrances arising or growing out of the Airline's use of Airport space or activities at the Airport. An Airline must fully indemnify and defend the Port in connection with any such liens filed against the Airport. At the Port's request, an Airline shall furnish the Port with written proof of payment of any item that would or might constitute the basis for such a lien on the Airport if not paid.

17.4 Notices. All notices required under this Resolution may be delivered or mailed. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received by the addressee at the last provided delivery address. If mailed, they shall be sent to the respective addresses as the Port and the Airline may from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if

properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

17.5 Labor Disputes. An Airline must use reasonable efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving the Airline, and in the event of a strike, picketing, demonstration or other labor difficulty involving the Airline, to use its good offices, including the utilization of available legal remedies, to minimize or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

**Article 18.** The Managing Director, Aviation Division, is authorized to take all necessary steps and execute all necessary documents, to calculate Airline rates and charges in accordance with the methodology set forth in this Resolution, and to implement all other provisions of this Resolution.

**ADOPTED** by the Port Commission of the Port of Seattle at a regular meeting held this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

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