

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

This Airline Service Incentive Program Agreement (“Agreement”) is hereby made this ____ day of _____, 20__, by and between the City of Los Angeles, a municipal corporation, (“City” or alternately referred to as “Los Angeles World Airports” or “LAWA” or “Agency”) acting by order of and through its Board of Airport Commissioners (“BOAC”), of the Department of Airports, also known as Los Angeles World Airports (“LAWA”), and _____, a _____ corporation, having its office and principal place of business at _____ (“Airline”).

RECITALS

WHEREAS, LAWA owns and operates Los Angeles International Airport (LAX), an international airport located in Los Angeles, California; and

WHEREAS, in light of the impacts of the COVID-19 pandemic on air travel, LAWA seeks to encourage air carriers to reinstate service frequency between LAX and international markets and/or commence LAX service between certain priority international markets; and

WHEREAS, in furtherance of such goals and consistent with Federal Aviation Administration (“FAA”) regulations and guidance, LAWA has developed an incentive program, whereby airlines providing service to certain qualifying new priority international markets will be eligible for certain landing fee credits and marketing incentives, including in-kind marketing assistance and certain matching funds for eligible marketing expenses (“Airline Service Incentive Program”); and

WHEREAS, also consistent with such goals and FAA guidance, the Airline Service Incentive Program provides for certain landing credits and marketing assistance to airlines that reinstate service between LAX and an international destination to the level of frequency provided by the airline to that destination in 2019;

WHEREAS, the Airline Service Incentive Program was adopted by LAWA on April 17, 2022 and is effective as of May 1, 2022 through April 30, 2024 (“Program Period”), as may be extended at LAWA’s discretion; and

WHEREAS, the Airline desires to provide new scheduled air service to a qualifying international destination and/or reinstate service to an international destination at the frequency provided by the Airline in 2019, consistent with the Airline Service Incentive Program and the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, the parties hereby agree as follows:

1. TERM

This Agreement shall be effective on the date first set forth above (“Effective Date”) and shall continue thereafter for twenty-four (24) months following the commencement of the New International Service or Reinstated International Service unless terminated earlier pursuant to the

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

terms hereof. Any termination or expiration of this Agreement shall not affect outstanding rights and obligations.

2. QUALIFYING SERVICE

A. New International Passenger Service

Airline shall provide scheduled, published, nonstop commercial passenger service [insert frequency]_____ to __[insert location]_____, a market that: (1) is not currently served by LAX and has not been served by LAX for at least twenty-four (24) months prior to the effective date of the Program Period; and (2) is located in a country, region, or market that has been identified as a priority by LAWA, as shown on **Exhibit A**. (“New International Passenger Service”)

B. Requirements of New International Passenger Service

The New International Passenger Service shall: (1) operate for at least twenty-four (24) months from the Effective Date of this Agreement, and may include either year-round service or seasonal (at least 6 consecutive months for two seasons) service; and (2) operate at least twice per week.

Airline must have a fully-executed Air Carrier Operating Permit with LAWA and be current in its financial or other obligations with and to LAWA to be eligible to participate in the Airline Service Incentive Program.

C. Secondary Airports and Additional Service for New International Service

A secondary airport within the same priority destination shall qualify as New International Passenger Service; however, a route will not qualify if the Airline, or its parent or subsidiary, has cancelled service to a primary or secondary airport at the priority destination during the term of this Agreement or within twenty-four (24) months prior to the commencement of the Program Period.

Following the commencement of service, and continuing for a twenty-four (24) month period, any additional frequencies of New International Passenger Service, beyond those identified above, will qualify for applicable landing fee credits for twenty-four (24) months, as specified in Section 2 below, so long as the additional service commences during the Program Period and the additional service lasts for twenty-four (24) months.

To qualify for the Airline Service Incentive Program, Airline must be providing additional service at LAX. Airline will not qualify if it, or its parent or subsidiary, removes service from a market served within twenty-four (24) months from the commencement of the Program Period and replaces it with service to a new priority market.

D. Reinstated International Service

Airline shall reinstate scheduled, published, nonstop commercial service to [insert location]_____. The service shall be provided [insert level of service], the level at which it provided service

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

between LAX and [insert location] in 2019, and shall be provided for at least twenty-four (24) months.

Airline must have a fully-executed airline agreement with LAWA and be current in its financial or other obligations with and to LAWA.

3. LANDING FEE CREDITS AND NOT-TO-EXCEED AMOUNTS

Landing fees are assessed to passenger and cargo air carriers using landing facilities at LAX, based on costs and forecasted landing weights, in an amount as set by LAWA from time to time. In exchange for offering New International Service and/or Reinstated International Service, Airline shall be eligible for landing fee credits as described below.

A. New International Service Landing Fee Credits and Not-To-Exceed Amount

LAWA shall provide Airline with a credit to its landing fees, to be used within the subsequent twenty-four (24) months, for New International Passenger Service as follows:

	Consecutive Service (12 months consecutive)	Seasonal Service (At least 6 months consecutive; two seasons required)
Year 1	100% of Landing Fees for New International Service	50% of Landing Fees for New International Service
Year 2	50% of Landing Fees for New International Service	50% of Landing Fees for New International Service

The amount of the credit will reflect the landing fee in effect at the time of the qualifying flight(s). The combined total Year 1 and Year 2 amount of the credit shall not exceed five million dollars (\$5,000,000).

B. Reinstated International Service and Not-To-Exceed Amount

LAWA shall provide Airline with a credit of 25% of landing fees paid by the Airline for the Reinstated International Service.

Airline shall have a one-year period of ramp-up, commencing on the Effective Date, to reach 2019 service levels. If Airline initially provides additional frequency, as compared to the frequency level prior to entering into this Agreement, on the route specified above, but at less frequency than in 2019, those additional flights will be eligible for landing fee credits after the Airline reaches the specified 2019 frequency level for a period of twelve (12) months. The 25% landing fee credit will be also provided for flights on the specified route during the first twelve (12) months of continuous service consistent with 2019 levels.

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

The Reinstated International Service credit is subject to availability and is subject to a total not-to-exceed Airline Service Incentive Program cap of ten million dollars (\$10,000,000). The Reinstated International Service is being offered to all participants in the Airline Service Incentive Program on a first-come, first-served basis.

C. Landing Fee Credit - Process

Airline is responsible for paying all monthly invoices for all assessed landing fees. Provided that Airline is not in default and owes no rents, rates, charges or fees under any other agreements it has with LAWA or the City of Los Angeles, LAWA will credit the Airline, on a quarterly basis, for previously paid qualifying New International Service and/or Reinstated International Service landing fees over the prior three months as described in Sections 2A and 2B. Upon monthly receipt of a landing fee invoice, Airline may either pay the invoice for the monthly landing fee in the normal course or may use a landing fee credit, if available. All landing fee credits issued by LAWA pursuant to this Agreement must be used by Airline within twelve (12) months of issuance, or such credits shall be deemed forfeited.

If Airline does not complete its twenty-four (24) month minimum schedule for the New International Service or Reinstated International Service, it will forfeit any outstanding landing fee credits, and will be required to repay to LAWA the full amount of any landing fee credits previously received under this Agreement.

4. MARKETING INCENTIVES AND NOT-TO-EXCEED AMOUNTS

A. New International Service and Not-To-Exceed Amounts

LAWA agrees to provide a Marketing Incentive to Airline for certain marketing and promotional expenses with respect to promotion of Airline's New International Service as follows:

1. LAWA agrees to provide in-kind marketing services to Airline, valued at an amount not to exceed fifty thousand dollars (\$50,000) over the term of this Agreement. Such in-kind services may include gate events, drafting press releases, providing graphics for social media, promoting the New International Service on LAWA's social media, and inclusion of information regarding New Information Service in travel and/or trade publications. The specific in-kind marketing services to be provided will be mutually agreed upon by LAWA and Airline.
2. LAWA shall provide an amount not to exceed one hundred thousand dollars (\$100,000.00) per year on a one-to-one matching basis, over the twenty-four (24) month term of this Agreement, for eligible marketing expenses, as further described below.

B. Reinstated International Service and Not-To-Exceed Amounts

LAWA agrees to provide in-kind marketing services to Airline for one year, commencing on the Effective Date, valued at an amount not to exceed fifty thousand dollars (\$50,000). Such in-kind services may include gate events, drafting press releases, providing graphics for social

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

media, promoting the New International Service on LAWA's social media, and inclusion of information regarding New Information Service in travel and/or trade publications. The specific in-kind marketing services to be provided will be mutually agreed upon by LAWA and Airline.

C. Goal of Marketing Incentive

The goal of the Marketing Incentive is to increase awareness of the New International Service and/or Reinstated International Service and ridership on the flight. Only expenses consistent with this goal shall be considered eligible for matching funds.

Marketing Incentive matching funds may be used for, but are not necessarily limited to use for:

- Public relations events;
- Multi-media advertising (television, radio, newspaper, billboard, magazine, social media);
- Direct mail;
- Banners/signage; and
- Fees for creative development/placement

D. Prior Approval and Specifications

Airline shall provide LAWA's Airport Affairs Group with a copy of its marketing program, marketing plan, and marketing budget for the New International Service within nine months of the start of the new service. Airline's marketing plan is subject to LAWA's review and reasonable approval. All copy and creative material is subject to LAWA's review and prior approval to be eligible for matching funds.

Marketing and promotional materials must:

- Promote service between LAX and the qualified destination/route;
- Mention LAX in the copy, in a manner consistent with LAWA's current marketing strategy, as determined by LAWA's Executive Director or their designee;
- Display the LAX logo, with prominence substantially similar to the Airline's logo. LAX logo size, placement and dimensions shall be subject to the prior written approval of LAWA's Executive Director or their designee;
- Comply with any LAWA required specifications; and
- Comply with federal law concerning the use of airport revenue, including 49 U.S.C. §§47107(1) and FAA's Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (February 16, 1999).

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

E. Reimbursement Process

Marketing Incentives matching funds shall be provided by LAWA by way of reimbursement to the Airline via LAWA's billing and payment processes. Airline acknowledges and agrees that all requests for reimbursement of marketing related expenses must be submitted to LAWA within 90-days of the conclusion of the campaign.

To receive Marketing Incentive matching funds, Airline shall submit to LAWA's Airport Affairs Group all bills, invoices, and other proof of marketing expenses, including, but not limited to, receipts; copies of placements, "tear sheets", newspaper and other advertisements; verifications of online postings; and detailed bills for any inaugural or other specific events. LAWA shall provide funds on a one-to-one matching basis to reimburse qualified marketing expenses to Airline, up to the amount specified above.

5. MARKET REDUCTION/TERMINATION

A. The incentives described in Sections 2 and 3 will be terminated at such time as the Airline reduces or ceases the service for the New International Service or Reinstated International Service from the level specified in Section 1 above.

B. Should the air carrier reduce or terminate the service within twenty-four (24) months of commencement, the Airline shall repay LAWA for all landing fee credits and matching funds previously used by Airline for the qualifying flight(s) and may also be required to repay LAWA for the cost of any in-kind marketing services provided pursuant to this Agreement.

C. In the Event of a Default by Airline, all incentives under this Agreement shall terminate. Termination of incentives arising out of a cessation of air service or a failure to operate service at the specified level is effective as of the date the Airline first ceased or reduced flight operations to the New International Service or Reinstated International Service location, as the case may be.

6. TERMINATION, SUSPENSION, AND DEFAULT

A. If, at any time, the Chief Executive Officer, for any reason, decides to terminate or suspend the Agreement, or any part thereof, the Chief Executive Officer may do so upon giving Airline thirty (30) days written notice prior to the effective date of such termination or suspension, which date shall be specified in such notice.

B. In the event Airline fails to abide by the terms, covenants and conditions of this Agreement, City may, instead of immediately exercising its rights under this Section, give Airline written notice to correct the defect or default and, if the same is not corrected, or substantial steps are not taken toward accomplishing such correction, within ten (10) days after City's mailing such notification, City may, at its sole discretion: (a) terminate this Agreement forthwith upon giving Airline a thirty (30) day written notice; or (b) withhold any further performance until such defect or default is corrected within the time specified by the City, whereby if the default or defect is still not corrected within that time, City may terminate this Agreement forthwith upon giving Airline a thirty (30) day written notice. Upon such termination of this Agreement by the Airport, Airline shall be required to repay all landing fee and marketing incentive expense payments previously

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

provided to Airline pursuant to this Agreement and may also be required to repay LAWA for the cost of any in-kind marketing services provided pursuant to this agreement.

C. Notwithstanding anything herein to the contrary, either party has the right to terminate this Agreement, with or without cause, upon thirty (30) days advance written notice to the other party.

7. AUDIT

LAWA shall have the right, at any time during Airline's reasonable business hours, to audit all incentives and credits issued in conjunction with this Agreement. Airline agrees to cooperate with LAWA and its representatives in the performance of any such audit, and to make all of the Airline's relevant books and records available to LAWA and its representatives in the performance of this audit, either at LAWA or the Airline's location where such books and records are maintained in the ordinary course of the Airline's business.

8. CITY HELD HARMLESS

A. In addition to the requirements of Section 24, Insurance, herein, Airline shall, to the fullest extent permitted by law, defend, indemnify and hold harmless City and any and all of City's Boards, officers, agents, employees, assigns and successors in interest from and against any and all suits, claims, causes of action, liability, losses, damages, demands or expenses (including, but not limited to, attorney's fees and costs of litigation), claimed by anyone (including Airline and/or Airline's agents or employees) by reason of injury to, or death of, any person(s) (including Airline and/or Airline's agents or employees), or for damage to, or destruction of, any property (including property of Airline and/or Airline's agents or employees) or for any and all other losses, founded upon or alleged to arise out of, pertain to, or relate to the Airline's (and/or its employees' or agents') and/or subcontractor to Airline's (and/or its employees' or agents') performance of the Contract, whether or not contributed to by any act or omission of City, or of any of City's Boards, officers, agents or employees. If applicable, (a) where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from or relate to Airline's performance of a "Construction Contract" as defined by California Civil Code section 2783, this paragraph shall not be construed to require Airline to indemnify or hold City harmless to the extent such suits, causes of action, claims, losses, demands and expenses are caused by the City's sole negligence, willful misconduct or active negligence; and/or (b) where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from Airline's design professional services as defined by California Civil Code section 2782.8, Airline's indemnity obligations shall be limited to allegations, suits, claims, causes of action, liability, losses, damages, demands or expenses arising out of, pertaining to, or relating to the Airline's negligence, recklessness or willful misconduct in the performance of the Contract.

B. In addition, Airline agrees to protect, defend, indemnify, keep and hold harmless City, including its Boards, Departments and City's officers, agents, servants and employees, from and against any and all claims, damages, liabilities, losses and expenses arising out of any threatened, alleged or actual claim that the end product provided to LAWA by Airline violates any patent, copyright, trade secret, proprietary right, intellectual property right, moral right, privacy, or similar right, or any other rights of any third party anywhere in the world. Airline

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

agrees to, and shall, pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by City arising out of, or relating to, the matters set forth above in this paragraph of the City's "Hold Harmless" agreement.

C. In Airline's defense of the City under this Section, negotiation, compromise, and settlement of any action, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

D. Survival of Indemnities. The provisions of this Section shall survive the termination of this Contract.

9. ADVERTISEMENTS

Airline shall not, at any time, under any circumstances, install, place, or maintain any type of advertising, on Airports, unless expressly authorized by the City in accordance with all terms and conditions of this Agreement.

10. ALTERNATIVE FUEL VEHICLE REQUIREMENT PROGRAM (FOR LAX ONLY)

Airline shall comply with the provisions of the alternative fuel vehicle requirement program (the "Alternative Fuel Vehicle Requirement Program"). The rules, regulations and requirements of the Alternative Fuel Vehicle Requirement Program are attached as Exhibit B and made a material term of this Contract.

11. ASSIGNMENT OR TRANSFER PROHIBITED

A. Airline shall not, in any manner, directly or indirectly, by operation of law or otherwise, hypothecate, assign, transfer or encumber this Contract, or any portion thereof or any interest therein, without the prior written consent of the Chief Executive Officer. This Agreement shall not, nor shall any interest therein, be assignable as to the interest of Airline by operation of law without the prior written consent of the Chief Executive Officer or his or her authorized representative.

B. For purposes of this Contract, the terms "transfer" and "assign" shall include, but not be limited to, the following: (i) if Airline is a joint venture, a limited liability company, or a partnership, the transfer of fifty percent (50%) or more of the interest or membership in the joint venture, the limited liability company, or the partnership; (ii) if Airline is a corporation, any cumulative or aggregate sale, transfer, assignment, or hypothecation of fifty percent (50%) or more of the voting shares of Airline; (iii) the dissolution by any means of Airline; and, (iv) a change in business or corporate structure. Any such transfer, assignment, mortgaging, pledging, or encumbering of Airline without the written consent of the Chief Executive Officer is a violation of this Agreement and shall be voidable at LAWA's option and shall confer no right, title, or interest in or to this Agreement upon the assignee, mortgagee, pledgee, encumbrancer, or other lien holder, successor, or purchaser.

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

C. When proper consent has been given by the Chief Executive Officer, the provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the heir(s), successor(s), executor(s), administrator(s) and assign(s) of the parties hereto.

12. ATTORNEYS FEES

If City shall, without any fault, be made a party to any litigation commenced by or against Airline arising out of this Contract, then Airline shall pay all costs, expenses, and reasonable attorney's fees incurred by or imposed upon City in connection with such litigation. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

13. DISABLED ACCESS

A. As directly related to Airline's responsibilities with regard to this Contract, Airline shall be solely responsible for fully complying with any and all applicable present and/future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access including any services, programs, improvements or activities provided by Airline. Airline shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, Airline's noncompliance. Further, Airline agrees to cooperate fully with City in its efforts to comply with the Americans with Disability Act of 1990 and any amendments thereto, or successor statutes.

B. Should Airline fail to comply with this Section, if applicable, then City shall have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Airline will then be required to reimburse City for the actual cost of achieving compliance, plus a fifteen percent (15%) administrative charge.

14. ENVIRONMENTALLY FAVORABLE OPERATIONS

Airline acknowledges for itself and any subcontractors that its operation of its activities under this Agreement will be subject to all the Department's policies, guidelines and requirements regarding environmentally favorable construction, use and/or operations practices (collectively "LAWA Policies") as such LAWA Policies may be promulgated, revised and amended from time-to-time."

15. FIRST SOURCE HIRING PROGRAM FOR AIRPORT EMPLOYERS (FOR LAX ONLY).

Airline shall comply with the provisions of the First Source Hiring Program adopted by the Board. The rules, regulations, requirements, and penalties of the First Source Hiring Program are attached as Exhibit C and made a material term of this Contract.

16. PREVAILING WAGE

Work performed under this Agreement may require payment of prevailing wages, and Airline is obligated to make that determination. Airline shall be bound by and comply with applicable provisions of the California Labor Code and federal, state, and local laws related to labor. Airline

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

shall indemnify and pay or reimburse City for any damages, penalties or fines and interest (including, but not limited to, attorney's fees and costs of litigation) that City incurs, or pays, as a result of noncompliance with applicable prevailing wage laws.

17. RESTRICTIONS AND REGULATIONS

A. Airline shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local government authority.

B. Airline 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 Chief Executive Officer which are now in force or which may be hereafter adopted by the Board of Airport Commissioners and/or the Chief Executive Officer with respect to the operation of Airport.

C. Airline 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.

D. Airline shall be solely responsible for insuring that the Services fully comply with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local government authority.

18. OWNERSHIP OF WORK PRODUCT

A. The City shall own all titles, rights and interests in all Work Products created by Airline and all of its subcontractors (hereinafter collectively referred to as "Vendors") for the City under this Agreement. Work Products are all materials, tangible or not, created in whatever medium under this Agreement, including without limitation reports, manuals, specifications, drawings and sketches, computer programs and databases, schematics, maps, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property. Airline shall not dispute or contest, directly or indirectly, the City's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Vendors hereby assign, and if later required by the City, shall assign to the City all titles, rights and interests in all Work Products. Airline shall cooperate and cause subcontractors to cooperate in perfecting City's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the City. Airline agrees that before commencement of any subcontract work it will incorporate all provisions in this Agreement on property ownership, including this Section, to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the City's titles, rights, and interests in Work Products are preserved and protected as intended herein. This provision does not apply to any pre-existing intellectual property created by Airline or its subcontractors prior to their performance of tasks under this Contract, nor will this provision apply to any enhancement or alteration to the pre-existing property created by Airline or its subcontractors during their performance of tasks under this Contract.

B. Airline represents and warrants that performance of all obligations (including those

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

performed by its subcontractors) under this Agreement does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information.

C. In accordance with this provision, Airline will defend at its expense and hold harmless in any infringement claim, demand, proceeding, suit or action (hereinafter collectively referred to as "Action") against the City, its boards, commissioners, officers, directors, agents, employees, assigns and successors in interest (hereinafter collectively referred to as "City Defendants") from and against any infringement or violation, actual or alleged, direct or contributory, intentional or otherwise, of any intellectual property rights, (hereinafter referred to as "Intellectual Property rights"), (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the Airline or its subcontractors of any tier in performing the work under this Contract; or (2) as a result of the City's actual or intended use of any Services furnished by Airline under the Contract. Airline also shall indemnify the City against all reasonable attorneys' fees, losses, costs, expenses, liability, and damages awarded against the City or settlement as a consequence of such Action.

D. In Airline's defense of the City Defendants, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

E. Rights and remedies available to the City hereinabove shall survive the expiration or other termination of this agreement. Further, the rights and remedies are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City of Los Angeles.

F. Should Airline have information that (1) any of the Work Products allegedly or actually infringes or is likely to infringe on any third party intellectual property rights (patents, copyrights, trademarks, trade secrets and other proprietary information), or (2) any of the licenses procured on behalf of the City under this Agreement is to expire, to be terminated or enjoined sooner than the term procured for, Airline shall immediately notify City of such alleged, actual or potential infringement or license status. Upon City's request, Airline shall, at Airline's own expense:

- a) procure for the City the right or license to continue using the intellectual property at issue; or
- b) replace the intellectual property at issue with a functionally equivalent, non-infringing product, if practicable.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the City or its lessees, or diminish the intended benefits and use of the Work Products by the City or its lessees under the specifications herein.

G. The provisions of this Section shall survive termination of this Agreement.

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

19. WAIVER

The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition.

20. BUSINESS TAX REGISTRATION

Airline represents that it has registered its business with the Office of Finance of the City of Los Angeles and has obtained and presently holds from that office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of City's Municipal Code). Airline shall maintain, or obtain as necessary, all such certificates required of it under said ordinance and shall not allow any such certificates to be revoked or suspended during the term hereof.

21. CHILD SUPPORT ORDERS

This Agreement is subject to Los Angeles Administrative Code, Division 10, Chapter 1, Article 1, Section 10.10, et seq. related to Child Support Assignment Orders, which is incorporated herein by this reference. A copy of Section 10.10 has been attached hereto for the convenience of the parties as **Exhibit D**. Pursuant to this section, Airline (and any subcontractor of Airline providing services to City under this Contract) shall (1) fully comply with all State and Federal employment reporting requirements for Airline's or Airline's subcontractor's employees applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of Airline and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (4) maintain such compliance throughout the term of this Contract. Pursuant to Section 10.10 (b) of the Code, failure of Airline or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Airline or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Agreement subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Airline by City (in lieu of any time for cure provided elsewhere in this Contract).

22. NONDISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

A. **Federal Non-Discrimination Provisions.**

Airline assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Airline or its transferee for the period during

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

B. Municipal Non-Discrimination Provisions.

1. Non-Discrimination In Use Of Airport. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of Airport or any operations or activities conducted on Airport. Nor shall Airline or any person claiming under or through Airline establish or contract any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of contractors, subcontractors, or vendees of Airport. Any assignment or transfer, which may be permitted under this Contract, shall also be subject to all non-discrimination clauses contained in Section 23.2.

2. Non-Discrimination In Employment. During the term of this Contract, Airline agrees and obligates itself in the performance of this Agreement not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. Airline shall take affirmative action to insure that applicants for employment are treated, during the term of this Contract, without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code, Sections 10.8, et seq., or any successor ordinances or law concerned with discrimination.

3. Equal Employment Practices. If the total payments made under this Agreement are One Thousand Dollars (\$1,000) or more, this provision shall apply. During the performance of this Contract, Airline agrees to comply with Section 10.8.3 of the Los Angeles Administrative Code ("Equal Employment Practices"), which is incorporated herein by this reference. A copy of Section 10.8.3 has been attached to this Agreement for the convenience of the parties as **Exhibit E**. By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Airline to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Contract. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Airline. Upon a finding duly made that Airline has failed to comply with the Equal Employment Practices provisions of this Contract, this Agreement may be forthwith terminated, cancelled, or suspended.

4. Affirmative Action Program. If the total payments made under this

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

Agreement are Twenty-Five Thousand Dollars (\$25,000) or more, this provision shall apply. During the performance of this Contract, Airline agrees to comply with Section 10.8.4 of the Los Angeles Administrative Code ("Affirmative Action Program"), which is incorporated herein by this reference. A copy of Section 10.8.4 has been attached to this Agreement for the convenience of the parties as **Exhibit F**. By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of the Code, the failure of Airline to comply with the Affirmative Action Program provisions of this Agreement may be deemed to be a material breach of this Contract. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Airline. Upon a finding duly made that Airline has failed to comply with the Affirmative Action Program provisions of this Contract, this Agreement may be forthwith terminated, cancelled, or suspended.

23. INSURANCE

A. Airline shall procure at its expense, and keep in effect at all times during the term of this Contract, the types and amounts of insurance specified on Insurance, **Exhibit G**, attached hereto and incorporated by reference herein. The specified insurance shall also, either by provisions in the policies or by other endorsement attached to such policies, include City, its Department, its Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds with respect to Airline's Commercial General Liability coverage, against the areas of risk described on Insurance, **Exhibit G**, hereof caused, in whole or in part, by Airline's acts or omissions in its operations, use, and occupancy of the Airport or other related functions performed by or on behalf of Airline in, on or about Airport.

B. Airline's required Commercial General Liability insurance policy shall contain a separation of insured (cross liability) clause which provides 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 the rights and duties of the first named insured on the policy and Contractual Liability coverage.

C. All such insurance shall be primary and noncontributing with any other insurance held by City's Department with respect to liability caused, in whole or in part, by the acts or omissions of Airline, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Airline.

D. City shall have no liability for any premiums charged for such coverage(s). The inclusion of City, its Department, Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Airline in Airline's operations at Airport. In the event Airline fails to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of Airline, and Airline agrees to promptly reimburse City for the cost thereof. Payment shall be made within thirty (30) days of invoice date.

E. At least five (5) days prior to the expiration date of the above policies, a certificate of insurance showing that the insurance coverage has been renewed or extended shall be filed with

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

City. If such coverage is canceled or limits reduced below limits required herein, Airline shall, within fifteen (15) days of such cancellation of coverage, file with City an updated certificate of insurance as evidence that the required insurance has been reinstated or provided through another insurance company or companies.

F. Airline shall provide proof of all specified insurance and related requirements to City by production of a current certificate of insurance along with copies of required endorsements to the Chief Executive Officer. The certificates of insurance evidencing required insurance shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in Sections 11.47 through 11.56 of the Los Angeles Administrative Code (the "Code") prior to Airline occupying the Airport. The certificate of insurance 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 Airline or Airline's insurance broker. Airline shall provide thirty (30) days' written notice of cancellation or nonrenewal, to the City Attorney of the City of Los Angeles for any required coverage that is not replaced.

G. City and Airline agree that the insurance policy limits specified herein shall be reviewed for adequacy once per three (3) year term of this Agreement by the Chief Executive Officer who may require Airline, on sixty (60) days prior written notice, to adjust the amounts of insurance coverage to an appropriate amount based on limits required for City's other Airlines performing similar operations for the City.

H. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Airline agrees, except where exempted, to provide City proof of said insurance by and through a surplus line broker licensed by the State of California.

24. LIVING WAGE REQUIREMENTS

A. Living Wage Ordinance.

1. **General Provisions: Living Wage Policy.** This Agreement is subject to the Living Wage Ordinance (the "LWO") (Section 10.37, et seq., of the Los Angeles Administrative Code, which is incorporated herein by this reference. A copy of Section 10.37 has been attached hereto for the convenience of the parties as **Exhibit H.** The LWO requires that, unless specific exemptions apply, any employees of a service contractor who render services that involve an expenditure in excess of Twenty-Five Thousand Dollars (\$25,000) and a contract term of at least three (3) months are covered by the LWO if any of the following applies: (1) at least some of the services are rendered by employees whose work site is on property owned by the City, (2) the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than Twelve Dollars (\$12) per hour of their possible right to the Federal Earned Income Tax Credit ("EITC") and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Airline shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by City. Whether or not subject to the LWO, Airline shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Airline agrees to comply with Federal law prohibiting retaliation for union organizing.

2. **Living Wage Coverage Determination.** An initial determination has been made that this is a service contract under the LWO, and that it is not exempt from coverage by the LWO. Determinations as to whether this Agreement is a service contract covered by the LWO, or whether an employer or employee is exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. In some circumstances, applications for exemption must be reviewed periodically. City shall notify Airline in writing about any redetermination by City of coverage or exemption status. To the extent Airline claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Airline to prove such non-coverage or exemption.

3. **Compliance; Termination Provisions And Other Remedies: Living Wage Policy.** If Airline is not initially exempt from the LWO, Airline shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the execution date of this Contract. If Airline is initially exempt from the LWO, but later no longer qualifies for any exemption, Airline shall, at such time as Airline is no longer exempt, comply with the provisions of the LWO and execute the then currently used Declaration of Compliance Form, or such form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Code, violation of the LWO shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Airline violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Contract. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO.

4. **Subcontractor Compliance.** Airline agrees to include, in every subcontract or sublease covering City property entered into between Airline and any subcontractor, a provision pursuant to which such subcontractor (A) agrees to comply with the LWO with respect to City's property; (B) agrees not to retaliate against any employee lawfully asserting noncompliance on the part of the subcontractor with the provisions of either the LWO; and (C) agrees and acknowledges that City, as the intended third-party beneficiary of this provision may (i) enforce the LWO directly against the subcontractor with respect

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

to City property, and (ii) invoke, directly against the subcontractor with respect to City property, all the rights and remedies available to City under Section 10.37.5 of the LWO, as same may be amended from time to time.

B. Service Contract Worker Retention Ordinance.

This Agreement may be subject to the Service Contract Worker Retention Ordinance ("SCWRO")(Section 10.36, et seq, of the Los Angeles Administrative Code), which is incorporated herein by this reference. If applicable, Airline must also comply with the SCWRO which requires that, unless specific exemptions apply, all employers under contracts that are primarily for the furnishing of services to or for the City of Los Angeles and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least three (3) months, shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of Section 10.36.3(c) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available if City determines that the subject contractor violated the provisions of the SCWRO.

25. ASSIGNMENT OF ANTI-TRUST CLAIMS

Airline understands that it may be subject to California Government Code Sections 4550–4554. If applicable, Airline offers and agrees that it will assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act or under the Cartwright Act, arising from purchases of goods, services, or materials by Airline. Such assignment is made and becomes effective at the time the City tenders final payment to Airline.

26. GOOD STANDING

To continue to qualify for the credits and other incentives described in herein, Airline must be in compliance with all other agreements with LAWA and current on all amounts owed LAWA. In the event the Airline is in arrears with regard to rates, charges and other fees due LAWA, LAWA has the right to terminate the credits and other incentives set forth in above, provided LAWA first gives the Airline notice of such arrearage or failure to comply, allows the Airline no less than thirty (30 days) to pay the arrearage or cure the failure to comply, and includes in such notice a reference to LAWA's intention to terminate the credits under this Agreement in the absence of such payment or cure. If the Airline disputes any airport charge or fee and gives LAWA notice of such dispute, the LAWA agrees to thoroughly discuss and attempt to resolve the dispute before determining the Airline is not in good standing.

27. NOTICES

- A. Notice to City: All notices, requests, demands, and other communications under this Agreement shall be in writing. Written notices to City hereunder, with a copy to the City

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

Attorney of the City of Los Angeles, shall be given by registered or certified mail, postage prepaid, and addressed to:

**Department of Airports
1 World Way
Post Office Box 92216
Los Angeles, CA 90009-2216**

**Office of City Attorney
1 World Way
Post Office Box 92216
Los Angeles, CA 90009-2216**

or to such other address as City may designate by written notice to Airline.

B. Notice to Airline:

Airline Name:
Street:
City, State, Zip Code:
Attention: Title:
Phone:
Email:

or to such other address as one party may designate by written notice to the other party

28. DIRECTOR, OFFICER, AGENT, EMPLOYEE

No director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or any supplement, modification or amendment to this Agreement or because of any breach hereof or thereof.

29. FORCE MAJEURE

Neither party shall be liable to the other for any loss, injury, damage or delay whatsoever resulting, directly or indirectly, from one or more of the following: an Act of God; seizure under legal process, governmental sanctions; fire, fog, flood or other weather-related reason; failure or refusal on the part of any government or governmental agency to grant or issue approvals, clearances, exemptions, permits or operating authority or recession or revocation thereof by any government or governmental agency; damage or destruction of aircraft or other flight equipment; mechanical difficulties or breakdowns; unavailability of fuel; riots or civil commotion; strikes, lockouts or labor disputes (whether resulting from disputes between either party and its employees or between other parties); U.S. military or airlift emergency or substantiality expanded U.S. military airlift requirements as determined by the U.S. government; an airlift emergency as determined by the United States Secretary of Defense or his/her designee or by the Commander of the United States Military Airlift Command, or if the United States Civil Reserve Air Fleet is activated by order of the Secretary of Defense; activation of the U.S. Civil Reserve Air Fleet; war or hazards or dangers incident to a state of war; or any other acts, matters or things, whether or not of a similar nature, which are beyond the control of such party and which shall directly or indirectly prevent, delay, interrupt, or otherwise adversely affect the

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

performance of such party's obligations hereunder, including in the case of the Airline, the furnishing, operation or performance of air transportation services, (each an "Event of Force Majeure"). The Airline shall have the right to suspend performance of the terms of this Agreement forthwith in the event of and for the duration of an Event of Force Majeure. Each party will promptly advise the other party regarding any Event of Force Majeure, as described above, that may affect its performance hereunder and will keep the other party apprised of efforts made to remedy the problem.

In the event of unforeseen circumstances, LAWA may, in its sole discretion, suspend or cancel aspects of the Airline Service Incentive Program, thereby relieving Airline of its obligation to repay previously provided credits in the event that Airlines cancels or reduces service in such circumstances.

30. CONSTRUCTION, SEVERABILITY, NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against either party. In the event that any one or more of the provisions of this Agreement shall be determined to be invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not affect any other provision of this Agreement and the Agreement shall be construed as if such invalid, unenforceable or illegal provision had never been contained herein. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. NO PERSON OR ENTITY, OTHER THAN AIRLINE OR LAWA, SHALL HAVE ANY RIGHTS, CLAIMS, BENEFITS OR POWERS UPON ANY THIRD PARTY. THERE ARE NO THIRD-PARTY BENEFICIARIES OF THIS AGREEMENT.

31. RELATIONSHIP BETWEEN THE PARTIES

Each party, in its performance under this Agreement, is and shall be engaged and acting in its own separate business. Each party shall retain complete and exclusive control over its personnel and operations and the conduct of its business. Neither party nor its officers, employees or agents shall in any manner make any representation or take any actions which may give rise to the existence of any employment, agency, partnership or other like relationship between the parties hereto. The employees, agents and independent contractors of each party shall be and remain employees, agents and independent contractors of such party for all purposes, and under no circumstances shall be deemed to be employees, agents or independent contractors of the other party. Neither party shall have supervisory power or control over any employees, agents or independent contractors employed or engaged by the other party.

32. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and, to the extent permitted hereunder, assigns.

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

33. PUBLICITY

Prior to issuance of any press release, public statement or announcement ("Public Statement") in connection with the New International Service or Reinstated International Service, the party that desires to issue such Public Statement shall provide an advance copy to the other party and such Public Statement shall not be issued without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed.

34. MISCELLANEOUS PROVISIONS

A. Fair Meaning. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Airline.

B. Section Headings; Counterparts. The section headings appearing herein are for the convenience of City and Airline, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Contract. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one Agreement.

C. Void Provisions. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Contract, and all such other provisions shall remain in full force and effect.

D. Governing Law. This Agreement shall be construed and enforced in accordance with the Los Angeles City Charter and Administrative Code and the laws of the State of California, and venue shall lie in the appropriate U.S. Federal Court or California Superior Court located in Los Angeles County.

E. Gender. The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

F. Ordinance and Code Language Governs. City of Los Angeles ordinance and code exhibits are provided as a convenience to the parties only. In the event of a discrepancy between the exhibits and the applicable ordinance and/or code language, or amendments thereto, the language of the ordinance and/or code shall govern.

G. Amendments to Ordinances and Codes. The obligation to comply with any ordinances and codes which have been incorporated into this Agreement by reference shall extend to any amendments which may be made to those ordinances and codes during the term of this Contract.

H. No Exclusive Right. No provision of this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of the Federal Aviation Act, 49 U.S.C. 40103(e) and 40107(a)(4)(Public Law No. 103-272).

[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

I. **Amendment**. All amendments hereto shall be in writing and signed by the persons authorized to bind the parties thereto.

35. ENTIRE AGREEMENT

This Contract, including all exhibits, contains the entire agreement between the parties hereto and supersedes any and all prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements or understandings, oral or written, between and among the parties relating to the subject matter contained in this Agreement which are not fully set forth herein. This is an integrated agreement.

36. FEDERAL REQUIREMENTS

This Agreement is intended to satisfy the standards for airport incentive programs for promotion of air carrier service set forth in FAA's Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (February 16, 1999), as amended. In the event the Department of Transportation, the Federal Aviation Administration, and/or a court of competent jurisdiction determine that LAWA's ability to perform any obligations under this agreement would violate any such law or policy, LAWA shall be immediately excused from performing such obligation. All other terms and obligations shall remain in full force and effect. In addition, all applicable federal requirements as set forth in Airline's Air Carrier Operating Permit with LAWA are hereby incorporated by reference and included in this Agreement.

37. AGREEMENTS WITH SIMILARLY SITUATED AIRLINES

In accordance with FAA requirements and the Airline Service Incentive Program, LAWA shall provide the same incentives to all similarly situated airlines. LAWA agrees that it shall not enter into any Airline Service Incentive Program Agreement containing more favorable terms and incentives than those contained in this Agreement with any other similarly situated airline offering the same services as this Airline. If another similarly situated airline receives better terms and incentives than included in this Agreement, Airline shall be entitled to receive the same terms and incentives.

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[FORM] AIRLINE SERVICE INCENTIVE PROGRAM AGREEMENT

SIGNATURE BLOCK

IN WITNESS WHEREOF, City has caused this Agreement to be executed by the Chief Executive Officer of its Department of Airports and Airline has caused the same to be executed by its duly authorized officers and its corporate seal to be hereunto affixed all as of the day and year first hereinabove written.

APPROVED AS TO FORM:

CITY OF LOS ANGELES

MICHAEL N. FEUER,
City Attorney

Date: _____

Date: _____

By: _____
Deputy/Assistant City Attorney

By: _____
Chief Executive Officer
Department of Airports

By: _____
Chief Financial Officer
Deputy Executive Director
Department of Airports

[Airline], a [] corporation

By: _____
Signature (Secretary/Treasurer/CFO)

By: _____
Signature

Print Name

Print Name

Print Title Print

Title