

**FIXED BASE OPERATOR LEASE AGREEMENT**

THIS **FIXED BASE OPERATOR LEASE AGREEMENT** (“**Lease**”) is entered into by and between the COUNTY OF CAMERON, acting by and through its Commissioners' Court (“**County**”), and [company name], a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“**Lessee**”).

For and in consideration of mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, County and Lessee enter into this Lease and agree as follows:

**1. LEASE OF PROPERTY**

- A. Premises: The premises covered by and included with this Lease Agreement is that portion of the property more specifically shown in yellow on Exhibit “A”, attached hereto and which is incorporated by reference as if fully set forth herein.
- B. Access to Premises: Subject to Lessee performing its obligations under this Lease, including payment of Rent hereunder, County grants Lessee the non-exclusive right of reasonable ingress to and egress from the Premises: (1) over Airport roadways designated for such purpose, for itself and its officers, employees, agents, Sub-Lessees, invitees, vendors, and contractors; and (2) over taxiways and aircraft ramps provided by County from Airport runways and landing areas for aircraft owned or operated by or on behalf of Lessee or its Sub-Lessees. Lessee’s right of access is subject to such rules and regulations as the Cameron County Commissioners Court, the FAA, TSA, or other Governmental Authority, may reasonably implement. Lessee shall not interfere with or impair the use of such public access roadways, taxiways, and ramps by other Airport users or Lessees.
- C. Existing Condition: Lessee acknowledges that it is leasing the Premises **AS IS, WITH ALL FAULTS**, and that County has not made any representations, warranties, covenants, or agreements, express or implied, regarding: (a) the value, nature, quality, or condition of the Premises; (b) the income to be derived from the Premises; (c) the suitability of the Premises for any activity or use which Lessee may conduct thereon; (d) the compliance of the Premises or its operation with any Applicable Laws; or (e) the habitability, marketability, or fitness for a particular purpose of the Premises. Lessee further acknowledges and agrees that any information, which County procures from a third party and provides to Lessee with respect to the Premises, may be delivered without any independent investigation or verification of such information by County, and County makes no representations as to the accuracy or completeness of such information.

**2. TERM**

Term: The term of this Lease shall be for a period of five (5) years (the “**Term**”), beginning and ending on \_\_\_\_\_, unless sooner terminated as provided herein.

**3. USE OF PREMISES**

- A. Authorized Uses. Lessee, at Lessee’s sole expense, is authorized to develop, finance, construct, manage, maintain, and operate as a Fixed Base Operator in accordance with the Port Isabel-Cameron County Airport Minimum Standards for Fixed Base Operators, attached hereto and incorporated herein as Exhibit B, the Port Isabel-Cameron County Airport Model Rules and Regulations, attached hereto and incorporated herein as Exhibit C, and with the Cameron County Request for Proposals

#1100, attached hereto and incorporated herein as Exhibit D. In the event of a conflict between the Minimum Standards and this Lease, this Lease shall control. Lessee may not use the Premises for any other purpose without the prior written consent of the County, which County may grant or withhold in its sole and absolute discretion.

- B. Prohibited Uses. Lessee shall not use or occupy, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would make void or voidable any insurance then in force with respect thereto, which would make it impossible or financially prohibitive to obtain the insurance required to be furnished by or on behalf of County or Lessee hereunder, which would constitute a public or private nuisance, or which would violate any Applicable Laws, or Airport Minimum Standards. In no event may the Facilities be used or occupied for residential purposes. Lessee shall not construct, erect or install, or permit the construction, erection or installation of, any wireless, cellular telephone, or other communications towers or antennae on the Premises.
- C. Permits and Licenses. Lessee shall procure and maintain or cause to be procured and maintained at no cost to County all Governmental Authorizations necessary or appropriate to construct, operate and maintain the Project on the Premises under Applicable Laws.

#### 4. RENT AND FEES

Lessee shall pay County Rent for the right and privilege granted under this Lease to use and occupy the Premises as follows:

- A. Rent. LESSEE agrees to pay an annual amount of \_\_\_\_\_ (\$\_\_\_\_\_) as rent payable at the rate of \_\_\_\_\_ per month. All rental fees shall be due and payable on or before the \_\_\_\_\_ day of each month. LESSEE will be charged a late fee of \$25.00 per day for every day the rental installment is not paid to the County. Rent shall be adjusted annually as provided in Section 4.B. below.
- B. Annual Rental Adjustment. Commencing with the first anniversary of the Effective Date, and thereafter throughout the remainder of the term of this Lease, Rent shall be adjusted each year as of the anniversary of the Effective Date by the percentage increase in the Consumer Price Index – All Urban Consumers (“CPI”) published by the U.S. Department of Labor Bureau of Labor Statistics over the CPI for the preceding twelve (12) months. If the CPI does not increase in a Lease Year, then the Rent for the subsequent Lease Year shall remain unchanged. In the event that the CPI should cease to be published, the parties shall use their best good faith efforts to agree upon a substitute index that most closely approximates the CPI in gauging changes in the cost of living for urban wage earners. The rental rate shall be rounded to the nearest one cent (\$0.01). The application of the provisions of this Section 4.B is illustrated by and is intended to conform to the examples described in Exhibit E.
- C. Fuel Flowage Fees. Lessee shall pay County a Fuel Flowage Fee for each gallon of fuel delivered to the Airport to Lessee or a Sub-Lessee or for the account of Lessee or a Sub-Lessee, including fuel delivered for the account of Lessee or a Sub-Lessee to another fuel facility on the Airport. Lessee shall act as the agent for the County for purposes of collection and remittance of the fuel flowage fee. The fuel retail sale price for clientele is \_\_\_\_\_, which does not exceed the **average mean** of the following local airport locations: **KBRO, KHRL, T65, KEBG, KMFE** ± (plus or minus) **fifty cents (.50 ¢)**. Lessee shall provide County with a written fuel flowage report setting forth the amount of fuel delivered to the Airport to Lessee, a Sub-Lessee, or for the account of Lessee or a Sub-Lessee during the reporting month. The report shall be accompanied by (i) documentation of the

amount of fuel delivered, including invoices and delivery receipts, and (ii) payment of the fuel flowage fee attributable to such deliveries.

**D. Security Deposit.**

(1) Upon execution of this Lease, Lessee shall deposit with the County the sum of \$\_\_\_\_\_ to be held by County as security for Lessee's full, faithful, and timely performance of its obligations under this Lease (the "Security Deposit"), being one (1) month estimated total Rent payable by Lessee under this Lease at its inception. The Security Deposit shall not be considered an advance payment of Rent, or a measure of damages in the event of default by Lessee.

(2) County shall have the right, but not the obligation, to apply all or any part of the Security Deposit to cure any default of Lessee under this Lease, including (a) any arrearages of Rent, (b) the cost to repair or restore any damage to the Premises, or (c) any other amounts due from Lessee under this Lease. In such event, Lessee must deposit with County an amount equal to the amount so applied by County within five (5) business days of written notice from County of the nature and amount of the application.

(3) County shall return the Security Deposit to Lessee, less any amounts applied by County under subsection (3), within sixty (60) days after the later of the expiration or termination date of this Lease, or the date that Lessee surrenders possession of the Premises to County.

**E. Records and Audit.** Lessee shall keep and maintain complete and accurate records of its operations related to or concerning the airport operations in accordance with generally accepted accounting principles in the United States. Upon not less than ten (10) business days prior written notice, County's auditors or other authorized representatives shall, at any time or times during the Term of this Lease or within three (3) years after the end of any Lease Year, have access to, and the right to audit, examine, or reproduce any and all records of the Lessee related to performance under this Lease, including, calculation of Gross Receipts and payment of Rent or other amounts payable under this Lease. Lessee shall retain such books and records for the longer of three (3) years after the Lease terminates or until completion of all pending audits or litigation between the parties. Lessee shall either keep and maintain all such records at a mutually acceptable location in Austin, Texas, or make such books and records available to County in Austin within twenty (20) days of receipt of written demand. If, as a result of such inspection and audit, it is established that additional Rent or other fees or charges are due County, Lessee shall, upon written notice by County, pay such additional fees, plus interest at the Contract Rate, within ten (10) days of written notice. If a County audit reveals a discrepancy of more than three Percent (3%) between the amount of Rent and fees paid by Lessee and the amounts determined to be due by the audit, Lessee shall reimburse County for the cost of such audit. If as a result of such inspection and audit it is established that Lessee has overpaid the fees due County, such overpayment shall be refunded to Lessee. Except at the end of the Term, such refund shall be in the form of a credit against future Rent payments.

**5. TAXES**

Lessee will pay, or cause to be paid, all ad valorem, use and occupancy, and occupation taxes, excises, levies, assessments, and other charges by any Governmental Authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind (collectively "Taxes"), which are assessed, levied, or imposed from and after the Effective Date by any public or quasi-public authority upon or with respect to: (a) the Premises or any part thereof; (b) the Facilities; or (c) the rent and income received by or for the account of Lessee from any sub-leases or for any use or occupation of the Premises as and when they become due. Lessee shall deliver to County evidence of timely payment of all Taxes.

## **6. UTILITIES**

Lessee shall pay or cause to be paid all fees and charges for gas, electricity, light, heat, air conditioning, power, cable television, telephone and other communication services, water, wastewater, drainage, and all other utilities and similar services rendered or supplied to the Premises. Lessee shall establish separate utility accounts for the Facilities in Lessee's name.

## **7. MAINTENANCE AND REPAIRS**

- A. Lessee, at Lessee's sole expense, shall maintain and take good care of the Premises and the Facilities, and all other improvements on the Premises including the hangars, fixtures, aircraft aprons, ramps and taxiways, water quality and drainage facilities, parking lots, driveways, gates, and fences, and shall make or cause to be made all repairs thereto and replacements thereof which are necessary to maintain and keep the Premises and Facilities in good order, repair, and condition at all times. Lessee shall maintain and repair all mechanical, electrical, plumbing, heating and cooling, and fire-protection systems in the Facilities. Subject to normal wear and tear, Lessee will not cause or permit any waste, damages, disfigurement, or injury to or upon the Premises, the Facilities, or any part thereof. Lessee shall mow and maintain the grass and landscaping within the Premises. Lessee shall maintain and repair all utility lines, fixtures and equipment on the Premises, except to the extent maintenance and repair is the obligation of the utility serving the Premises.
- B. Lessee shall provide, at its sole expense, all waste collection, handling, and disposal services necessary or appropriate to keep the Premises and Facilities free from trash, garbage and other refuse. Lessee shall provide, or cause to be provided, proper receptacles for trash, garbage and other refuse generated on or from business operations on the Premises. Lessee shall also provide special containers to collect hazardous waste, including used motor oil, engine fluids, and oily rags. Hazardous waste may not be placed in regular trash receptacles.

## **8. IMPROVEMENTS:**

- A. Plans and specifications for any and all improvements to be made on the property covered hereby must be submitted to COUNTY and its written approval obtained prior to commencement of construction. COUNTY, acting through its Building Inspector and other Inspectors, shall have free access to the property and to the improvements for the purpose of determining that construction conforms to the plans and specifications approved by COUNTY and to determine if the buildings and other improvements are being maintained as required in this Lease Agreement. It shall be LESSEE's responsibility to take such actions as are necessary to insure that the LESSEE's construction of improvements and any later maintenance work for which LESSEE is responsible is conducted without interference to other Lessees, the F.A.A. and aviation activity which is the principal purpose of the maintenance of the airport. Any activity which interferes with or endangers aviation activity will be immediately discontinued when so required by COUNTY or the F.A.A.
- B. LESSEE agrees and understands that any improvements or additions to County-owned buildings or structures will become the property of the COUNTY. It is expressly understood and agreed, however, that any structures or improvements placed on the leased premises that are in no way connected to, or a part of any County-owned structure or improvement shall remain the property of LESSEE, and LESSEE may sell such improvements to another LESSEE or remove same at the termination of its Lease, if LESSEE is not delinquent under the terms hereof, and subject to LESSEE's restoring and cleaning the premises after such removal except any concrete or asphalt pad, driveway, or parking area.

- C. No Liens. Lessee shall be solely responsible for payment to all contractors and workers for all elements of construction, modification, or demolition of any improvements, and shall keep the Premises free and clear of all liens resulting from any work thereon, or the furnishing of labor or materials, by or on behalf of Lessee. If any such lien is filed or asserted, Lessee shall promptly cause the same to be released within thirty (30) days, or shall post a surety bond for payment of such lien claims that causes the lien to be removed as an encumbrance on the Premises or any portion thereof.

## **9. FBO SERVICES AND OPERATIONS**

- A. FBO Services. At all times throughout the Term of this Lease, Lessee shall provide or cause to be provided all Aeronautical Services required to be provided by a Fixed Base Operator under the Port Isabel-Cameron County Airport Minimum Standards for Fixed Base Operators (Exhibit B), the Port Isabel-Cameron County Airport Model Rules and Regulations (Exhibit C), and the Cameron County Request for Proposal #1100 (Exhibit D). If Lessee is providing a Minimum Service through a subcontractor or Sub-Lessee, Lessee shall give County written notice of the service provided and the person providing that service. Anyone providing Aeronautical Services on behalf of Lessee must meet the minimum qualifications established in the Minimum Standards for such Aeronautical Service. Lessee shall give County prompt written notice of any change in the services it provides to its customers or the person performing such services on Lessee's behalf.
- B. Fueling of Aircraft. Fueling facilities and procedures shall comply with Airport Minimum Standards, all Airport environmental and spill containment requirements, fire codes, safety regulations, and other Applicable Law, and shall be subject to approval by County, which shall not be unreasonably withheld. In no event may a Sub-Lessee maintain or keep any fuel tanks or fuel dispensers on the Premises, except as expressly authorized under this Agreement. However the preceding sentence shall not be construed to prohibit a Sub-Lessee from "self-fueling" as such term is defined in FAA Advisory Circular 150/51906, provided that self-fueling is not performed inside any hangar, but in an area on the Premises designated by Lessee for self-fueling and reasonably approved by the Director. Lessee shall be responsible to clean up all spills and or releases that occur as a result of fueling operations, even if caused in whole or part by a Sub-Lessee. Waste materials associated with spill cleanup must be disposed of in accordance with Applicable Law and established City and Airport environmental policies and procedures.
- C. De-icing, Painting and Washing. No de-icing, anti-icing, or painting of aircraft is permitted anywhere on the Premises. Except for waterless aircraft cleaning, aircraft or vehicle cleaning or washing at the Airport is permitted only at designated wash rack areas connected to an industrial waste water system.
- D. Repair and Maintenance. No one other than an employee or subcontractor of Lessee may access the Premises to perform aircraft service, repairs or maintenance unless such service, repair or maintenance contractor has been granted a permit to perform such services on the Airport by County. However the preceding sentence shall not be construed to prohibit a Sub-Lessee from maintaining, repairing, cleaning, and otherwise providing service to its aircraft provided that the service is performed by the aircraft County or the County's employees with resources supplied by the aircraft County. Lessee shall be responsible to clean up all spills and or releases that occur as a result of aircraft service, repair and maintenance operations, even if caused in whole or part by a Sub-Lessee. Waste materials associated with aircraft service, repair and maintenance activities must be disposed of in accordance with Applicable Law and established City and Airport environmental policies and procedures.

- E. Engine Run-ups. Sub-Lessees shall perform engine run-ups on the east runway taxiway system exclusively, subject to receipt of Airport Airside Operations' prior approval. Running-up engines in the Premises is prohibited.
- F. No Interference with Flight Operations. Lessee shall not, and shall not permit any Sub-Lessee to, interfere with the landing and taking off of aircraft from the Airport or otherwise create or maintain a hazard.
- G. Sub-Lessees. Lessee shall have a written sublease, rental agreement, or other use and occupancy agreement with each Sub-Lessee. Lessee shall provide to County on a semi-annual basis an updated list of all Sub-Lessees occupying the Premises, including names, addresses and telephone numbers.

## **10. COUNTY'S OBLIGATIONS**

- A. Operation as a Public Airport. County shall operate and maintain the Airport as a public airport in accordance with Applicable Law.
- B. Runway and Taxiway Maintenance. County shall maintain and repair all public access runways, taxiways, ramps and aprons at the Airport. County shall have no obligation to maintain or repair private aircraft ramp, taxiway and aprons within the Premises. Nor shall County have any obligation to extend any runways, taxiways, ramps or aprons to the Premises.
- C. Right of Inspection. County may enter upon the Premises at any time in order to inspect the Facilities and to determine compliance by Lessee with its respective obligations under this Lease and applicable Airport rules and regulations. Except in an emergency, County shall use reasonable efforts to minimize disruptions to Lessee arising out of such inspections.
- D. Emergencies. In the event of an emergency, as determined by County in its sole discretion, County may temporarily deny Lessee access to the Facilities, direct Lessee to remove the aircraft from the Premises, or if Lessee cannot be promptly reached, remove, or cause the aircraft to be removed, from the Premises. During time of war or national emergency, County shall have the right to lease the Premises or any part thereof to the United States for government use, and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. All rent or other payments owing under this Lease shall likewise be suspended until Lessee's normal operations are resumed.

## **11. COMMUNICATION SERVICES**

- A. Telecommunications Services. All external telecommunications providers shall terminate at the demarcation point located in the Cameron County Airport demarcation point. If applicable, Lessee shall use the County's fiber optics and Copper Premise Distribution System (PDS) to connect to the demarcation point. Fees for telecommunications services are set by municipal ordinance.
- B. Telephone Service. Lessee may either use the Cameron County Airport Department's telephone system or select another telephone service provider. Lessee must provide their own telephone sets. Lessee shall purchase its own telephone switch and related equipment to connect to the Cameron County Airport Department's Airport telecommunications demarcation point. Lessee furnished telephone switches and equipment shall be located on Lessee's premises.
- C. Telephone Service Charges. Payment of all telephone service charges, including installation, maintenance, moves, adds, changes, long distance and local provider service shall be Lessee's sole responsibility. Lessee shall not enter into any telephone agreement that conflicts with the County's Minimum Point of Entry (MPOE), the telephone demarcation point.

- D. Data Communications Service. All data communication service charges, including installation, maintenance, moves, adds, changes, shall be borne by Lessee.
- E. Television Service. Lessee may not install satellite dishes, antennae or similar receiving devices on the Premises. All television service charges, including installation, maintenance, moves, adds, changes, and cable channel charges shall be borne by Lessee.
- F. Computer Networks. Lessee shall, at its sole expense, procure, install and maintain all computer networks within the Premises.
- G. Removal. Prior to the end of the term or earlier termination of this Lease, Lessee shall remove or remediate in accordance with applicable Environmental Laws all of Lessee's Hazardous Materials from the Premises, the Airport, and surrounding lands and waters. Unless instructed otherwise by the County, Lessee shall also, prior to vacating the Airport, remove all tanks, piping and other equipment which stored Hazardous Materials, or which are contaminated by Hazardous Materials. Lessee's responsibilities under this paragraph shall not extend to any Environmental Conditions existing on, in or arising from the Premises (or property adjacent or contiguous to the Premises) prior to Lessee's occupancy of the Premises except to the extent that a Lessee Environmental Party either disturbed or caused such pre-existing Hazardous Materials to migrate, so as to give rise to an Environmental Claim.

## 12. INSURANCE

Lessee will, at its cost and expense, throughout the term of this Lease obtain and maintain in full force and effect the policies of insurance set forth in Exhibit E, which is attached hereto and incorporated by reference as if fully set forth herein. Insurance provided by Lessee shall be primary coverage for all losses. Lessee shall require each Sub-Lessee to provide insurance, for coverages in amounts consistent with Exhibit E, naming County as an additional insured.

## 13. INDEMNITY

- A. Lessee shall defend, indemnify and hold harmless the County and its employees, agents, representatives, successors and assigns (Indemnified Parties), from and against all costs, expenses (including reasonable attorneys' fees, expenses, and court costs), liabilities, damages, claims, suits, actions, and causes of actions whatsoever, to the extent arising directly or indirectly out of: (a) any breach of this Lease by Lessee, any Sub-Lessee, and their respective agents, employees, or contractors (Lessee Parties); (b) any false representation or warranty made by the Lessee hereunder; or (c) any negligent act or omission, gross negligence, or willful misconduct of the Lessee Parties in connection with this Lease, the construction, development, operation or use of the premises, or the facilities. Lessee is not excused or relieved of its obligations under this section if a claim arises out of, or is caused by, the negligence or willful misconduct of the Lessee Parties concurrent with that of the Indemnified Parties. Lessee shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all claims against any of the indemnified parties.
- B. Claims Against Lessee. If any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Lessee arising out of or concerning this Lease, the Facilities, or the Premises, the Lessee shall give written notice thereof, to the County within three (3) business days after being notified of such claim, demand, suit, or action. The notice shall enclose a true copy of all written claims, and if the claim is not written or the information is not discernable from the written claim, state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of the claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. The

notice shall be delivered either personally or by mail and shall be directly sent to the Cameron County Judge, 1100 E. Monroe Street, Brownsville, Texas 78520.

#### **14. RULES AND REGULATIONS**

County may adopt and enforce reasonable rules and regulations, which Lessee agrees to observe and obey, with respect to the use of the Airport and its appurtenances, together with all facilities, improvements, equipment and services of the Airport, for the purpose of providing for safety, good order, good conduct, sanitation and preservation of the Airport and its facilities; provided that such rules and regulations shall be consistent with the rules, regulations, and orders of the FAA, TSA, or other regulatory agency having jurisdiction, with respect to aircraft operations at the Airport; and provided, further that such are not inconsistent with the provisions of this Lease, or other agreements with Lessee at the Airport, or the procedures prescribed, or approved from time-to-time by the FAA, TSA, or other Governmental Authority with respect to the operation of aircraft at the Airport.

#### **15. DEFAULT AND REMEDIES**

A. Default by Lessee. Each of the following shall be deemed a default by Lessee (“Lessee Default”) hereunder and a material breach of this Lease:

- (1) Lessee shall fail to pay any installment of Rent, or any other sum payable by Lessee to County under this Lease when due, and such failure shall continue for ten (10) days after delivery by County to Lessee of written notice of the failure;
- (2) Lessee shall fail to pay when due any taxes, assessments, or utility charges when due, or fails to deliver to County evidence of payment thereof, and such failure shall continue for thirty (30) days after delivery by County to Lessee of written notice of the failure, subject to Lessee’s right to contest the amount of such Taxes;
- (3) Lessee shall fail to keep, perform, or observe any of the non-monetary covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Lessee, and Lessee shall fail to cure such failure within thirty (30) days after delivery by County to Lessee of written notice specifying the failure; provided, however, if the failure is curable, but cannot be cured within such 30-day period, a Default shall not occur under this subsection if Lessee commences the cure of the failure during such 30-day period, and thereafter, diligently and continuously pursues the cure to its completion within an additional period not to exceed ninety (90) days;
- (4) Lessee shall abandon or vacate the Premises, and the Premises remain abandoned or vacant for a period of thirty (30) days after receipt of written notice from County;
- (5) An involuntary petition shall be filed against Lessee under applicable Bankruptcy Law, or a receiver of Lessee, or of all or substantially all of the property of Lessee, shall be appointed without acquiescence, and such petition or appointment shall not be discharged or stayed within sixty (60) days after the happening of such event;
- (6) Lessee shall make an assignment of its interest in the Premises for the benefit of creditors, shall file a voluntary petition under applicable Bankruptcy law, or seek relief under any other law for the benefit of debtors;
- (7) Any representation or warranty made by Lessee under this Lease that is found to be false, misleading, or inaccurate shall be considered to be materially false, misleading or inaccurate as of the date made;



(8) Lessee tenders more than one check to County in payment of fees or charges under this Lease in any twenty-four month period which is not paid upon presentment by Concessionaire's bank.

B. Remedies of County. If a Lessee Default occurs, County may, at any time thereafter and without waiving any other rights hereunder or available to County at law or in equity, do any one or more of the following:

(1) County may terminate this Lease by giving Lessee written notice, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through, or under Lessee shall automatically terminate upon the effective date of such notice; and County, its agents or representatives, may, without further demand or notice, reenter and take possession of the Premises and remove all persons and property there from with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof.

(2) County shall have the right, but not the obligation, without judicial process and without incurring any liability therefore, to enter upon the Premises and perform any obligation that Lessee has failed to perform. Performance by County shall not cure the Lessee default, and all costs and expenses incurred by County in performing such obligations of Lessee (including County's administrative and overhead costs) shall be deemed Additional Rent payable by Lessee to County.

(3) County may exercise any other right or remedy available to County under this Lease or at law or in equity.

C. Default by County. The following shall be deemed a default by County ("County Default") and a material breach of this Lease:

(1) County shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by County, and County shall fail to cure such failure within thirty (30) days after delivery by Lessee to County of written notice specifying the failure; provided, however, if the failure is curable, but cannot be cured within such 30-day period, a County Default shall not occur if County commences the cure of the failure during such 30-day period and thereafter diligently and continuously pursues the cure to its completion; or

(2) Any representation or warranty made by Lessee under this Lease that is found to be false, misleading, or inaccurate shall be considered to be materially false, misleading or inaccurate as of the date made.

D. Lessee's Remedies. If any County Default occurs, Lessee may at any time thereafter do any one or more of the following:

(1) Lessee may terminate this Lease by giving County written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through, or under Lessee shall automatically terminate upon the effective date of such notice; and Lessee shall thereafter be released of all other duties, obligations and responsibilities with respect to this Lease, except such provisions, including Lessee's indemnity obligations that shall survive termination; or

(2) Lessee may exercise any other right or remedy available to Lessee under this Lease or under Applicable Law, except as expressly limited by the terms of this Lease.

## 16. SURRENDER OF PREMISES

- A. Condition of Premises. Upon the expiration of the term of this Lease by expiration, termination, or otherwise, or of any renewal, or extension hereof, Lessee shall peaceably quit, deliver up, and surrender the Premises, in good order, repair, and condition. Lessee shall restore the Premises and make such repairs as may be necessary to restore the Premises to substantially the same condition as the Premises were upon inception of this Lease, reasonable wear and tear and County-authorized improvements excepted. Lessee shall remove all goods, equipment or personal property owned by Lessee on the Premises; subject, however, to any valid lien that County may have thereon for unpaid Rent, fees, or charges. In no event may Lessee dismantle, remove or demolish any improvements without the prior written consent of County.
- B. Repossession and Holding Over. Upon such expiration County may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by summary proceedings, ejectment, or otherwise, and may have, hold, and enjoy the Premises and all rental and other income there from, free of any claim by Lessee with respect thereto. If Lessee does not surrender possession of the Premises at the end of the term, such action shall not extend the term. Lessee shall be a Lessee at sufferance, and during such time of occupancy, Lessee shall pay to County, as damages, an amount equal to one hundred fifty percent of the then current Rent for the Premises. County shall not be deemed to have accepted a surrender of the Premises by Lessee, or to have extended the term, other than by execution of a written agreement specifically so stating.

## 17. CASUALTY LOSS

- A. Restoration Upon Casualty Loss. If the Facilities, or any buildings, hangars or leasehold improvements are wholly or partially destroyed or damaged by fire or any other casualty (“**Casualty**”), Lessee shall cause the same to be restored and reconstructed with available insurance proceeds (and such other proceeds as are made available to Lessee), unless otherwise agreed by County in writing, and the following provisions shall apply:
- (1) The design of all portions of the Facilities to be restored and reconstructed shall meet the requirements of this Lease and County shall have the same rights of review, comment, and approval with respect to such design as it has for new construction.
  - (2) Restoration and reconstruction shall commence within six (6) months of the date of the Casualty, and shall be pursued thereafter with all due diligence to completion.
  - (3) Lessee shall use all available proceeds of Lessee’s casualty insurance for the restoration and reconstruction of the Facilities.
  - (4) All proceeds from Lessee’s rental insurance or business interruption insurance policies shall be the property of Lessee.
- B. No Restoration Following Casualty Loss. If Lessee and County agree not to restore and reconstruct the Facilities, then either party may elect to terminate this Lease as to the portion of the Premises affected by the Casualty Loss (as reasonably determined by County) upon thirty (30) days’ written notice to Lessee.

## 18. LAWS, AGREEMENTS AND GRANT CONDITIONS

- A. Grant Assurances. This Lease is subject to the provisions of any agreement heretofore made between County and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to County for Airport purposes, or the expenditure of federal funds for the development of

the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA's Airport Improvement Program, or in order to impose or use passenger facilities charges under 49 U.S.C. § 40117.

- B. National Emergencies. This Lease shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during a time of war or national emergency.
- C. Non-Discrimination and Affirmative Action. Lessee, for itself, its successors and assigns, as a part of the consideration of this Lease, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said Premises and improvements; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to unlawful discrimination; and (3) that Lessee shall use the Airport facilities in compliance with all other requirements imposed by, or pursuant to, 49 CFR, Part 21 (Non-discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended. Lessee covenants that (i) 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 Section, and (ii) it will require that any covered Sub-Lessee similarly will undertake affirmative action programs and that the Sub-Lessee will require assurance from the Sub-Lessee's Sub-Sub-Lessees, as required by 14 CFR, Part 152, Subpart E, to the same effect. Lessee shall post, in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
- D. Public Accommodation Laws. Lessee covenants that it shall comply fully with Applicable Laws governing non-discrimination in public accommodations and commercial facilities, including the requirements of the Americans with Disabilities Act and all regulations hereunder, and that Premises shall remain in compliance with throughout the term of this Lease.
- E. Compliance with Laws. In its use and occupancy of the Premises, Lessee shall strictly comply with all Applicable Laws. Lessee shall not do, or permit anything to be done, in or on the Premises that would constitute a public or private nuisance.
- F. Lighting and Electrical Interference. Lessee shall not permit or create any electrical or other interference with radio communications between the Airport and aircraft. Lessee may not install any lighting on the Premises that would make it difficult for pilots to distinguish between Airport lights and those of Lessee, impair visibility in the vicinity of the Airport, or otherwise endanger landing, taking off, or maneuvering of aircraft.
- G. Airport Development. The use of a portion of Airport property for operation of the Premises is subordinate to the use of Airport property for aviation purposes. County reserves the right to develop and improve the Airport and all roadways, terminal facilities, land areas, and taxiways and any other facilities at the Airport as it may see fit.
- H. Amendment. In the event that the FAA or other Governmental Authority shall require any modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, or to impose or use passenger facilities charges under 49 U.S.C. § 40117, or if it is necessary to modify this Lease to comply with the requirements of Applicable Laws, orders and decisions of a Court, the FAA or other Governmental Authority, County may

unilaterally modify this Lease, upon advice of its legal counsel, as may reasonably be required to obtain such funds or comply with such law. Nothing herein shall preclude Lessee from contesting such orders or decisions, but Lessee shall abide by the unilateral modification by the County, until or unless rescinded, overturned, or if stayed, for the duration of the stay. In no event will Lessee be required, pursuant to this paragraph, to pay Rent greater than specified herein.

## 19. SECURITY

- A. Lessee shall comply with applicable Airport security regulations and shall control the premises so as to prevent unauthorized access to the air operations area. Lessee shall comply with all applicable Transportation Security Regulations including Title 49 CFR Chapter XII. Lessee's security system must comply with Airport security plan. The County reserves the right to install security devices in or on the premises, as it deems necessary. **LESSEE SHALL INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, PENALTIES, FINES, COST, LOSS, OR EXPENSE INCURRED BY THE COUNTY ARISING OUT OF, OR CONCERNING, A BREACH BY LESSEE, ANY SUBLESSEE, OR THEIR RESPECTIVE EMPLOYEES OR CONTRACTORS, OF LESSEE'S OBLIGATIONS UNDER THIS SECTION.**
- B. Lessee, at Lessee's expense, shall provide and install such locks, fences and other security devices or measures, as may be necessary or appropriate to (1) comply with applicable TSA Regulations or the Airport Security Plan, and (2) protect and safeguard the Premises, the Facilities, any goods, equipment, or other property stored thereon, Lessee's employees, invitees, customers, and those of Lessee's Sub-Lessees and customers. Lessee shall provide County with a current key (or combination) to all fence and exterior building and hangar locks in the Premises.
- C. Lessee shall provide electrical wiring and security data circuits as specified by County to operate security devices including gates, access controls and cameras, which are part of the Air Operations Area of the Airport ("AOA"). Lessee shall supply power from an electrical panel as specified by County with circuit breaker protection. The County may connect AOA security data cables to the PDS within Lessee's telecommunications room. Energy to operate AOA security equipment on Lessee's premises shall be furnished by Lessee at no cost to County.

## 20. FORCE MAJEURE

- A. The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure means acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, wars, riots or insurrections; landslides, lightning, earthquakes, fires, acts of domestic or foreign terrorism, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. Force Majeure does not include economic or market conditions, which affect a party's cost, but not its ability, to perform.
- B. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in writing, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.

- C. No event of Force Majeure shall relieve Lessee from its monetary obligations under this Lease, including Lessee's obligations to pay Rent hereunder, nor shall the term of this Lease be extended by any event of Force Majeure.

## **21. NOTICES AND CONTRACT ADMINISTRATION**

- A. Contract Administrator. The Cameron County Airport Director is the County's designated representative for matters relating to this Lease Agreement. County may change its contract administrator by written notice to Lessee.
- B. Notices. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section; or (b) hand delivering the same to the party to be notified. Notice given in accordance herewith shall be deemed delivered and effective on the earlier of actual receipt or three calendar days next following deposit thereof in accordance with the requirements above. Notices to County shall be sent to: Cameron County Airport Director, 1100 E. Monroe Street, Brownsville, Texas 78520. Any notices, consents and approval to Lessee shall be addressed to: \_\_\_\_\_.

## **22. ASSIGNMENT, SUCCESSORS AND ASSIGNS**

- A. By Lessee. Lessee may not assign this Lease, or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of County, which may be granted or withheld in County's sole and absolute discretion. Nor may Lessee's interest in this Lease be assigned or transferred involuntarily or by operation of law without the prior written consent of County. A transfer directly or indirectly of a controlling interest in Lessee (either in one transfer or a series of transfers) shall constitute an assignment hereunder subject to County's consent. Notwithstanding the foregoing provision, Lessee may lease hangar and tie-down space to Sub-Lessees without County's prior consent provided that: 1) the sub-lease or other use and occupancy agreement is expressly subject to and subordinate to this Lease, 2) the terms of the sub-lease or other use or occupancy agreement are consistent with the terms and conditions of this Lease, and 3) Lessee provides County a true and complete copy of each such sublease or use and occupancy agreement no later than ten (10) days after its execution. No assignment, sublease, or grant of use and occupancy rights shall relieve Lessee of its obligations to County hereunder. Any assignment, transfer or sublease that is not expressly permitted under this Lease and has not been authorized by County in writing shall be void.

## **23. NONEXCLUSIVE RIGHTS**

Nothing in this Lease is intended or shall be construed to grant or authorize the granting of an exclusive right to provide an aeronautical service or operate a fixed base operator facility.

## **24. MISCELLANEOUS**

- A. Severability. The invalidity or unenforceability of any provision of this Lease shall not affect validity or enforceability of any other provision of this Lease, and the remainder shall be construed and enforced as if the invalid or unenforceable provision were never included in the Agreement. The parties agree to use their best efforts to reform the Agreement to replace any such provision with a valid provision that comes as close as possible to the intent of the invalid or unenforceable provision.

- B. Signs. Lessee shall obtain the Cameron County Airport Director's written approval prior to placing signs on the terminal premises. Lessee shall submit drawings, design dimensions, type, number and character of all proposed signs to the Cameron County Airport Director for evaluation.
- C. Jurisdiction and Venue. This Lease is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of law principles. Venue of any action brought concerning this Lease shall be proper and lie exclusively in Cameron County, Texas.
- D. Non-waiver of Rights. No waiver of default by either party of any terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.
- E. No Partnership or Agency. Nothing herein is intended or shall be construed to in any respect create or establish any relationship other than that of Lessor and Lessee, and nothing herein shall be construed to establish any partnership, joint enterprise, joint venture or association or make Lessee the general representative or agent of the County for any purpose.
- F. Amendment. Except as otherwise expressly provided herein, the provisions of this Lease may be amended only by a written agreement signed by the County and the Lessee.
- G. Warranty of Authority. Each party warrants and represents to the other that the person signing this Lease on its behalf has been duly authorized and empowered to do so, that it has taken all action necessary to approve this Lease, and that this Lease is a lawful and binding obligation of such party, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditor's rights, or with respect to County, governmental immunity under the Constitution and laws of the State of Texas.
- H. No Third Party Beneficiaries. This Lease is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.
- I. Entire Agreement.

(1) This Lease, together with its exhibits and attachments, contains the entire understanding and agreement between the parties hereto with respect to the subject matter of this Lease. It is further understood and agreed by Lessee that County and its agents have made no representations or promises with respect to this Lease, except as expressly set forth herein, and that no claim or liability or cause for termination shall be asserted by Lessee against the County, and the County shall not be liable by reason of the breach of any representations or promises not expressly stated in this Lease.

(2) The exhibits to this Lease are as follows:

Exhibit A- Map of the Airport and Premises

Exhibit B- Port Isabel-Cameron County Airport Minimum Standards for Fixed Base Operators (FBO)

Exhibit C-Port Isabel-Cameron County Airport Model Rules and Regulations

Exhibit D-Cameron County Request for Proposal #1100

Exhibit E-Application of CPI Rent Increase

Exhibit F-Insurance Requirements

**IN WITNESS WHEREOF**, County and Lessee have executed this Lease through their duly authorized representatives as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the Effective Date).

\_\_\_\_\_  
Carlos H. Cascos, CPA  
Cameron County Judge

\_\_\_\_\_  
Lessee

Attested By:

\_\_\_\_\_  
Joe G. Rivera, County Clerk

DRAFT