

## **ARTICLE VI - INDEMNIFICATION, EXCEPTION OF CITY, AND INSURANCE**

### **Section 6.01: Indemnification.**

To the furthest extent allowed by law, Permittee shall hold City completely harmless and indemnify, protect and defend City and each of its officers, officials, employees, agents and volunteers against any and all claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses [including all reasonable costs and expenses for investigation and defense thereof (including, but not limited to attorney fees, court costs and expert fees)], or any one, more or all of these, of any nature whatsoever, arising or allegedly arising, directly or indirectly, out of, as a result of, or incident to, or in any way connected with: (1) Permittee's occupancy(ies) and/or use(s) of any part or all of the Airport; (2) Permittee's exercise of any one, more or all of the rights and privileges herein granted; (3) any breach or default in the performance of any obligation on Permittee's part to be performed under the terms of this Permit; and/or (4) any act(s) or omission(s) on the part of Permittee and/or any officer(s), agent(s), employee(s) or contractor(s), of Permittee during the Term, except for any claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the gross negligence or by the willful misconduct of City or any of its officials, officers, or employees acting within the scope of their duties for City. The forgoing indemnification obligation is subject to the City providing Permittee with: (1) written notice of any claim subject to indemnification hereunder; (2) sole control over the defense and settlement of each such claim (provided that Permittee will not settle or compromise any claim without the written consent of the City); and (3) reasonable cooperation, at Permittee's expense, in the defense and settlement of a claim. City may, at its sole cost and expense, participate in the defense of a claim with counsel of its own choosing.

Permittee shall conduct all defenses at no cost or expense to the City. City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Permittee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Permittee and its officials, officers, employees, agents and volunteers.

The provisions of this section of this article shall survive the expiration or early termination of this Permit.

### **Section 6.02: Exemption of City.**

Permittee hereby specifically warrants, covenants and agrees that City shall not be liable for injury to Permittee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Airport under authority hereof, whether belonging to Permittee, or any employee, agent, contractor, sub-contractor, tenant, sub-lessee of Permittee, or any other person whomsoever. The City shall not be liable for any injury to the person of Permittee or Permittee's employees, agents, contractors, sub-contractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air

conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Airport or in or on any of the improvements/ facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Permittee. Permittee also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties. The above exemption shall not apply and shall in no way relieve the City from any liability, claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the gross negligence or by the willful misconduct of City or any of its officials, officers, or employees acting within the scope of their duties for City.

### **Section 6.03: Insurance.**

Permittee shall, at Permittee's expense, obtain and, throughout the Term, maintain in full force and effect all policies of insurance required hereunder, with an insurance company(ies) either (i) eligible to issue insurance policies in the State of California and rated not less than "A-/VII" in Bests Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required and shall maintain limits of liability of not less than those amounts stated below. The following policies of insurance are required:

A. Commercial General Liability insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Permit) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.

B. Commercial Automobile Liability insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.

C. Workers' Compensation insurance as required under the California Labor Code.

D. Employers' Liability insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

Permittee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Permittee shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of City, of policy cancellation, or reduction of coverage, except for the Workers' Compensation policy, which shall provide a ten (10) day written notice of such cancellation, or reduction of coverage. Upon issuance by the insurer, broker, or agent of a notice of cancellation, or reduction in coverage, Permittee shall file with City a certified copy of the certificates and endorsements for such policy, and applicable sections of the insurance policy to verify coverages required herein.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City of Fresno, its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Permittee's insurance shall be primary and no contribution shall be required of City. Any

Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Permittee shall furnish City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of this Permit at the following address:

City of Fresno - Airports Department Attn.: Properties Division  
4995 E. Clinton Way Fresno, CA 93727

or to such other address as City may, from time to time, provide Permittee in writing during the Term.

Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Permit.

Permittee shall have the right to provide the coverage specified in this Article by a program of self-insurance, which has been approved by the State of California. Permittee shall furnish City with a self-insured certificate of insurance and applicable endorsements. Said certificate and applicable endorsements shall document that Permittee's self-insurance program is approved by the State of California; the retention level of such self-insurance program; and that the policy of insurance is primary and no contribution shall be required by City. Permittee shall also supply the name of Permittee's excess insurance carrier at the time the certificate of self-insurance is supplied to City.

**Section 6.04: Delivery to Director of Evidence of Insurance.**

Permittee must deliver, without request or demand, to the Director, a certificate of insurance and all applicable endorsements or other evidence of insurance coverage required by this Article in form and content satisfactory to City's Risk Manager or his/her designee. Permittee must update such evidence of insurance not less frequently than annually.

**Section 6.05: Expiration of Insurance Policy.**

Promptly following the expiration of any insurance policy required by this Article, Permittee must submit to the Director a certificate of insurance and all applicable endorsements showing that such insurance coverage has been renewed. If such coverage is cancelled or reduced, Permittee, within five business days following the date of written notice from the insurer of such cancellation or reduction in coverage, must file with the Director a certificate of insurance and all applicable endorsements showing that the required insurance has been reinstated or provided through another insurer or insurers.

**Section 6.06: Adjustment of Claims.**

Permittee must provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Permittee under this Permit.