



Atlanta Airlines Terminal Company
Delivering Excellence. Exceeding Expectations.®

**ATLANTA AIRLINES TERMINAL COMPANY, LLC
HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT**

TERMS & CONDITIONS OF SERVICE – CONCESSION CUSTOMERS ONLY

Effective Date: July 15, 2019

1. APPLICATION OF AND AGREEMENT TO TERMS; CHANGES TO TERMS

- a. These Terms & Conditions of Service (“Terms & Conditions”) apply to all services performed by the Atlanta Airlines Terminal Company, LLC (“AATC”) on behalf of Prime, operating one or more concessions in the Central Passenger Terminal Complex (“CPTC”) at the Hartsfield-Jackson International Airport, Atlanta Georgia (the “Airport”; each, a “Customer”), such services include without limitation, (a) regular or emergency maintenance and operations services, janitorial and solid waste removal services (collectively, the “M&O Services”), and (b) such additional services as AATC may agree to perform pursuant to a purchase order or similar written service request issued by Customer (a “Work Order”) during the term hereof and accepted by AATC in writing (the “Other Services”; and together with the M&O Services, the “Services”). By using the Services, Customer agrees to be bound by these Terms & Conditions, which constitute an agreement between AATC and Customer.
- b. Notwithstanding any provision hereof, AATC may amend these Terms & Conditions, including the scope of any Service(s), on not less than thirty (30) days prior written notice to Customer (which notice shall be deemed given by the posting of the revised Terms & Conditions on AATC’s website at www.aatc.org/forms-alt/, along with the date on which such revised Terms & Conditions became effective as indicated by the “**Effective Date**” heading at the top of such revised Terms & Conditions), *provided that* any such change shall apply to all similarly situated concessions clients of AATC and shall have been approved by the members of AATC. At AATC’s discretion, notice of any amendments or changes to the Terms & Conditions may be provided through other means of communication or as is required by law.

Customer's continued acceptance of any affected Service(s) after the effective date of such change shall constitute Customer's acceptance of and agreement to such change.

2. FEES

- a. Customer shall pay AATC, in respect of regular or emergency maintenance M&O Services, Customer's allocable share of the relevant expenses incurred by AATC, based on its direct cost; and janitorial and waste removal M&O Services based on Customer's annual weighted average revenues determined in accordance with AATC's standard allocation methodology for M&O Services to concessions clients as in effect from time to time. Charges for electricity or other utilities provided through AATC's master contracts will be invoiced and payable based on the rates charged to AATC by the underlying utilities provider and actual consumption as measured by local utility meters. In addition, Customer shall pay AATC overhead charges on all fees or other amounts payable hereunder (including utility pass-throughs) in accordance with AATC's standard concessions overhead schedule as in effect from time to time (the "Overhead Schedule"), the current version of which may be found on AATC's website at www.aatc.org/forms-alt/. AATC reserves the right to amend the Overhead Schedule without prior notice by posting the revised Overhead Schedule on its website. Unless otherwise specified by AATC in connection with any Work Order, AATC will invoice Customer monthly in arrears for all Services provided hereunder. All expense allocations made by AATC in good faith will be binding on Customer absent manifest error.
- b. Customer shall pay to AATC, in respect of any Other Services, the amount set forth in, or determined in accordance with, AATC's written acceptance of the applicable Work Order, or if no amount or method of determination is set forth therein, an amount determined by AATC on a time and materials basis using AATC's then-current standard labor and materials rates as in effect from time to time, plus overhead in accordance with the Overhead Schedule.
- c. Customer shall also pay any applicable sales, use, excise or other taxes imposed on the provision of Services or any other amounts payable in respect of the Services (other than taxes on AATC's income), which will be separately itemized.

3. DATE PAYABLE

Customer shall pay each bill rendered by AATC, without deduction, set-off or offset, on or before the twenty-fifth (25) day of the calendar month during which it is rendered, *provided* that no bill

shall be considered past due earlier than fourteen (14) days after the date such bill is rendered. Subject to the proviso in the preceding sentence, no delay by AATC in issuing any estimated or adjusted bill shall release Customer from its obligation to pay for any Services in accordance herewith. If Customer does not pay in full all billed amounts when due, Customer shall pay to AATC interest on the overdue amount at a rate equal to the Prime Rate plus one and one-half percentage points, which interest shall accrue from the due date until the date payment is received by AATC. As used herein, the "Prime Rate" means the per annum rate of interest publicly announced from time to time by Wells Fargo Bank, N.A. as its "prime rate", "base rate", "corporate base rate" or other similar reference rate as in effect from time to time (or any other commercial bank as AATC may reasonably designate in writing from time to time).

4. LIMITED WARRANTIES

AATC warrants that all Services performed by AATC shall be performed, with respect to any M&O Services, in material compliance with applicable laws and substantially in accordance with past practices for such M&O Services prior to the Effective Date of these Terms & Conditions, or, with respect to any Other Services, substantially as specified in AATC's written acceptance of any Work Order for such Other Services. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, AATC MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE SERVICES OR ANY GOODS USED OR PROVIDED IN THE PERFORMANCE OF ANY SERVICES OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND AATC HEREBY EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES.**

5. REMEDY

Subject to Section 12 below with respect to Services or goods provided by Subcontractors, AATC's sole obligation, and Customer's sole remedy, in respect of any Service or related good that does not conform to the limited warranties in Section 4 is re-performance of such Service or replacement of such non-conforming good. AATC reserves the right to replace any non-conforming good with another product of similar quality and purpose.

6. EXCLUSION OF CERTAIN DAMAGES

WITHOUT LIMITING ANY REMEDIES SPECIFICALLY CONTEMPLATED HEREIN, TO THE EXTENT PERMITTED BY LAW, AATC WILL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST

PROFITS OR REVENUES, LOSS OF USE OR SIMILAR ECONOMIC LOSS), PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES, WHETHER ARISING UNDER CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATED TO ANY SERVICES PERFORMED OR GOODS FURNISHED (OR THE FAILURE TO PERFORM ANY SERVICES OR FURNISH ANY GOODS) BY OR ON BEHALF OF AATC, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. LIMITATION OF LIABILITY

Subject to Section 12 below with respect to Services or goods provided by Subcontractors, to the extent permitted by law, AATC's liability for any direct damages resulting from, arising out of or relating to any Services or related goods (or any failure to perform or provide same), whether based on an action or claim in contract, negligence, tort or otherwise, will not exceed, in the aggregate, an amount equal to the fees paid to AATC in respect of the corresponding Service(s) during the two months prior to the assertion of the claim; provided, however, that the foregoing limitation of liability shall not apply to the extent of any damages arising directly from the gross negligence or willful misconduct of AATC. No director, officer, agent or employee of AATC will be personally liable to Customer in respect of any Services performed or goods provided (or not performed or provided).

8. ADVANCES

Customer agrees to comply with AATC's policies and procedures with respect to maintenance and operations advances as now or hereafter in effect (the "M&O Advance Procedure"). A copy of AATC's current M&O Advance Procedure is available on AATC's website at www.aatc.org/forms-alt/. AATC may from time to time and in its own discretion change or amend all or any portion of the M&O Advance Procedure, provided that any such change or amendment shall (i) become effective with respect to Customer only upon thirty (30) days' written notice, (ii) shall apply consistently to all similarly situated concessions clients of AATC, and (iii) shall have been previously approved by the members of AATC. Customer's failure to comply with the M&O Advance Procedure as now or hereafter in effect will constitute a material default of Customer's obligations and shall be a basis for AATC to suspend or otherwise curtail its provision of Services on behalf of Customer.

9. SECURITY INTEREST

To secure Customer's payment obligations in respect of any Services, Customer hereby grants to AATC a continuing security interest in any and all funds of Customer now or hereafter in the possession of AATC for any reason. Notwithstanding any other provision hereof, and without limiting any other right or remedy of AATC, AATC may, in its discretion by written notice to Customer, apply all or any portion of such funds against any amounts due and payable by Customer to AATC (including interest, late payments charges and any costs of collection payable pursuant to Section 10). Customer hereby authorizes AATC to file appropriate financing statements under the UCC reflecting the foregoing security interest.

10. COSTS OF COLLECTION

In the event any amount owed by Customer to AATC is past due and collected, in whole or in part, by or through an attorney-at-law or other collection agent, all reasonable costs of collection, including reasonable attorneys' fees, shall be paid by Customer.

11. TERMINATION

If AATC suspends or terminates the provision of Services upon a default by Customer, whether in whole or in part, such suspension or termination shall be without prejudice to any rights or obligations (including payment obligations) in respect of Services performed prior to the effective time of such termination, and in addition to any other amounts due to AATC, Customer shall reimburse AATC for any fees or costs incurred or to be incurred by AATC under any non-cancellable contract or Subcontract entered into by AATC in connection with any Work Order on behalf of Customer which has been terminated. For so long as any material default by Customer has occurred and is continuing, all fees in respect of Services performed after the occurrence of such default shall be increased, on ten days' prior notice by AATC to Customer, by fifteen percent (15%). The parties acknowledge and agree that the damages suffered by AATC as a result of any such material default are difficult to predict with certainty and that such increase is intended by the parties as liquidated damages (and not as a penalty) in respect of such material default.

12. SUBCONTRACTS

The following provisions shall apply when any Services are provided by AATC through a Subcontract:

a. GENERAL

Customer acknowledges that AATC's ability to provide all or a portion of the Services is dependent upon the services of another party (a "Subcontractor") under one or more

contracts or other arrangements (the "Subcontracts") between AATC and one or more Subcontractors. Customer further acknowledges that all or a portion of the Services shall be performed by one or more Subcontractors and their personnel, except as required under the terms of a Subcontract or as an incident to exercising reasonable coordination and review of a Subcontractor's performance of the Services.

b. TERMINATION

AATC may terminate, and shall not be liable to Customer in respect of, any such Services if, despite AATC's using commercially reasonable efforts, Subcontractor services cannot be arranged either through the incumbent Subcontractor or other possible Subcontractors, provided that AATC shall give written notice to Customer of such termination as soon as is reasonably possible once AATC is in receipt of a notice of termination from the Subcontractor, or once AATC has determined that such Services cannot be provided through an existing or another Subcontractor.

c. RESPONSIBILITY FOR SUBCONTRACTOR'S ACTS OR OMISSIONS

Notwithstanding any other provision hereof, AATC shall have no liability to Customer for any acts or omissions of any Subcontractor. AATC shall use its good faith commercial efforts to pass through to Customer the benefits of any warranties, indemnities or similar protections provided by any Subcontractor with respect to the Services performed for the benefit of Customer through such Subcontractor. To the extent that any such Subcontractor is liable to AATC under the terms of any Subcontract for work to be performed for Customer or for injury to Customer's property or personnel, and to such extent and in such circumstances, AATC will make reasonable good faith efforts to recover for Customer's benefit any such amounts believed by Customer to be owed by any such Subcontractor, and to assist Customer in recovering directly from such Subcontractor as a third party beneficiary of the pertinent Subcontracts; in each instance Customer will reimburse AATC for out-of-pocket expenses reasonably incurred by AATC in seeking such recovery. Subject to the foregoing, Customer acknowledges that it is not intended to be a third party beneficiary of any such Subcontract, and agrees that even if it is or may be deemed to be a third party beneficiary of any Subcontract entered into by AATC, AATC shall have the right, without prior notice to or consent of Customer, to amend, modify, terminate or waive provisions of any such Subcontract as AATC may determine in its good faith

exercise of its business judgment, and that AATC shall have no liability to Customer as a result of any such amendment, modification, termination or waiver.

d. GOOD FAITH EXERCISE OF DISCRETION

AATC shall have no liability to Customer for any act or omission taken or not taken in AATC's good faith reasonable exercise of discretionary authority.

e. OTHER TERMS AND PROVISIONS

Except as otherwise provided in these Terms & Conditions, to the extent that the Services are provided by a Subcontractor, the Services shall be provided in accordance with and subject to the terms and conditions set forth in each Subcontract.

f. SUBSTITUTE SERVICES

In the event services of a Subcontractor are discontinued or interrupted for any reason, AATC shall use commercially reasonable good faith efforts to procure substitute services from a new subcontractor as soon as possible if the incumbent Subcontractor is unable to provide services. However, Customer shall have the right to arrange for substitute services by any means legally permissible.

13. INDEMNIFICATION

Customer hereby agrees to be liable for and hereby agrees to defend, release, discharge, fully indemnify and hold AATC, its directors, officers, members and employees harmless from and against any and all claims, demands, damage, liability, actions, causes of action, loss, cost and expense of any nature whatsoever (including investigation costs and expenses and reasonable attorney's fees and expenses incident thereto) by reason of any injury, including death, of any person whomsoever (including directors, officers, employees, agents, guests, licensees invitees, or other persons associated with Customer), regardless of how caused, or any loss or damage to property of every class and description owned by or in the possession of any such person, arising in relation to the performance or non-performance of any Service(s), except to the extent resulting from the gross negligence or willful misconduct of AATC, its directors, officers, agents or employees or its contractors or subcontractors and their directors, officers, agents or employees.

AATC shall pursue all rights it may possess to be indemnified by a Subcontractor for claims, demands, damage, liability, actions, causes of action, losses, fines, costs and expenses of any nature whatsoever (including the costs and expenses of investigation and attorney's fees

and expenses) and will subtract any amounts received under such indemnification from any duplicative amounts owed by Customer arising in connection with any Services.

14. EFFECT OF SUSPENSION OR TERMINATION

Suspension or termination of any Services shall be without prejudice to any rights or obligations occurring prior to such expiration or termination.

15. MISCELLANEOUS

a. **GOVERNING LAW.**

These Terms & Conditions of Service shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to the conflicts of laws principles thereof that would result in the application of the laws of any other jurisdiction. The parties hereby submit to the exclusive jurisdiction of the Superior Courts of Fulton County, Georgia, and Federal Courts of the Northern District of Georgia with respect to any action or legal proceeding commenced by either party in respect of these Terms & Conditions or any Services.

b. **AMENDMENTS.**

All Work Orders shall be deemed subject to and to incorporate these Terms & Conditions. No additional, different or inconsistent terms or conditions appearing or incorporated in any Work Order, purchase order, request for quotation or other document issued by Customer shall be effective (and such terms or conditions shall be deemed rejected and ineffective, notwithstanding any acceptance or performance of any such document by AATC) unless AATC accepts such terms in a written document signed by AATC and which expressly states that these Terms & Conditions are amended, and any such amendment shall apply only to the specific Services that the subject of such signed written document.

c. **ASSIGNMENT.**

Customer shall not assign these Terms & Conditions or any rights and obligations hereunder or in respect of any Services. These Terms & Conditions shall inure to the benefit of AATC's successors and assigns.

d. **SEVERABILITY.**

If any term or provision of these Terms & Conditions is held to be invalid illegal or unenforceable for any reason, the remaining portions (and any partially enforceable

provision) shall not be affected thereby and shall continue to be valid and enforceable to the maximum possible extent and the invalid, illegal or enforceable term or provision will be amended and limited to give effect to the intent of the parties as determined from the face of these Terms & Conditions, to the extent necessary to validate such term or provision.

e. ENTIRE AGREEMENT.

These Terms & Conditions constitutes the sole and entire agreement of the parties with respect to the subject matter hereof and supersede any prior understanding or agreement relating to the Services or any of them, provided that nothing herein shall be construed to release any obligation (including any obligation to make payment in respect of any services performed prior to the Effective Date hereof) accruing under any agreement prior to the Effective Date hereof.

16. FORCE MAJEURE

Neither AATC nor Customer shall have any liability to the other for any failure or delay in the performance of any of its obligations in respect of any Services if caused, directly or indirectly, by fire, flood, earthquake, act of God or the public enemy, strikes, lock-outs, labor disturbances, riots, or civil disorder, unavoidable casualty, governmental order, state of war, accidents, interruptions of utilities, interruptions in transportation facilities or delays in transit, supply shortages, failure of any Customer or any third party to perform any commitment to AATC relative to the performance of any Subcontract or other service or delivery of any goods or materials required by AATC to perform any Service, or any other cause, whether similar or dissimilar to the foregoing, beyond such party's reasonable control. This provision shall not apply to payment of any fees or other charges in respect of Services.

17. EMPLOYEES; RELATIONSHIP OF THE PARTIES

The employees of AATC and the employees of any Subcontractor chosen to perform any Services shall be the employees of AATC or such Subcontractor, respectively, for all purposes, and shall under no circumstances be deemed to be employees of Customer. Further, no joint venture, partnership or agency relationship exists between AATC and Customer as a result of these Terms & Conditions, or any use of the Services. Customer agrees not to hold itself out as a representative, agent or employee of AATC or any Subcontractor, and AATC shall not be liable for any representation, act or omission made by Customer.