

**Torres Rojas, Genara**

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**From:** Edgardo Collazo [mailto:collazo7770@gmail.com]  
**Sent:** Wednesday, October 29, 2014 12:39 PM  
**To:** Duffy, Daniel  
**Subject:** Re: Freedom of Information Request Reference No. 15443

Under what agreement does Spanish Transportation DBA Express Service has that they use the George Washington bridge bus terminal to drop off and pickup customers

On Oct 29, 2014 12:10 PM, "Duffy, Daniel" <dduffy@panynj.gov> wrote:

Please see attached.

*Daniel D. Duffy*

*Freedom of Information Administrator*

*Office of the Secretary*

*225 Park Avenue South, 17th Floor*

*New York, NY 10003*

NOTICE: THIS E-MAIL AND ANY ATTACHMENTS CONTAIN INFORMATION FROM THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND AFFILIATES. IF YOU BELIEVE YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY, PERMANENTLY DELETE THIS E-MAIL (ALONG WITH ANY ATTACHMENTS), AND DESTROY ANY PRINTOUTS.

**THE PORT AUTHORITY OF NY & NJ**

FOI Administrator

October 30, 2014

Mr. Edgardo Collazo  
First Class Transportation Services  
94 Broadway, Suite 1  
Paterson, NY 07505

Re: Freedom of Information Reference No. 15449

Dear Mr. Collazo:

This is in response to your October 29, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for the agreement under which Spanish Transportation provides bus services at the George Washington Bridge Bus Station.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/15449-LPA.pdf>. Paper copies of the available records are available upon request.

Certain portions of the material responsive to your request are exempt from disclosure pursuant to exemptions (1) and (4) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy  
FOI Administrator

Attachment

: For Port Authority Use Only :

: Carrier License No. TBT-STS-BLA-014 :

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**  
**225 Park Avenue South**  
**New York, New York 10003**

**BUS CARRIER LICENSE AGREEMENT**

**1. Carriers' Full Legal Names:** (a) SPANISH TRANSPORTATION SERVICE CORP.

(b) AIRPORT SERVICE CORP.

(c) DISCOVERLINE CORP.

(d) NEW SERVICE, INC.

**2. Carriers' Addresses:**

62 Luddington Avenue, Clifton, NJ 07011 (Mailing Address)

68-96 Barclay Street, Paterson, NJ 07503 (Physical Address)

(both addresses apply to all four co-carriers named hereon)

**3. Type of legal entity:**

Corporation (applies to all four co-carriers named hereon)

**4. State of organization:**

New Jersey (applies to all four co-carriers named hereon)

**5. Carriers' Representative:**

Norberto Curitomai, President

**6. Effective Date:** May 1, 2008

Dated: April 30, 2008

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY.**

By *Victoria Cross Kelly*

name: *Victoria Cross Kelly*

title: *Director, Tunnels, Bridges and Terminals*

**SPANISH TRANSPORTATION SERVICE CORP., Co-Carrier**

By *Norberto Curitomai*

name: Norberto Curitomai

title: President

**AIRPORT SERVICE CORP., Co-Carrier**

By *Norberto Curitomai*

name: Norberto Curitomai

title: President

**DISCOVERLINE CORP., Co-Carrier**

By *Norberto Curitomai*

name: Norberto Curitomai

title: President

**NEW SERVICE, INC., Co-Carrier**

By *Norberto Curitomai*

name: Norberto Curitomai

title: President

Port Authority Use Only	
Approval as to Terms:	Approval as to Form:
<i>JK</i>	<i>JK</i>

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## BUS CARRIER LICENSE AGREEMENT

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America, having an office at 225 Park Avenue South, New York, New York 10003(the "Port Authority"), and the bus carrier identified on the Cover Page hereof (the "Carrier"), have executed this Agreement by the signatures of their respective duly authorized representatives on the Cover Page attached to the front of this Agreement, as of the date set forth on such Cover Page.

### RECITALS

1. The Port Authority, acting in the public interest and in furtherance of the Comprehensive Plan for the Development of the Port of New York and pursuant to Chapter 95 of the Laws of New Jersey, 1946, and Chapter 443 of the Laws of New York, 1946, maintains and operates, on Eighth Avenue in the Borough of Manhattan, in the City, County and State of New York, a motor bus terminal (such terminal, together with additions thereto and extensions and replacements thereof, collectively, the "PABT").

2. The Port Authority, acting in the public interest and in furtherance of the Comprehensive Plan for the Development of the Port of New York and pursuant to Chapter 156 of the Laws of New Jersey, 1956, and Chapter 807 of the Laws of New York, 1955, as an addition and improvement to the George Washington Bridge, maintains and operates a bus passenger facility in Washington Heights in the Borough of Manhattan, in the City, County and State of New York (such bus passenger facility, together with additions thereto and extensions and replacements thereof, collectively, the "GWBBS").

3. The Carrier is engaged in the business of the transportation of passengers by Bus, and desires to use space and services provided by the Port Authority at the PABT and/or the GWBBS in connection with such business.

### TERMS OF AGREEMENT

In consideration of the foregoing, the mutual promises contained herein and other valuable consideration, receipt of which is acknowledged, and intending to be legally bound, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

#### Article 1. Definitions

Unless the context requires another meaning, the following when used in this Agreement shall have the respective meanings set forth below in this Article 1. Unless otherwise noted, a defined term shall include, where appropriate to the context, the noun (singular and plural), verb and adjective forms of such term.

"Activity Fee Installment" shall have the meaning set forth in Section 4.1(b).

"Activity Fees" shall have the meaning set forth in Section 4.1(a).

"Audit Findings" shall have the meaning set forth in Section 4.5(b).

**"Bus"** shall mean a self-propelled highway vehicle designed and constructed for the carriage of passengers for hire, employing as a source of motive power (either directly or by electrical transmission) a reciprocating internal-combustion or a turbine engine (not including a jet-propulsion engine) utilizing as fuel, gasoline, diesel oil, or any other substance utilized by highway vehicles as fuel and permitted by the laws of New York and by those of New Jersey then in effect and also under the then existing rules and regulations governing the use of the Lincoln Tunnel.

**"Central Manhattan"** shall mean that portion of the Borough of Manhattan, City, County and State of New York, which lies (1) north of: (i) the center-line of East Houston Street, as the said street exists and as the said line runs and is extended easterly from the center-line of Broadway to the easterly shore of Manhattan Island; (ii) the center-line of West Houston Street as the said street exists and as the said line runs from the center-line of Broadway westerly to the center-line of the Avenue of the Americas, and (iii) the center-line of West Houston Street as the said street exists and as the said line runs and is extended westerly from the center-line of the Avenue of the Americas to the westerly shore of Manhattan Island; and (2) south of the center-line of West 160<sup>th</sup> Street as the said street exists and as the said line runs and is extended easterly to the easterly shore of Manhattan Island and westerly to the westerly shore thereof.

**"Charter"** shall mean an arrangement made by a carrier with an individual, firm, corporation or other legal entity (other than a group formed solely for the purpose of the movement involved) for the transportation of more than one person in one or more Buses as a single movement, occasional and non-repetitive, without contractual relation between the carrier and the individuals so transported. A **"Charter Coach"** shall be a Bus operated under the provisions of a charter, as herein defined, and **"Charter Operations"** shall mean the operation of a Charter Coach or Charter Coaches.

**"Contract Carriage"** shall mean repetitive operation of Buses for hire over substantially the same routes and for substantially the same persons but not covered by Regular Route Operation or Irregular Route Operation certificates held by the carrier involved.

**"cost"** shall mean: (1) payroll costs of the Port Authority, including contributions to the Retirement System, or the cost of participation in other pension plans or systems, insurance costs, including sums reserved for or allocated to self-insurance funds, and sick-leave, holiday, vacation and authorized-absence pay; (2) cost of materials and supplies used; (3) payments to contractors; (4) any other direct costs; and (5) thirty percent (30%) of the sum of the foregoing.

**"Cover Page"** shall mean the page, designated "Cover Page", attached to the front of this Agreement and forming an integral part hereof.

**"day"** shall mean, and **"daily"** shall refer to, a calendar day.

**"Departure Fee"** shall have the meaning set forth in Section 4.1(a).

**"Departures"** shall mean Bus departures from the Facility.

**"Dispatcher"** shall have the meaning set forth in Section 7.4.

**"Effective Date"** shall mean the date set forth on the Cover Page as the "Effective Date".

**"Executive Director"** shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the Executive Director by this Agreement; but until further notice from the Port Authority to the Carrier it shall mean the

Executive Director of the Port Authority for the time being or his duly designated representative or representatives.

"**Facility**" shall mean either or both of the PABT and the GWBBS, as the context requires.

"**Gate Fee**" shall have the meaning set forth in Section 4.1(a).

"**General Manager**" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said General Manager by this Agreement, but until further notice from the Port Authority to the Carrier, it shall mean the General Manager (or Acting General Manager) of the Facility for the time being, or his duly designated representative or representatives.

"**GWBBS**" shall have the meaning set forth in Recital 2 above.

"**Holiday**" shall mean only such days as may be declared "holidays" or "legal holidays" by the Legislature of the State of New York.

"**Irregular Route Operations**" shall mean all operation of motor vehicles for transportation to and from the City of New York as a common carrier of passengers and their baggage pursuant to a certificate of public convenience and necessity (or portion thereof) which specifies irregular route operation, but shall not include Charter Operations.

"**Labor Trouble**" shall mean any type of strike, boycott, picketing, work stoppage, work slowdown or other disturbance, complaint, dispute or controversy involving labor, regardless of the employ or the employment status of the persons involved.

"**Loading Position**" shall mean a location on a Vehicular Level, including a gate or a platform position, designated for passengers to be loaded onto, or unloaded from, Buses.

"**Long Distance Service**" shall mean service with a final destination that (x) is outside of the Short Haul Area (as defined below) and (y) is not a Park/Ride Lot.

"**Middle Distance Destination**" shall mean a destination within the Short Haul Area that is more than twenty-five (25) miles from the Facility.

"**Middle Distance Percentage Fee**" shall have the meaning set forth in Section 4.1(a).

"**Non-Revenue Departures**" shall mean Departures of Buses that are not carrying, and not offering to carry, passengers.

"**Northern Manhattan**" shall mean that portion of the Borough of Manhattan in the City, County and State of New York, which lies north of the center-line of West 160<sup>th</sup> Street as the said street exists and as the said line runs and is extended easterly to the easterly shore of Manhattan Island and westerly to the westerly shore thereof.

"**Notice**" shall have the meaning set forth in Section 14.1(a).

"**PABT**" shall have the meaning set forth in Recital 1 above.

"**Peak Period**" shall have the meaning set forth in Section 10.2.

"**Pooling Arrangement**" shall have the meaning set forth in Section 10.1.

"Pooling Partner" shall have the meaning set forth in Section 10.1.

"Quarterly Reconciliation Form" shall have the meaning set forth in Section 4.1(b).

"Regular Route Operations" shall mean all operation of motor vehicles for transportation to and from the Facility as a common carrier of passengers and their baggage pursuant to a certificate of public convenience and necessity, which is conducted under individual contracts with such passengers, over public highways specified in the said certificate, repetitively and with a fixed periodicity in accordance with previously established schedules.

"Required Deposit Amount" shall have the meaning set forth in Section 12.1(a).

"Short Haul Service" shall mean service with a final destination (x) within the "Short Haul Area" set forth on Exhibit 1 or (y) at a Park/Ride Lot.

"Space" shall have the meaning set forth in Section 2.1(a).

"Surface Transportation Board" shall mean not only such governmental board or agency as it now exists, but also any governmental board, official agency or authority hereafter exercising the same or similar powers or jurisdiction.

"Term" shall have the meaning set forth in Section 2.2(b).

"Vehicular Level" shall mean any floor or story at the Facility designed for use by Buses.

## Article 2. License

### Section 2.1 Grant of License

(a) *License to use Space.* The Port Authority hereby grants to the Carrier a license to use, on a non-exclusive basis, one or more Loading Positions (which may include Loading Positions to be shared with one or more other bus carriers) as shall be specified from time to time by the General Manager (collectively, the "Space") in one of the areas provided for the standing of Buses at the Facility (not including any space then exclusively licensed or premises leased to others). Without limiting the generality of the foregoing and the General Manager's right generally to assign and reassign particular Loading Positions from time to time, if at any time or times a condition exists at the Facility or elsewhere (including without limitation special and seasonal traffic conditions, strikes, Labor Trouble, construction work or damage to the Facility) which in the General Manager's opinion may affect the safe or efficient handling of passengers or Buses at the Space, he may assign or designate for use by the Carrier space elsewhere at the Facility, and the Carrier shall use the same for the duration of the condition. While such assignment or designation is in effect, the space so assigned shall be deemed to be the Space for the purposes of this Agreement.

(b) *Unavailability during Certain Hours.* The Carrier recognizes that the Upper Bus Level of the PABT will be closed on all days during the hours of 1:00 o'clock a.m. through 6:00 o'clock a.m. In the event that the Carrier conducts operations during such hours, other space will be provided to the Carrier by the General Manager for such operations, such space to be used, as designated by the General Manager, in common with other carriers.

(c) *Nonexclusive Areas.* The Port Authority shall provide a waiting-room area and free, nonexclusive toilets at the Facility and shall designate the same for the use of the Carrier's passengers, in common with passengers of other carriers and with the public. The Carrier's passengers will be permitted to use such areas, subject to and upon compliance with the

applicable terms and conditions of this Agreement and the rules and regulations of the Port Authority. The Port Authority may remove violators and exclude repeated violators from the Facility.

(d) *Ingress and Egress.* The Carrier and its officers, employees and passengers shall have the right of ingress and egress between the Space and the streets outside the Facility. Such right shall be exercised by means of the pedestrian or vehicular ways (to be used in common with others having rights of passage within the Facility and in accordance with the rules and regulations of the Port Authority) as may from time to time be designated by the Port Authority for the type of traffic involved for the use of carriers or for the use of the public. The Port Authority may at any time temporarily or permanently close, or consent to or request the closing of, any such way so long as reasonable means of ingress and egress remains available. The Carrier hereby releases and discharges the Port Authority of and from any and all claims, demands and causes of action which the Carrier may now or at any time hereafter have arising or alleged to have arisen out of the closing of any such way, or of any street, roadway or other public areas, whether within or outside the Facility. The direction of traffic on stairways and escalators and in halls, corridors and other portions of the Facility shall be at all times subject to determination and redetermination by the General Manager. The General Manager may discontinue the operation of all or any number of the escalators for such period or periods as he may determine advisable, in the interests of safety, efficiency or economy of operation of the Facility or for repair or maintenance.

(e) *Other Rights and Privileges by Separate Agreement.* Nothing in this Agreement shall be construed to grant to the Carrier any rights or privileges with respect to any of the following, which shall be the subject of separate agreements: offices or drivers' rooms, etc.; ticket selling space; Bus parking within the Facility; parcel-checking space for any carrier providing parcel-checking service for other carriers', as well as its own, ticketed passengers.

(f) *No Interest in Real Property.* Nothing in this Agreement shall be construed to grant to the Carrier any interest or estate in real property.

## Section 2.2 Effective Period

(a) *Effectiveness.* This Agreement shall be effective and binding upon execution by both the Port Authority and the Carrier.

(b) *Term.* The effective period of the license granted hereby (the "Term") shall commence at 12:01 a.m. on the Effective Date and shall expire at 11:59 p.m. on the day preceding the fifth (5<sup>th</sup>) anniversary of the Effective Date, except that it shall terminate with any earlier termination of this Agreement. The Port Authority shall be obligated to provide services to the Carrier only during the Term.

(c) *Entry Prior to Effective Date.* For a period of fourteen (14) days immediately prior to the Effective Date, the Carrier shall have the right to enter the Facility in order to familiarize its employees with the same and with the intended uses thereof.

## Section 2.3 Assignment and Subcontract

Except with the prior written approval of the Port Authority (except as specifically provided in Section 10.1 below with respect to Pooling Arrangements), the Carrier shall not sell, transfer, mortgage, pledge or assign this Agreement or any rights or obligations hereunder, and shall not subcontract the performance of any of its obligations hereunder, or the exercise, in whole or in part, of its rights, licenses and privileges hereunder.

## Article 3. Use

### Section 3.1 Permitted Use of Space

The Carrier shall use the Space for the following purposes only and for no other purpose whatsoever: the standing of Buses operated by the Carrier for the transportation of passengers and their hand baggage while such Buses are being loaded or unloaded or are waiting for loading or unloading. No Bus shall be permitted to remain in the Space for longer than the time reasonably necessary for the operations of the Carrier in connection therewith. In the event the departure of any Bus which is unloading is scheduled more than twenty (20) minutes after its arrival, such Bus shall leave immediately upon unloading its passengers, unless otherwise directed or permitted by the General Manager. In the event that any Bus of the Carrier shall be in the Space for as long as twenty (20) consecutive minutes, the Carrier shall remove the same from the Facility within five (5) minutes after request to do so made by the General Manager, which request may be made orally to the Dispatcher or, in the absence of a Dispatcher, to the driver; in the event of failure to remove the Bus upon such request, the Port Authority shall have the right to remove the Bus to any point within or outside the Facility at its discretion and to leave the Bus at such point, all at the Carrier's risk and cost, such cost to be payable to the Port Authority on demand.

### Section 3.2 Right and Obligation to Use Facility

(a) *Regular Operations.* The Carrier agrees to use the Facility for all its Regular Route Operations to and from Central Manhattan or Northern Manhattan, as applicable, except to the extent consented to in advance by the General Manager.

(b) *Charter Operations.* The Carrier may use the Facility for Charter Operations to and from the City of New York.

(c) *Uses Not Permitted.* This Agreement does not permit the Carrier to use the Facility when the Carrier is performing Contract Carriage or Charter Operations, unless approved in writing by the General Manager.

### Section 3.3 Discontinuance of Other Terminals

Except when required or requested by governmental authorities to meet emergency conditions or national defense requirements, the Carrier shall not pick up or discharge passengers or baggage at any point, terminal or station in Central Manhattan or Northern Manhattan (as the case may be) other than the Facility, except to the extent consented to in advance by the General Manager.

## Article 4. Fees

### Section 4.1 Fees

(a) *Fees.* For the right to use the Space and to utilize the services provided under this Agreement the Carrier shall pay to the Port Authority the following:

(1) *Gate/Platform Position Fee.* The annual amount set forth in Schedule 1 (the "Gate Fee"), which shall be payable as provided in the following paragraph (b) of this Section 4.1; provided, however, that where a Loading Position has been assigned to the Carrier to be shared with one or more other bus carriers, the Gate Fee with respect to such Loading Position shall be one hundred twenty percent (120%) of the amount set

forth in Schedule 1, and the total of such increased Gate Fee shall be shared equally by the Carrier and such other bus carrier(s); for example, if the Loading Position has been assigned to be shared by two bus carriers, each shall pay directly to the Port Authority an adjusted Gate Fee equal to sixty percent (60%) of the Gate Fee set forth in the then-current Gate Fee schedule.

(2) *Activity Fees.* The Departure Fee and the Middle Distance Percentage Fee (collectively, the "**Activity Fees**"), as follows: which shall be payable as provided in the following paragraph (b) of this Section 4.1:

(i) The amount set forth in Schedule 2 (the "**Departure Fee**") for each Fee Departure of a Bus operated by the Carrier or on its behalf.

(ii) An amount (the "**Middle Distance Percentage Fee**"), equal to the percentage set forth in Schedule 2, of all monies paid or payable to the Carrier on account of all tickets (including round-trip tickets) sold or issued in the Borough of Manhattan for transportation of passengers for passage between the Facility and Middle Distance Destinations, including the total purchase price of tickets for transportation partly on lines of the Carrier and partly on lines of others), but not including (x) tickets sold or issued for transportation wholly on lines operated by others or for transportation under charters of the Carrier or others or (y) "commutation tickets", which shall mean tickets usable by the purchaser only, for ten (10) or more one-way trips, good over a period of time the number of days in which shall not be greater than the number of trips multiplied by two (2).

The Activity Fees shall be payable in the manner provided in the following Paragraph (b) of this Section 4.1.

(b) *Manner of Payment of Fees.*

(1) *Gate Fee.* The Gate Fee shall be payable in advance in equal monthly installments on the Effective Date and on the first day of each calendar month throughout the Term, provided, however, that if the Effective Date is other than the first day of a calendar month, there shall be payable on the Effective Date an installment of the Gate Fee in an amount equal to the amount of the said equal monthly installment multiplied by a fraction of which the numerator shall be the number of days from the Effective Date through the last day of the month in which the Effective Date occurs, including both such days, and the denominator shall be the actual number of days in that month.

(2) *Activity Fees.* The Carrier shall pay the Activity Fees as follows:

(i) Not later than the beginning of each calendar year (or the Effective Date, as the case may be) the Port Authority shall determine a monthly amount (the "**Activity Fee Installment**") to be paid by the Carrier each month of that calendar year on account of the Activity Fees, and shall notify the Carrier accordingly. The Activity Fee Installment shall be due and payable on the first day of each calendar month.

(ii) In determining the amount of the Fixed Fee Payment, the Port Authority will consider the rates of the Activity Fees and the Carrier's third highest monthly activity level in the preceding four reported quarters (to the extent applicable) and such other factors as the Port Authority may deem appropriate. The amount of the Activity Fee installment may be adjusted from

time to time by the Port Authority, in its discretion, to reflect significant changes in the operations of the Carrier that would affect activity levels.

(iii) Within fifteen (15) days after the end of each calendar quarter, the Carrier shall deliver to the Port Authority a report, certified by a responsible officer of the Carrier, consolidating the information provided in the Monthly Summary of Daily Departures reports required pursuant to Section 4.4(a) below and setting forth actual levels of activity during that quarter relevant to the calculation of the Activity Fees, such report (the "**Quarterly Reconciliation Form**") to be substantially in the form attached as Exhibit 2. Based upon the Quarterly Reconciliation Form, the Port Authority will issue an adjustment invoice or credit, as appropriate, to the Carrier.

#### Section 4.2 Fees Subject to Change

(a) *Fees Subject to Change.* The Gate Fee and the Activity Fees shall be subject to change, on thirty (30) days' notice, at the sole discretion of the Port Authority, as determined by resolution of its Board of Commissioners. Other fees and charges shall be subject to change without notice.

(b) *Special Right of Termination.* In the event of any change in the Gate Fee or Activity Fees, the Carrier shall, in addition to its rights of termination provided in Article 11 below, have the right, on ten (10) days' notice, to terminate this Agreement and discontinue its operations hereunder.

#### Section 4.3 Place and Form of Payments

(a) *Place and Form.* All payments required of the Carrier by this Agreement shall be made to the Port Authority by good checks drawn on an account at a bank that is a member of the New York Clearing House Association (or any successor body of similar function) and mailed to the following address:

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY  
P.O. BOX 95000-1517  
PHILADELPHIA, PENNSYLVANIA 19195-1517

or made pursuant to the following wire transfer instructions:

Bank:	TD Bank 6000 Atrium Way Mount Laurel NJ 08054
Bank ABA Number:	031201360
Account Number:	Exemption (1/4)
Beneficiary Name	The Port Authority of NY & NJ

or sent to such other address, or made pursuant to such other wire transfer instructions, as may hereafter be substituted by the Port Authority, from time to time, by notice to the Carrier.

(b) *Acceptance by Port Authority.* No payment by the Carrier or receipt by the Port Authority of a lesser amount than that which is due and payable under the provisions of this Agreement at the time of such payment shall be deemed to be other than a payment on account of the earliest fees then due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment be deemed an accord and satisfaction, and the Port

Authority may accept such check or payment without prejudicing in any way its right to recover the balance of such fees or to pursue any other remedy provided in this Agreement or by law.

#### Section 4.4 Books and Records

(a) *Maintenance and Reporting.* The Carrier shall maintain, in accordance with accepted accounting practice, records and books of account recording all its transactions at, throughout, or in any way connected with the Facility, and shall (except as provided below in subparagraph (2) with respect to daily records of Bus Departures) keep the same for a period of seven (7) years after the making of such records, either within the Port of New York and New Jersey District, or at the office of the Carrier's representative set forth on the Cover Page; provided, however, that if such records are kept outside of the Port of New York and New Jersey District, the Carrier shall pay the transportation, hotel, food, etc. expenses of the agents and employees of the Port Authority in the event of an audit pursuant to paragraph (b) below. As a part of such records, the Carrier shall cause to be prepared the following:

(1) On or before the fifteenth (15<sup>th</sup>) day of each calendar month, the Carrier shall prepare, and make available for inspection by the Port Authority, a report of all Departures during the previous month, listing and classifying the same as follows: (w) Sales of tickets for transportation between the Facility and Middle Distance Destinations; (x) Long Distance Service Departures of Buses other than Charter Coaches; (y) Departures of Charter Coaches; (z) Short Haul Service Departures of Buses other than Charter Coaches, specifying separately those Departures having a Park/Ride Lot as the final destination. In each such classification, Non-Revenue Departures shall be separately identified. The foregoing report shall be made on the Monthly Summary of Daily Departures form, a copy of which is attached as Exhibit 3 (or an equivalent form as used by the Carrier itself, provided such form has been approved by the Port Authority). The Monthly Summary of Daily Departures form for the three months of each calendar quarter shall be delivered to the Port Authority together with the Quarterly Reconciliation Form.

(2) The Carrier shall prepare a daily record of Bus Departures made by the Dispatcher, or by another employee of the Carrier, on the Dispatch Record form, a copy of which is attached as Exhibit 4 (or an equivalent form as used by the Carrier itself, provided such form has been approved by the Port Authority), one complete copy of which shall be delivered daily to the General Manager; the Carrier shall retain each such daily record of Bus Departures for a period of at least eighteen (18) months.

(b) *Port Authority Audit.* The Carrier shall permit, at any time during ordinary business hours, the examination and audit of all such records and books of account by the agents and employees of the Port Authority.

#### Section 4.5 Late and Service Charges

(a) *Late Charges.* If the Carrier should fail to pay any amount required under this Agreement (including without limitation the full amount of any Activity Fee Installment) when due to the Port Authority, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (described below) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days, except that one late charge period each calendar year may be for a period of less than fifteen (15) (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts

found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions hereof with respect to such unpaid amount. Each late charge shall be recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees payable under this Agreement. Nothing herein is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in the Section entitled "Termination by the Port Authority", or (y) any obligations of the Carrier under this Agreement. In the event that any late charge payable hereunder exceeds a legal maximum applicable to such late charge, then, in such event, each such late charge shall be payable instead at such legal maximum.

(b) *Service Charge.* In the event that upon conducting an examination and audit as provided in Section 4.4(b) above, entitled "*Port Authority Audit*", the Port Authority determines that unpaid amounts are due to the Port Authority by the Carrier (the "**Audit Findings**"), the Carrier shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Carrier under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Agreement with respect to such unpaid amount. Each such service charge shall be and become a fee, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Agreement, including, without limitation, the Port Authority's rights to terminate this Agreement or (y) any obligations of the Carrier under this Agreement.

#### Section 4.6 Effect of Use and Occupancy after Expiration or Termination

Without in any way limiting any other provision of this Agreement, unless otherwise notified by the Port Authority in writing, in the event the Carrier continues its use and occupancy of the Space after the expiration or termination of the effective period of the license granted under this Agreement, as such effective period of the license may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Agreement or other remedies the Port Authority may have by law or otherwise, the Carrier shall pay to the Port Authority a fee for the period commencing on the day immediately following the date of such expiration or the effective date of such termination and ending on the date that the Carrier shall surrender and completely vacate the Space at a rate equal to twice the monthly fee as provided for herein then in effect. Nothing herein contained shall be deemed to give the Carrier any right to continue its use and occupancy of the Space after the expiration or termination of the effective period of the license granted under this Agreement. The Carrier acknowledges that its failure to surrender, vacate and yield up the Space to the Port Authority on the effective date of such expiration or termination will or may cause the Port Authority injury, damage or loss. The Carrier hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise, and the Carrier hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

## Article 5. Facility Services

### Section 5.1 Maintenance and Repair of Facility

(a) *Repairs.* Except as otherwise provided in this Agreement, the Port Authority shall make such repairs as may be necessary to keep the Facility in good operating condition. The Carrier shall have no claim or remedy against the Port Authority for breach of such obligation, unless reasonable notice of the necessity for repairs shall have been given to the Port Authority in writing. In the event the Surface Transportation Board or the Public Service Commission of the State of New York or another governmental regulatory body having jurisdiction over the operations of the Carrier in the City of New York orders the Carrier to discontinue use of the Facility unless an alteration is made therein, the Port Authority, upon reasonable notice from the Carrier of such requirement, shall proceed to make the necessary alteration.

(b) *Cleaning.* The Port Authority shall be responsible for cleaning the public areas of the Facility and the Space. Subject to the availability of equipment and to other commitments, the Port Authority will promptly remove snow from exposed portions of the Facility used by Buses.

(c) *Extraordinary Cleaning Services.* The Port Authority will clean all fuel and other spills originating from the Carrier's Buses, and the Carrier shall pay the Port Authority's standard charges therefor on demand.

### Section 5.2 Utilities, etc.

(a) *Lighting.* The Port Authority shall supply in the Space electricity in reasonable quantities for illumination purposes, by which is meant only the energizing of incandescent and fluorescent fixtures. The Port Authority shall supply bulbs and tubes for illumination purposes.

(b) *Telephone Service.* To the extent and for the time permitted by the supplier of telephone service to the Facility, the Port Authority shall provide an internal telephone system interconnecting telephone stations on (to the extent applicable) the Vehicular Levels, the main concourse, the suburban concourse and the entrance ramp at the point (outside the Facility) where the said ramp meets Dyer Avenue. The Port Authority shall cause to be installed and interconnected in such system a telephone station in the Dispatcher's booth space, if any, in the Space, upon condition that the Carrier shall continue at all times to satisfy the requirements of the supplier of telephone service with respect thereto, other than in paying the charge for installation and the rental of such station or stations in the Space. The internal system will be connected with a central office of the supplier of telephone service, and incoming calls only may be received by the Carrier from such central office at such stations in the Space.

(c) *Employee Toilets.* The Port Authority shall provide free non-exclusive toilets for the Carrier's employees using the Facility.

### Section 5.3 Signs and Advertising

(a) *Directional Signs.* The Port Authority shall furnish directional signs for the convenience of the traveling public and directional signs for vehicular traffic, maintained at such points in the Facility as the Port Authority may determine.

(b) *Consent Required.* Except as provided or otherwise with the consent of the Port Authority, the Carrier shall not maintain or display any advertising, signs, posters or similar devices at the Facility except such as may be affixed to the interior or exterior of Buses operated by the Carrier.

#### Section 5.4 Disabled Buses

Upon request of the Carrier, the Port Authority shall tow any Bus disabled in the Facility (if such Bus is capable of being towed on its wheels) from the point of original disablement to a point within or without the Facility, as designated by the Port Authority. The Port Authority shall have the right at all times to remove Buses disabled in the Facility to such point within or without the Facility as may be designated by the Port Authority. Towing and removal performed pursuant to this paragraph shall be at the Carrier's risk and the Carrier shall pay the Port Authority's standard charges therefor on demand.

### **Article 6. Services Provided on Behalf of Carrier**

#### Section 6.1 Schedule Information

(a) *Information Provided.* The Port Authority will provide to the public at the Facility information concerning the services, schedules and rates of the Carrier (except for Charter Coach and tour services and rates) during all hours necessary for adequate service to the public.

(b) *Carrier to Supply Information.*

(1) At the PABT, the Carrier shall supply all service, schedule and rate information to the Port Authority in the form of printed schedules and in an electronic format approved by the Port Authority. The Port Authority shall provide to the public only information previously so supplied to it by the Carrier. If the number of printed schedules is insufficient, in the Port Authority's reasonable opinion, to meet customer demand, the Port Authority shall notify the Carrier, specifying the additional quantity of printed schedules to be provided, and the Carrier, within forty-eight (48) hours thereafter, shall provide to the Port Authority such additional quantity of printed schedules. In the event that the Carrier fails to deliver such additional quantity of printed schedules within such forty-eight hour period, the Port Authority shall have the right (but not the obligation) to have photocopies of the printed schedules produced by a copying service, and the Carrier shall, on demand, pay to the Port Authority the cost thereof, plus a service charge in the amount of one hundred fifty percent (150%) of such cost.

(2) At the GWBBS, the Carrier shall supply all service, schedule and rate information to the Port Authority in an electronic format approved by the Port Authority. The Carrier may also, subject to the Port Authority's prior approval, provide printed schedule information as necessary at a kiosk location within the GWBBS.

(3) The Carrier shall supply information (electronically, and as applicable, in the form of printed schedules) as to each schedule change ten (10) days, if possible, before such change is to become effective, but in any event sufficiently soon to be handled by the information system.

(c) *Accuracy of Information.* The Carrier shall be responsible for the accuracy of all information supplied by it to the Port Authority. The Port Authority shall have no liability whatsoever with respect to any information, whether or not disseminated to the public, relating to the Carrier's services, schedules or rates.

## Article 7. Carrier's Operations

### Section 7.1 Method of Operations

(a) *Service to the Public.* The Carrier shall furnish good, prompt and efficient service at the Facility and shall furnish the said service on a fair, equal and non-discriminatory basis to the general public.

(b) *Conduct of Employees and Passengers.* The Carrier shall conduct all its operations at the Facility in an orderly, proper and courteous manner and so as not to annoy, disturb or be offensive to others at the Facility, and shall provide and shall require its employees at all times to wear or carry uniforms, badges or other suitable means of identification. All means of identification shall be subject to the prior and continuing written approval of the Port Authority. The Port Authority shall have the right to object to the Carrier regarding the demeanor and conduct of its employees and passengers, whereupon the Carrier shall take all steps reasonably necessary to remove the cause of the objection.

### Section 7.2 Rules and Regulations

The Carrier shall observe and comply with, shall compel its officers and employees to observe and comply with, and shall use its best efforts to cause its passengers, guests, invitees and others doing business with it to observe and comply with the Port Authority's Rules and Regulations, a copy of which is attached as Exhibit 5, and such further rules and regulations, including all amendments and supplements thereto, as may be promulgated by the Port Authority from time to time. The Port Authority shall, except in cases of emergency, give notice to the Carrier of every rule or regulation hereafter adopted by it at least five (5) days, exclusive of Saturdays, Sundays and Holidays, before the Carrier shall be required to comply therewith.

### Section 7.3 Cooperation

The Carrier shall cooperate with the Port Authority in all matters relating to the safe and efficient operation of the Facility by the Port Authority and shall require its employees to do so.

### Section 7.4 Dispatcher

Subject to the reasonable direction of the Port Authority, the Carrier shall dispatch its Buses. The Carrier shall take the precautions at the gates and platforms adjacent to the Space reasonably necessary to assure the safety of its passengers and other persons. For the performance of the foregoing, the Carrier shall designate one of its employees to be on duty at the Facility with the necessary authority from the Carrier to direct the placing, movement and departure of its Buses at and from the Space (such designated employee, the "Dispatcher"). The Dispatcher shall, together with all other employees of the Carrier at the Facility, cooperate with employees of the Port Authority. In periods of light traffic volume, the Carrier may designate Bus drivers as Dispatchers.

### Section 7.5 Requirements as to Buses

(a) *Restrictions as to Type and Size.* Prior to introducing into the Facility any type, style, size or model of Bus theretofore not operating at the Facility, the Carrier shall in all events obtain the General Manager's written approval (notwithstanding that any such type, style, size or model of Bus or its proposed manner of operation in the Facility may conform to the following restrictions). All Buses shall, in any event, be subject to the following restrictions:

- (1) Buses shall not exceed one hundred two (102) inches in width.

(2) Buses shall have a maximum gross loaded weight not in excess of forty-eight thousand (48,000) pounds avoirdupois, distributed to provide not more than twenty thousand (20,000) pounds per axle.

(3) Buses operating on the Lower Bus Level of the PABT shall not exceed 12 feet in height.

(4) Buses operating on the Intermediate Bus Level (Third Floor) and Upper Bus Level (Fourth Floor) of the PABT shall not exceed 11 feet 6 inches in height.

(5) Buses operating on the Lower Bus Level of the GWBBS shall not exceed 11 feet 6 inches in height, and shall not exceed 40 feet in length.

(6) Buses shall not exceed 45 feet in length; notwithstanding the foregoing, however, articulated Buses (*i.e.*, two-unit buses with a flexible coupling connection between the units) may operate in the Facility, provided that they may use only pull-through platforms designated by the General Manager.

(7) Buses fueled by Compressed Natural Gas ("CNG") may operate only in designated locations in the PABT.

(b) *Condition of Buses.* Buses shall be kept clean and maintained in good working order.

(c) *Operation.* Buses shall be operated in strict compliance with all applicable laws, rules and regulations, including without limitation the laws of New York and those of New Jersey and also under the rules and regulations governing the use of the Lincoln Tunnel and the George Washington Bridge.

(d) *Scheduling of Departure Times.* The Carrier shall make reasonable efforts to schedule departure times to avoid simultaneous Departures from multiple gates, and shall comply with reasonable requests from the General Manager for adjustments to its schedule to limit congestion at the Facility.

(e) *E-ZPass.* The Carrier shall establish one or more E-ZPass accounts and shall equip all its Buses to make payments using E-ZPass, and shall cause all of its Buses to use E-ZPass exclusively to pay tolls and other fees at all transportation facilities and parking facilities capable of accepting such payment. The Carrier shall be subject to all requirements relating to the use of E-ZPass and shall be responsible for all tolls and fees incurred at E-ZPass-equipped facilities. The Carrier hereby authorizes the Port Authority to access any and all records maintained by any Port Authority contractors relating to the Carrier's E-ZPass transactions.

#### Section 7.6 Maintenance of the Space

(a) *Repair and Replacement.* The Carrier shall be responsible for the repair, replacement, rebuilding and repainting of all portions of the Space and of the Facility which may be damaged or destroyed (not including deterioration because of reasonable wear) by the acts or omissions of the Carrier or by those of its employees, agents (not including the Port Authority) or representatives. The Port Authority shall do the work required and charge the cost thereof to the Carrier, which shall pay such charge on demand. In the event of such damage to or destruction of the Space caused by a causality actually insured against by the Port Authority, the obligation of the Carrier under this paragraph (a) is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance. Such release shall be effected by crediting to the Carrier the amount of such proceeds against the claim of the Port Authority for the costs incurred in repair, replacement or rebuilding; provided, however, that if this

release shall invalidate any policy of insurance or shall increase the premium therefor, or shall void, limit or diminish the rights of the Port Authority thereunder, then such release shall be void and of no effect.

(b) *Damage Without Carrier's Fault.* In the event that the Space is damaged at any time subsequent to the date of this Agreement without fault on the part of the Carrier or of any others for whose acts or omissions the Carrier is responsible under the provisions of paragraph (a) of this Section, so as to render the Space unusable, in whole or substantial part, then,

(1) If, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence; or

(2) If, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage, or if the entire Facility requires rebuilding, then the Port Authority shall have an option either to proceed with due diligence to make the necessary repairs and to do the necessary rebuilding, or to terminate this Agreement; the election by the Port Authority under this option shall be communicated to the Carrier within sixty (60) days after the date of such damage; if the Port Authority elects to repair or rebuild, the Carrier shall nevertheless have an option to terminate this Agreement by notice given within fifteen (15) days after notice of the Port Authority's election.

#### Section 7.7 Prohibited Acts

(a) *Damage or Interference.* The Carrier shall not do or permit any act or thing, and shall not permit any condition to exist or continue, if any of the same may damage the Facility or any part thereof or interfere with the efficient operation of the Facility or any part thereof, or any equipment, facilities or systems installed thereon, including without limitation damage to or interference with the effectiveness or accessibility of the elevators or escalators, or the fire-protection, sprinkler, drainage, sewage, plumbing, compressed-air, air-conditioning, ventilation, telephone, public announcement or intercommunication systems or any part thereof.

(b) *Insurance Requirements.* The Carrier shall not do or permit any act or thing in the Space which (x) will invalidate or conflict with any policies of fire insurance in the New York standard form covering the Space or any part thereof, or the Facility, or any part thereof, or which (y) in the opinion of the Port Authority, may constitute any extra-hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Agreement. The Carrier shall promptly observe, comply with and execute the provisions of any and all present and future rules, regulations, requirements, orders and directions of the National Fire Protection Association, the Insurance Services Office of New York, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Carrier, but shall have no obligation to make alterations, repairs or improvements required by any such rule, regulation, order or direction. If by reason of any failure on the part of the Carrier to comply with the provisions of this paragraph, any fire insurance rate, extended coverage rate or rental insurance rate on the Space or any part thereof, or the rate of other insurance of any type the premium for which is measured by the fire insurance premium or premiums, shall at any time be higher than it otherwise would be, then the Carrier shall pay to the Port Authority that part of all insurance premiums paid by the Port Authority which have been charged because of such violation or failure on the part of the Carrier.

(c) *Nuisance.* The Carrier shall commit no nuisance and shall permit neither the commission of any nuisance nor the doing of any act or thing which shall result in the creation or maintenance of a nuisance in the Space or any portion thereof or elsewhere in the Facility.

(d) *Sales.* The Carrier shall not sell or furnish in the Space, or permit others to sell or furnish in the Space, any food or other merchandise whatsoever, or any service of any type, and (without limiting the foregoing prohibition) shall not install, maintain or operate, or permit the installation, maintenance or operation in the Space or any portion thereof of, any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any restaurant, cafeteria, mobile or stationary kitchen, stand or other establishment of any type for the preparation, dispensing or sale of food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, of service of any kind, including without limitation telephone pay-stations. The Carrier shall not itself, by contractors or by others supply or provision at the Facility any Bus with food, beverages, tobacco or any other merchandise whatsoever intended to be sold or supplied to passengers or others on or from the Bus at any point or location whatsoever, except with the prior permission of the Port Authority.

#### Section 7.8 Governmental and Other Requirements

(a) *Carrier's Governmental Authorizations.* The Carrier hereby represents and warrants to the Port Authority that, as of the Effective Date, the Carrier shall have procured all licenses, certificates, registrations, permits or other authorizations from all governmental authorities having jurisdiction over the operations of the Carrier at the Facility, or over the operations of the Carrier of which its operations at the Facility are a part, which may be necessary for the conduct of such operations, and the Carrier covenants that it shall maintain the same in effect and in good standing throughout the Term.

(b) *Carrier to Notify Port Authority of Requirements.* The Carrier shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, ordinances, rules regulations, requirements, orders and directions which may pertain or apply to its operations in the Space or at the Facility, or to its operations of which its operations at the Facility are a part, and shall promptly notify the Port Authority of any and all improvements thereon or alterations thereto or repairs of which it may have knowledge that may be required at any time hereafter by an such present or future law, ordinance, rule, regulations, requirement, order or direction. The Carrier shall have no obligation to make any such alterations, repairs or improvements.

(c) *No Application to Port Authority.* The obligation of the Carrier to comply with governmental requirements is provided herein in order to assure responsible operation and to establish proper safeguards for the protection of persons and property in the Space and at the Facility, and such provision is not to be construed as a submission by the Port Authority to the application to itself of such requirements, or any of them.

#### Section 7.9 Labor Provisions

(a) *Notice to Port Authority.* The Carrier shall immediately give oral notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies involving the Carrier's employees which are likely to affect the operation of the Facility, or the operations of others at the Facility, and shall continually report to the Port Authority the progress of such and the resolution thereof.

(b) *Suspension of Agreement.* The Port Authority shall have the right, upon notice to the Carrier, to suspend the provisions of this Agreement under which the Carrier is licensed to use the Space and under which sums payable to the Port Authority accrue, in either of the following events:

(1) If the Carrier, in its operations at the Facility, employs any person or persons, or uses or has any equipment or materials, or allows any condition to exist, which causes

any Labor Trouble at the Facility involving employees of the Port Authority or those of any other person operating at the Facility other than the Carrier's own employees, and which interferes with the operation of the Facility, other than the Carrier's own operations, or with the operations of others at the Facility, and if the Carrier, upon notice from the Port Authority, does not within twelve (12) hours thereafter withdraw from the Facility any such person or persons and any such equipment or materials specified in such notice, or rectify any such conditions; or

(2) If any Labor Trouble of or directed against the Carrier adversely affects the Port Authority's operation of the Facility or the operations of others at the Facility, whether or not the same is due to the fault of the Carrier, and notwithstanding that the Port Authority may or may not have issued directions in connection with the same.

(c) *No Operations During Suspension.* During the period of suspension, the Carrier shall not operate at the Facility, and if any vehicle or vehicles or other property of the Carrier remains in the Space, or any property in the Dispatcher's booth space (if applicable), the Port Authority may remove the same for storage at another location in the Facility or elsewhere, such removal and storage to be at the risk and expense of the Carrier; provided, however, that any communications equipment belonging to the Carrier installed in the Dispatcher's booth space (if applicable) may remain, at the risk of the Carrier, provided, that any such equipment shall not be used by the Carrier during the period of suspension. During the period of suspension, the Port Authority shall have the right to use or permit the use of the Space, or any part thereof, by others, on such terms as the Port Authority may determine.

(d) *Effect on this Agreement.* The period of suspension shall end not more than twenty-four (24) hours after the Labor Trouble has ceased or been cured and the Carrier has so notified the Port Authority. If the period of suspension does not end on or before a date one hundred eighty (180) days after the effective date of suspension, the Port Authority shall have the right to terminate this Agreement upon five (5) days' notice, provided, however, that if, on or before the ninetieth (90<sup>th</sup>) day after the effective date of suspension, the Carrier notifies the Port Authority and then agrees to pay to the Port Authority the fees set forth below, then, and in such event, if the period of suspension does not end on or before a date one hundred eighty (180) days after the effective date of suspension, and if the Carrier pays to the Port Authority for the period beginning the ninetieth (90<sup>th</sup>) day after the effective date of suspension, the same fees that were payable for the same calendar days in the year next preceding, the Port Authority shall not have the right of termination set forth above. In the event this Section comes into operation during the first year of the Term, then the Carrier shall pay fees based on the total number of Regular Route Operations Departures operated by it from Central Manhattan or Northern Manhattan, as applicable, on the same calendar days in the preceding year, as if the said Departures had been made under this Agreement.

## **Article 8. Entry for Inspection and Maintenance**

### **Section 8.1 Right of Entry**

The Port Authority, by its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the Space for the purpose of inspecting the same, for observing the performance by the Carrier of its obligations under this Agreement and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement. Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, representatives and contractors, shall have the right, for the benefit of the Carrier or for the benefit of others at the Facility, or in connection with any reconstruction or redevelopment of the Facility, to maintain and replace existing and future utilities systems or portions thereof in the Space, *including without limitation* systems for the supply of heat, hot and cold water, gas, electricity, compressed air and fuel, and for the furnishing of fire-alarm, fire-protection, sprinkler,

sewerage, drainage, ventilation, air-conditioning, telephone and intercommunication services, including lines, pipes, mains, wires, conduits, tubes, ducts, fixtures and equipment connected with or appurtenant to such systems, and to enter upon the Space at all reasonable times to make such repairs, alterations and replacements as may, in the opinion of the Port Authority, be deemed necessary or advisable, and, from time to time, to construct or install over, in, under or through the Space or any portion thereof new lines, pipes, mains, wires, conduits, tubes, ducts, fixtures and equipment; provided, however, that such repair, alterations, replacement or construction shall not unreasonably interfere with the Carrier's use of the Space.

#### Section 8.2 No Port Authority Obligation

Nothing in this Section shall impose upon the Port Authority any obligation so to maintain or so to make repairs, replacements, alterations or additions, or shall create any liability for failure to do so.

#### Section 8.3 No Abatement

No abatement of payments to be made under this Agreement by the Carrier shall be claimed by or allowed to the Carrier by reason of the exercise of the foregoing rights by the Port Authority or others.

### **Article 9. Indemnity and Insurance**

#### Section 9.1 Indemnity

*(a) Indemnification.* The Carrier shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from (and shall reimburse the Port Authority for the Port Authority's costs or expenses including reasonable legal expenses and the costs to the Port Authority of its in-house legal counsel incurred in connection with the defense of) all claims and demands of third persons including but not limited to those for death, for personal injuries, or for property damages, arising out of (x) any default of the Carrier in performing or observing any term or provision of this Agreement, or (y) the use or occupancy of the Space by the Carrier or by others with its consent (except to the extent resulting from the Port Authority's negligence or willful misconduct), or (z) any of the acts or omissions of the Carrier, its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and other persons who are doing business with the Carrier or who are at the Space with the Carrier's consent where such acts or omissions are at the Space, or arising out of any acts or omissions of the Carrier, its officers, members, employees, agents and representatives where such acts or omissions are elsewhere at the Facility (except to the extent resulting from the Port Authority's negligence or willful misconduct).

*(b) Defense of Claims.* If so directed, the Carrier shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

#### Section 9.2 Liability Insurance

*(a) Required Coverages.* The Carrier in its own name as assured shall secure and pay the premium or premiums for the policies of insurance set forth in the attached Schedule 3, in the minimum limits provided in such Schedule. Each such policy shall be maintained in at least the

limit fixed with respect thereto, shall cover the operations of the Carrier under this Agreement and shall be effective throughout the Term.

*(b) Policy Requirements.*

(1) The Port Authority shall be named as an additional insured in each policy of liability insurance unless the Port Authority, at any time during the effective period of this Agreement, directs otherwise in writing, in which case the Carrier shall cause the Port Authority not to be so named.

(2) Each policy of insurance on property other than that of the Carrier shall name the Port Authority as the owner of the property.

(3) Each policy of liability insurance shall provide an ISO standard "separation of insureds" clause or contain a cross liability endorsement providing that the protection afforded the Carrier thereunder with respect to any claim or action against the Carrier by a third party shall pertain and apply with like effect with respect to any claim or action against the Carrier by the Port Authority and against the Port Authority by the Carrier, but said clause or endorsement shall not limit, vary, change or affect the protection afforded the Port Authority as an additional insured.

(4) Each policy of liability insurance shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority or its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(5) If at any time any policy is or becomes unsatisfactory to the Port Authority as to form or substance, or if any carrier issuing such policy is or becomes unsatisfactory to the Port Authority, the Carrier shall promptly obtain a new and satisfactory policy in replacement.

*(c) Evidence of Insurance.* As to all insurance required hereunder, a certified copy of each policy or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority within ten (10) days after the execution of this Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written notice thereof to the Port Authority. Evidence of a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy.

## **Article 10. Utilization of the Space**

### **Section 10.1 Sharing of Loading Positions**

*(a) Pooling Arrangements.* The Carrier may enter into an arrangement, with any other bus carrier already licensed by the Port Authority to use space at the Facility, to share use of any Loading Position that is a part of the Space (a "Pooling Arrangement"; and any such already licensed carrier, a "Pooling Partner" of the Carrier).

*(b) Notification.* The Carrier shall give the Port Authority thirty (30) days' prior notice of any proposed Pooling Arrangement, stating the details of such arrangement and providing the Port Authority with a copy of the agreement covering such Pooling Arrangement.

(c) *Gate Fee and Other Responsibilities.* Notwithstanding any Pooling Arrangement, the Carrier shall continue to be wholly liable for the Gate Fee and all other obligations hereunder with respect to the Loading Position that is the subject of the Pooling Arrangement.

(d) *No Effect on Other Provisions.* Except as expressly provided, the foregoing shall not be deemed to abrogate, limit or otherwise diminish any restrictions, limitations or prohibitions on assignment, subcontracting or use of the Space by others under this Agreement, and shall not in any manner affect, waive or change any of the provisions hereof. The Carrier specifically acknowledges and agrees that the Carrier's Pooling Partners shall constitute persons using and occupying the Space with the Carrier's consent for purposes of Section 9.1 of this Agreement, entitled "Indemnity", and are accordingly covered by clauses (y) and (z) of paragraph (a) thereof.

**Section 10.2 Performance Requirements**

(a) *Minimum and Maximum Requirements.* Loading Positions shall be subject to minimum and maximum performance requirements in order to ensure efficient use of the Facility's limited capacity.

(1) With respect to the PABT, the minimum and maximum requirements shall be as set forth in the following chart, as revised from time to time by the General Manager:

<b>Type of Loading Position</b>	<b>Minimum Average Peak Period* Departures</b>	<b>Maximum Peak Period* Departures</b>
Short-Haul Gate	4 Departures/hour	6 Departures/hour
Short-Haul Platform Position	5 Departures/hour	8 Departures/hour
Long-Distance Gate	N/A	6 Departures/hour

\* "Peak Period" shall mean the period 4:00 – 7:00 p.m. on weekdays.

The number of average Peak Period Departures will be determined for each type of Loading Position for each hour in the Peak Period by adding the total number of Departures by the Carrier, as observed by a survey or obtained through dispatcher reports, in the Port Authority's discretion, and dividing by the number of Loading Positions used by the Carrier.

(2) With respect to the GWBBS, the minimum and maximum requirements shall be as determined from time to time by the General Manager.

(b) *Effect of Failure to Maintain Minimum.* If the Carrier fails to maintain the minimum required number of average Peak Period Departures, the Port Authority shall notify the Carrier to that effect. If the Carrier fails to meet such minimum requirements within two weeks thereafter, the Port Authority shall have the right, upon sixty (60) days' notice, to remove a Loading Position from the Space.

(c) *Effect of Failure to Maintain Maximum.* If the Carrier exceeds the maximum allowable number of average Peak Period Departures, the Port Authority shall notify the Carrier to that effect. If the Carrier is found to exceed the maximum allowable number of average Peak Period Departures a second time during a twelve-month period, the Port Authority may impose a fine upon the Carrier.

(d) *No Effect on Other Provisions or Obligations.* The foregoing shall not be deemed in any way to affect, alter, modify or diminish (x) any other rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in the section of this Agreement entitled "Termination by the Port Authority", (y) any obligation of the Carrier under this Agreement with respect to any Loading Positions that have not been removed pursuant to Paragraph (b) above, or (z) any outstanding obligation of the Carrier with respect to any Loading Position that has been removed pursuant to Paragraph (b) above. Failure to promptly pay any fine imposed pursuant to Paragraph (c) above shall constitute a Payment Default.

## Article 11. Termination

### Section 11.1 Termination by Port Authority

(a) *Certain Events of Default.* If any one or more of the following events shall occur, that is to say:

(1) the Carrier is adjudged insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement, or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or any other law or statute of the United States or of any State thereof, or consents to the appointment of a receiver, trustee, or liquidator of all of substantially all of its property, or

(2) by order or decree of a court the Carrier is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or (if the Carrier is a corporation) by any of the stockholders of the Carrier, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or any law or statute of the United States or of any State thereof; or

(3) a petition under any part of the federal bankruptcy laws or in action under any present or future insolvency law or statute is filed against the Carrier and is not dismissed within sixty (60) days after the filing thereof; or

(4) if the Carrier voluntarily abandons or discontinues the majority of its Regular Route Operations to or from the Facility (except when by order or direction of any appropriate governmental regulatory body) and such abandonment or discontinuance continues after ten (10) days' notice thereof from the Port Authority to the Carrier; or

(5) if the Carrier is, or the legal entities each of which is a party to this Agreement and fulfills the definition of the "Carrier" hereunder collectively are, doing business as, or constitute, a partnership, and the said partnership is dissolved as the result of any act or omission of its partners or any of them, or by operation of law or the order or decree of any court or for any other reason whatsoever; or

(6) after exhausting or abandoning any right of further appeal, the Carrier is prevented for a period of thirty (30) days by action of any governmental agency, from conducting its operations at the Facility, regardless of the fault of the Carrier

then, upon the occurrence of any such event and at any time thereafter during the continuance thereof, the Port Authority may by thirty (30) days' notice terminate the rights of the Carrier under this Agreement, effective upon the date specified in such notice.

*(b) Event of Default, General.* If the Carrier fails to keep, perform and observe each and every promise, covenant and agreement set forth in this Agreement on its part to be kept, performed or observed, and such failure continues after ten (10) days' notice thereof, then at any time during the continuance thereof the Port Authority may by thirty (30) days' notice terminate the rights of the Carrier under this Agreement, effective upon the date specified in such notice.

*(c) Event of Default, Payment.* If the Carrier fails duly and punctually to make any payment (including without limitation all fees, charges and fines) required hereunder (a "Payment Default"), then the Port Authority may by ten (10) days' notice terminate the rights of the Carrier under this Agreement, effective on the date specified in such notice; provided, however, that if the Carrier has cured such Payment Default by making payment in full on or before the day preceding the effective date of the notice, then the notice shall be deemed to have been withdrawn and to be of no effect. **Notwithstanding the foregoing, however, in the event of the occurrence of three (3) or more Payment Defaults within any period of twelve (12) consecutive months (and irrespective of any cure the Carrier may have effected with respect to any or all of such Payment Defaults in accordance with the proviso in the preceding sentence), the Port Authority may by ten (10) days' notice terminate the rights of the Carrier under this Agreement, effective on the date specified in such notice.**

*(d) No Waiver.* Except as provided in the proviso in the first sentence of the preceding Paragraph (c), the acceptance by the Port Authority of sums, charges or other payments for any period or periods after a default on the part of the Carrier in its performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Carrier shall not be deemed a waiver of any right on the part of the Port Authority to terminate the rights of the Carrier under this Agreement. No waiver of default by the Port Authority of any of the terms, covenants or conditions hereof to be performed, kept or observed by this Carrier shall be or be construed to be a waiver by the Port Authority of any other or subsequent default of any of the said terms, covenants and conditions.

## Section 11.2 Port Authority's Remedies and Damages

*(a) Rights of Termination Additional to Other Rights.* The rights of termination provided above in this Article shall be in addition to all other rights and remedies that the Port Authority would have at law or in equity consequent upon a breach of this Agreement by the Carrier and all of such rights and remedies shall be cumulative and not alternative; the exercise by the Port Authority of any such right of termination shall be without prejudice to any other such rights and remedies.

*(b) Damages.* In case of breach of this Agreement by the Carrier (whether or not followed by termination) entitling the Port Authority to damages, the parties contemplate and agree that non-use of the Facility in whole or in part by the Carrier at any time during the Term as originally fixed will damage the Port Authority by reason of its inability to utilize the full capacity of the Facility, the unique character of the Facility and the consequent inability of the Port Authority to convert it to other uses, and the diminution in value of viaducts owned by the Port Authority and connected with the Facility, all in addition to damages by reason of the loss of sums otherwise payable hereunder by the Carrier and by reason of the loss of revenues from other occupants of the Facility, the amount of whose rentals and fees depend upon use of the Facility by the Carrier and its passengers.

### Section 11.3 Termination by Carrier

(a) Except as otherwise expressly provided herein, if the Port Authority does not perform or commence the performance of any material obligation on its part to be performed under this Agreement, within thirty (30) days after the receipt of notice from the Carrier of a breach of such obligation, then in such event and during the continuance of such default, the Carrier shall have the right to terminate this Agreement by ten (10) days' notice.

(b) *Rights of Termination Additional to Other Rights.* The right of the Carrier to terminate under this Section shall be in addition to all other rights and remedies that the Carrier would have at law or in equity consequent upon a breach of this Agreement by the Port Authority, and all of such rights and remedies shall be cumulative and not alternative; the exercise by the Carrier of any such right of termination shall be without prejudice to any other such rights and remedies.

### Section 11.4 Thirty-Day Termination

Each of the Port Authority and the Carrier shall have the right to terminate this Agreement without cause at any time by giving at least thirty (30) days' prior notice to the other party.

### Section 11.5 Transfer or Partial Discontinuance

(a) *Transfer or Partial Discontinuance.* If, by order or decree of any administrative or judicial board, officer, court or other governmental agency having jurisdiction, any of the provisions of this Agreement, or any operation hereunder, or any operation conducted at the Facility by the Port Authority without obligation to do so which affects the Carrier or its passengers, is declared to be unlawful, or is determined to have the effect of permitting Federal regulation of the operations or financing of the Port Authority, whether in connection with the Facility or otherwise, the Port Authority shall have the right to elect as follows, in each case to take effect not sooner than the effective date of such order or decree: (x) to transfer the operation of the Facility and the Port Authority's interest in and obligations under this Agreement to a subsidiary agency or corporation or to a responsible independent organization as contractor, which will undertake to fulfill the obligations of the Port Authority; (y) to eliminate from this Agreement the said provision or provisions and to discontinue the operations provided for thereby, making an equitable adjustment of the charges hereunder (if any), and to continue this Agreement and operations hereunder as to all other parts thereof; or (z) to continue any operations theretofore conducted without obligation, but only as the agent and at the expense of the Carrier (or to discontinue the same).

(b) *Notice and Carrier's Right of Termination.* The Port Authority shall give notice of such election, which shall be sixty (60) days or, if less than sixty (60) days, at least the number of days between promulgation of the order and the effective date, less fifteen (15) days. In the event of the Port Authority's election of (y) or (z) in the foregoing paragraph (a), the Carrier shall have the right, exercisable by notice given within sixty (60) days of its receipt of the notice of election by the Port Authority, to terminate this Agreement in its entirety by not less than thirty (30) days' notice to the Port Authority.

### Section 11.6 Loss of Facility

(a) *Condemnation.* Notwithstanding any other provision of this Agreement, if any governmental agency or agencies shall take, by exercise of the power of eminent domain, all or a substantial part of the Facility or all or a substantial part of the Space; then, if the Port Authority shall not make a substitution of other space for the Space (or portion thereof, as required), or shall be unable to do so, and if in the Port Authority's opinion the continued operation of the Facility for motor-bus carriers would be impossible, impractical or uneconomical, the Port Authority may at its option terminate this Agreement by notice to the Carrier, specifying the

effective date of termination, which date may be retroactive to the date of taking. Such termination shall have the same effect as the expiration of this Agreement.

(b) *No Carrier Claim.* In any action or proceeding instituted by any governmental agency or agencies for the taking for a public use of any interest in all or any part of the Facility, the Carrier shall not be entitled to assert any claim to any award or part thereof or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority, for or on account of any such taking, it being understood and agreed between the Port Authority and the Carrier that the Port Authority shall be entitled to all the compensation or awards made or to be made or paid for any such taking, free of any claim or right of the Carrier.

## Article 12. Security Deposit

### Section 12.1 Security Deposit

(a) *Required Deposit Amount.* As security for the Carrier's full, faithful and prompt performance of and compliance with all of its obligations under this Agreement, the Carrier shall, upon its execution and delivery of this Agreement, deposit with the Port Authority (and shall keep deposited throughout the Term) the sum set forth on Schedule 4 (the "Required Deposit Amount") either in cash, or in bonds of the United States of America, the State of New Jersey, the State of New York, or The Port Authority of New York and New Jersey, having a market value of the Required Deposit Amount; provided, however, that if the Required Deposit Amount is Twenty Thousand Dollars and No Cents (\$20,000.00) or greater, the Carrier shall be required, instead, to deliver to the Port Authority a letter of credit as provided in Section 12.2 below.

(b) *Requirements for Bonds.* Bonds qualifying for deposit hereunder shall be in bearer form, but if bonds of that issue were offered only in registered form, then the Carrier may deposit such bond or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Carrier) in a manner satisfactory to the Port Authority. The Carrier may request the Port Authority to accept a registered bond in the Carrier's name and, if acceptable to the Port Authority the Carrier shall deposit such bond together with a bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Carrier, any expenses incurred by the Port Authority in re-registering a bond to the name of the Carrier shall be borne by the Carrier.

(c) *Use of Deposit.* In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Carrier. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of the Carrier. With respect to any bonds deposited by the Carrier, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Carrier, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights of redemption of the Carrier. The Carrier hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Carrier. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Carrier. Any balance remaining shall be retained in cash toward bringing the deposit to the Required Deposit Amount. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have

declined below the Required Deposit Amount, the Carrier shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times at the full Required Deposit Amount, and such additional deposits shall be subject to all the conditions of this Section.

(d) *No Encumbrance.* The Carrier agrees that it will not assign or encumber the deposit.

(e) *Interest.* The Carrier may collect or receive any interest or income earned on bonds and interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise; provided, however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(f) *Return of Deposit.* After the expiration or earlier termination of the Term, and upon condition that the Carrier shall then be in no way in default under any part of this Agreement, and upon written request therefor by the Carrier, the Port Authority will return the deposit to the Carrier less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Carrier of this Agreement.

(g) *Tax Number.* For the purposes of the foregoing provisions, the Carrier hereby certifies that its federal Taxpayer Identification Number is as set forth on Schedule 4.

#### Section 12.2 Letter of Credit

(a) *Letter of Credit in Lieu of Security Deposit.* In lieu of the security deposit required pursuant to the preceding Section 12.1, the Carrier may deliver (if the Required Deposit Amount is less than Twenty Thousand Dollars and No Cents (\$20,000.00)), and *must* deliver (if the Required Deposit Amount is Twenty Thousand Dollars and No Cents (\$20,000.00) or greater) to the Port Authority, as security for all obligations of the Carrier under this Agreement, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York and New Jersey District, in favor of the Port Authority in the amount of the Required Deposit Amount.

(b) *Form and Terms.* The form and terms of each letter of credit delivered under this Section, as well as the institution issuing it (which shall be an investment-grade rated bank), shall be subject to the prior and continuing approval of the Port Authority; **the form of any proposed letter of credit (a sample of which is attached as Exhibit 6) shall be submitted to the Port Authority in advance for review and approval by its Credit, Collection and Accounts Receivable unit.** Such letter of credit shall provide that it shall continue throughout the Term and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit.

(c) *Return of Any Existing Security Deposit.* Upon acceptance of such letter of credit by the Port Authority, and upon request by the Carrier made thereafter, the Port Authority will return any security deposit theretofore made under and in accordance with the provisions of Section 12.1. The Carrier shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the Term and fulfillment of the obligations of the Carrier under this Agreement.

(d) *Cancellation; Drawdowns.* Upon notice of cancellation of a letter of credit the Carrier agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in the Required Deposit Amount or another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof, and

thereafter the Port Authority will hold the same as security under Section 12.1. If the Port Authority makes any drawing under a letter of credit held by the Port Authority hereunder, the Carrier, on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to the full Required Deposit Amount.

(e) *Failure to Provide Letter of Credit.* Following the Port Authority's acceptance of a letter of credit in lieu of the security deposit required pursuant to Section 12.1, any failure to provide such letter of credit at any time during the Term which is valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit, shall be deemed to be a breach of this Agreement on the part of the Carrier.

(f) *No Waiver.* No action by the Port Authority pursuant to the terms of any letter of credit, or receipt by the Port Authority of funds from any bank issuing any such letter of credit, shall be deemed to be a waiver of any default by the Carrier under the terms of this Agreement, and all remedies under this Agreement of the Port Authority consequent upon such default shall not be affected by the existence of, or a recourse to, any such letter of credit.

### **Article 13. Brokerage**

The Carrier represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Carrier shall indemnify and save harmless the Port Authority of and from and such claim, except such claims, if any, as may arise solely from the acts of the Port Authority and of its employees.

### **Article 14. Notices**

#### **Section 14.1 Notices**

(a) *Notices in Writing.* Except where expressly required or permitted to be oral, or to be otherwise delivered, all notices, requests, consents and approvals and the like required to be given to or by either party (each, a "Notice") shall be in writing, and all Notices shall be personally delivered to the duly designated officer or representative of such party or delivered to the office of such officer or representative during regular business hours or sent to him at such address by registered or certified mail.

(b) *Address for Notices.* Each party shall designate an office within any one of the fifty States or the District of Columbia and an officer or representative whose regular place of business is at such office, where and upon whom Notices may be served. Until further notice, the Port Authority hereby designates its Executive Director, and the Carrier designates the individual named as its representative on the Cover Page, as their respective officers and representatives upon whom Notices may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Carrier designates its office at the address set forth on the Cover Page, as the respective offices where Notices may be served.

(c) *Effectiveness.* The giving of any Notice shall be complete and effective upon receipt or, in the event of a refusal by the addressee, upon the first tender of the Notice to the addressee or at the address thereof.

## Article 15. Miscellaneous

### Section 15.1 No Personal Liability

No Commissioner, officer, agent or employee of the Port Authority shall be charged personally with any liability or held liable under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach or attempted or alleged breach of this Agreement.

### Section 15.2 Force Majeure

(a) *Force Majeure.* The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control. "Force Majeure" or "causes or conditions beyond its control", or words of similar import, shall mean acts of God, the elements, weather conditions, tides, earthquakes, settlement, fire, acts of any governmental authority (other than the Port Authority with respect to obligations to be performed by it under this Agreement), war, acts of terrorism, shortage of labor or materials, acts or omissions of third parties for which the Port Authority is not responsible, injunctions, labor troubles or disputes of every kind (including those affecting the Port Authority or its contractors, suppliers or subcontractors) or any other conditions or circumstances, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances) which are beyond the control of the Port Authority and which could not be prevented or remedied by reasonable effort and at reasonable expense.

(b) *Application of this Section.* The provisions of this Section shall apply to each and every obligation of the Port Authority under this Agreement, whether or not reference to Force Majeure or conditions beyond the control of the Port Authority is set forth in the provision of this Agreement which gives rise to such obligation. The fact that references to Force Majeure or conditions beyond the control of the Port Authority may be included in only certain of the provisions of this Agreement shall not be construed as making the provisions of this Section inapplicable to those provisions of this Agreement which do not contain such references.

### Section 15.3 Relationship of the Parties

This Agreement does not constitute the Carrier the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is created hereby.

### Section 15.4 Severability

If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 15.5 Remedies to be Non-Exclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities, shall not prevent the exercise of any other remedy.

Section 15.6 Waiver of Trial by Jury; Counterclaims

The Carrier hereby waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Carrier in respect of the Space and/or in any action that may be brought by the Port Authority to recover fees, damages, or other sums due and owing under this Carrier. The Carrier specifically agrees that it shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment of fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed. The foregoing reference to summary proceedings shall not be construed to mean that a landlord-tenant relationship exists between the Port Authority and the Carrier.

Section 15.7 Construction and Application of Terms

(a) *Headings.* The use of article, section and paragraph headings and a table of contents, and the organization of the various provisions of this Agreement thereunder, are for convenience of reference only and in no way define, limit or describe the scope or intent of any provision hereof.

(b) *Ambiguities.* Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applicable to the interpretation of this Agreement or any amendments, addenda or supplements hereto or any exhibits or schedules hereto.

(c) *Gender and Number.* Wherever in this Agreement a third person singular neuter pronoun or adjective is used, referring to the Carrier or the Port Authority, the same shall be deemed to refer to the Carrier or the Port Authority, regardless of the actual gender or number thereof. Wherever in this Agreement a third person masculine pronoun or adjective is used to refer to an individual or individuals, the same shall be deemed to include the feminine and plural forms of the pronoun or adjective.

(d) *Carrier's Obligations.* Wherever in this Agreement the Carrier is placed under an obligation, or covenants to do or to refrain from doing, or is prohibited from doing, or is entitled or privileged to do, any act or thing, the following shall apply:

(1) If the Carrier is a corporation, its obligation shall be performed and its rights and privileges shall be exercised only by its officers and employees.

(2) If the Carrier is a partnership, the obligation shall be that of its partners as well as of itself, and shall be performed only by its partners and employees, and the rights or privileges shall be exercised only by its partners and employees.

(3) If the Carrier is an individual, the obligation shall be that of himself (or herself) and shall be performed only by himself (or herself) and his (or her) employees, and the rights or privileges shall be exercised only by himself (or herself) and his (or her) employees.

(4) If the Carrier is a limited liability company, its obligation shall be performed and its rights and privileges shall be exercised only by its members, managers and employees.

(5) If the Carrier, as set forth on the Cover Page, consists of more than one individual or legal entity, then each and every obligation of the Carrier hereunder shall be the joint and several obligation of each such individual or legal entity.

(6) None of the provisions of this paragraph (d) shall be taken to alter, amend or diminish any obligation of the Carrier assumed in relation to its invitees, visitors, agents, representatives, contractors, customers, passengers, guests or other persons, firms or corporations doing business with it.

(e) *Exhibits and Schedules.* The provisions and obligations contained in any Exhibits or Schedules attached hereto shall have the same force and effect as if set forth in full in this Agreement.

(f) *Governing Law.* To the extent that any provisions of this Agreement are in any instance to be construed in accordance with the laws of a state, the laws of the State of New York shall apply.

(g) *Successors and Assigns.* The covenants, agreements, terms, provisions and conditions contained in this Agreement shall be binding upon and inure to the benefit of the Port Authority and the Carrier and their respective successors and permitted assigns, except as otherwise expressly set forth herein.

#### Section 15.8 Entire Agreement

(a) *Entire Agreement.* This Agreement, including the attached Cover Page, Schedules and Exhibits, which constitute integral parts of this Agreement, contains all of the promises, agreements, conditions, inducements and understandings between the Port Authority and the Carrier concerning the Port Authority's grant to the Carrier of a license to use the Space, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between the Port Authority and the Carrier other than as expressly set forth herein and therein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

(b) *Modifications to be in Writing.* No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the Carrier and the Port Authority.

(c) *No Waiver.* No failure by the Port Authority to insist upon the strict performance of any agreement, covenant, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach or default of any agreement, covenant, term, or condition of this Agreement, and no extension, supplement or amendment of this Agreement during or after such breach or default, unless expressly stated to be a waiver, and no acceptance by the Port Authority of any payment required hereunder after or during the continuance of any such breach or default, shall constitute the waiver of such breach or default. No waiver of any default shall affect or alter this Agreement, but each and every agreement, covenant, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

## EXHIBIT 1. SHORT HAUL AREA

The Short Haul Area shall be that contiguous area comprised of the following:

- (i) In New York: the five (5) boroughs of the City of New York; the Counties of Nassau, Orange, Putnam, Rockland and Westchester, and that portion of Suffolk County lying west of a line running from the point on the shore line of Port Jefferson Harbor which is closest to the northern extremity of New York Route No. 112 to the said northern extremity, thence along the said New York Route No. 112 to its southern extremity, and thence due south to the shore line of the Atlantic Ocean on Fire Island;
- (ii) In New Jersey: the Counties of Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union and Warren; Fort Dix and McGuire Air Force Base in Burlington County, and that portion of Ocean County lying north of a line running from the point where New Jersey Route No. 530 crosses the boundary between Ocean and Burlington Counties easterly along the said Route to its intersection with the Garden State Parkway, thence northerly along the Garden State Parkway to the point where it crosses the Toms River, thence easterly along the northern shoreline of the Toms River to and across Barnegat Bay to the closest point on the northern boundary of the Borough of Seaside Park, thence along the said boundary to the Atlantic Ocean; and
- (iii) In Connecticut: the County of Fairfield;

**provided, however,** that whenever the boundary of the above-described area would otherwise partition an incorporated municipality, then the entire such municipality shall be deemed to be within the Short Haul Area.

**EXHIBIT 2. QUARTERLY RECONCILIATION FORM**

**Summary for Activity at the George Washington Bridge Bus Station**

2007

**Short Haul Departures**

Month	Number of Departures	Departure Fee Rate	Actual Departure Fees	Amount Invoiced	Amount Due/Credit
1		\$2.10	\$0.00		\$0.00
2		\$2.10	\$0.00		\$0.00
3		\$2.10	\$0.00		\$0.00
<b>Short Haul Departures Total</b>					<b>\$0.00</b>

**Middle-Distance Ticket Sales**

Month	Ticket Sales Revenue	Commission	Actual Tickets Sales Fees	Amount Invoiced	Amount Due/Credit
1		13.5%	\$0.00		\$0.00
2		13.5%	\$0.00		\$0.00
3		13.5%	\$0.00		\$0.00
<b>Ticket Sales Total</b>					<b>\$0.00</b>

**Long-Distance Departures**

Month	Number of Departures	Departure Fee Rate	Actual Departure Fees	Amount Invoiced	Amount Due/Credit
1		\$38.00	\$0.00		\$0.00
2		\$38.00	\$0.00		\$0.00
3		\$38.00	\$0.00		\$0.00
<b>Long-Distance Departures Total</b>					<b>\$0.00</b>

**TOTAL DUE/CREDIT** **\$0.00**



**EXHIBIT 3. MONTHLY SUMMARY OF DAILY DEPARTURES**

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Port Authority Bus Terminal

Bus Company: \_\_\_\_\_

Month \_\_\_\_\_

Year \_\_\_\_\_

NUMBER OF DEPARTURES								
DATE	Schedules & Extra Sect.	Charter	DATE	Schedules & Extra Sect.	Charter	DATE	Schedules & Extra Sect.	Charter
1			12			23		
2			13			24		
3			14			25		
4			15			26		
5			16			27		
6			17			28		
7			18			29		
8			19			30		
9			20			31		
10			21					
11			22			<b>Total</b>		

Amount

Schedules and Extra Sections

\$ \_\_\_\_\_

Charters

\$ \_\_\_\_\_

**Total**

\$ \_\_\_\_\_

Check No. \_\_\_\_\_

(accompanies this report)

Per (Signature): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 3. MONTHLY SUMMARY OF DAILY DEPARTURES**

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

George Washington Bridge Bus Station

Bus Company: \_\_\_\_\_

Month \_\_\_\_\_

Year \_\_\_\_\_

NUMBER OF DEPARTURES								
DATE	Schedules & Extra Sect.	Charter	DATE	Schedules & Extra Sect.	Charter	DATE	Schedules & Extra Sect.	Charter
1			12			23		
2			13			24		
3			14			25		
4			15			26		
5			16			27		
6			17			28		
7			18			29		
8			19			30		
9			20			31		
10			21					
11			22			<b>Total</b>		

Amount

Schedules and Extra Sections

\$ \_\_\_\_\_

Per (Signature): \_\_\_\_\_

Charters

\$ \_\_\_\_\_

Title: \_\_\_\_\_

**Total**

\$ \_\_\_\_\_

Date: \_\_\_\_\_

Check No. \_\_\_\_\_

(accompanies this report)





**EXHIBIT 5. RULES AND REGULATIONS**

*[To be provided separately]*

**SCHEDULE 1. GATE/PLATFORM POSITION FEES**

**PORT AUTHORITY BUS TERMINAL (PABT)  
GEORGE WASHINGTON BRIDGE BUS STATION (GWBBS)**

SHORT-HAUL FEE CATEGORY <sup>1</sup>		
YEAR	SHORT-HAUL PLATFORM POSITIONS	SHORT-HAUL GATES
2008	\$ 1,742.00 / year	\$ 4,646.00 / year
Subsequent Years	Annual CPI Adjustment <sup>2</sup>	Annual CPI Adjustment

LONG-DISTANCE FEE CATEGORY				
YEAR	BEST GATES <sup>3</sup>	PREFERRED GATES <sup>4</sup>	STANDARD GATES <sup>5</sup>	PLATFORM POSITIONS <sup>6</sup>
2008	\$19,500	\$16,200	\$13,000	\$6,500
Subsequent Years	Annual CPI Adjustment	Annual CPI Adjustment	Annual CPI Adjustment	Annual CPI Adjustment

<sup>1</sup> Short-Haul Platform Position and Short-Haul Gate fees apply to Loading Positions used primarily for service to final destinations within the Short Haul Area. If the same Loading Position is used for both Short-Haul and Long-Distance services, the Port Authority may pro-rate the fees at its discretion.

<sup>2</sup> CPI Adjustment: The fee for each subsequent calendar year (a "New Fee Year") shall equal the sum of (x) the annual fee for year 2008 and (y) the amount of the year 2008 annual fee multiplied by the Percentage Increase, in accordance with the following:

"Percentage Increase" shall mean the percentage increase in the Index on each Anniversary Date, equal to a fraction of which the numerator shall be the Index for the Adjustment Period less the Index for the Base Period and the denominator shall be the Index for the Base Period, where:

"Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor,

"Base Period" shall mean the month of September 2007,

"Adjustment Period" shall mean the month of September immediately preceding the New Fee Year, and

"Anniversary Date" shall mean January 1 each New Fee Year.

<sup>3</sup> Best Gate fees apply to the PABT's North Wing Lower Level gates.

<sup>4</sup> Preferred Gate fees apply to the PABT's North Wing third and fourth floor gates and South Wing Lower Level south side gates.

<sup>5</sup> Standard Gate fees apply to all other gates at the PABT, as well as all gates at the GWBBS.

<sup>6</sup> Platform Position fees apply to each Loading Position on pull-through platforms at the PABT and GWBBS.

**SCHEDULE 2. DEPARTURE FEES AND  
MIDDLE DISTANCE PERCENTAGE FEE**

PORT AUTHORITY BUS TERMINAL (PABT)  
GEORGE WASHINGTON BRIDGE BUS STATION (GWBBS)

Long-Distance Departure Fees:

2008: \$40 per Revenue Departure<sup>1</sup>  
Subsequent years: Annual CPI Adjustment<sup>2</sup>

Short Haul Departure Fees:

2008: \$2.20 per Revenue Departure  
2009: \$2.30 per Revenue Departure  
Subsequent years: Annual CPI Adjustment<sup>3</sup>

Middle Distance Percentage Fee: Thirteen and one-half percent (13.5%)

<sup>1</sup> Revenue Departure – A departure fee shall be payable for all departures carrying, or offering to carry, passengers from the Facility

<sup>2</sup> CPI Adjustment: The fee for each subsequent calendar year (a "New Fee Year") shall equal the sum of (x) the fee for year 2008 and (y) the amount of the year 2008 fee multiplied by the Percentage Increase, in accordance with the following:

"Percentage Increase" shall mean the percentage increase in the Index on each Anniversary Date, equal to a fraction of which the numerator shall be the Index for the Adjustment Period less the Index for the Base Period and the denominator shall be the Index for the Base Period, where:

"Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor,

"Base Period" shall mean the month of September 2007,

"Adjustment Period" shall mean the month of September immediately preceding the New Fee Year, and

"Anniversary Date" shall mean January 1 of each New Fee Year.

<sup>3</sup> CPI Adjustment: The fee for each subsequent calendar year (a "New Fee Year") shall equal the sum of (x) the fee for year 2009 and (y) the amount of the year 2009 fee multiplied by the Percentage Increase, in accordance with the following:

"Percentage Increase" shall mean the percentage increase in the Index on each Anniversary Date, equal to a fraction of which the numerator shall be the Index for the Adjustment Period less the Index for the Base Period and the denominator shall be the Index for the Base Period, where:

"Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor,

"Base Period" shall mean the month of September 2008,

"Adjustment Period" shall mean the month of September immediately preceding the New Fee Year, and

"Anniversary Date" shall mean January 1 of each New Fee Year.

**SCHEDULE 3. INSURANCE**

<u>POLICY</u>		<u>MINIMUM LIMITS</u>
<b>COMMERCIAL GENERAL LIABILITY</b> (including a contractual liability endorsement)		
	<b>Bodily Injury Liability</b>  For injury or wrongful death to one person  For injury or wrongful death to more than one person from any one occurrence	<u>\$2,000,000</u>  <u>\$2,000,000</u>
	<b>Property Damage Liability</b>  For all damages arising out of injury to or destruction of property in any one occurrence	<u>\$2,000,000</u>
<b>AUTOMOBILE LIABILITY</b>		
	<b>Bodily Injury Liability</b>  For injury or wrongful death to one person  For injury or wrongful death to more than one person from any one occurrence	<u>\$5,000,000</u>  <u>\$5,000,000</u>
	<b>Property Damage Liability</b>  For all damages arising out of injury to or destruction of property in any one occurrence	<u>\$5,000,000</u>

#### **SCHEDULE 4. SECURITY DEPOSIT AND TAX I.D. NUMBER**

1. Security Deposit. The "Required Deposit Amount" provided in Section 12.1(a) of the Agreement to which this Schedule is attached shall be seventy thousand Dollars and No Cents (\$ 70,000.00).

2. Tax I.D. Number. The Carrier hereby certifies in accordance with Section 12.1(g) of the Agreement to which this Schedule is attached that its federal Taxpayer Identification Number is Exemption (1/4)