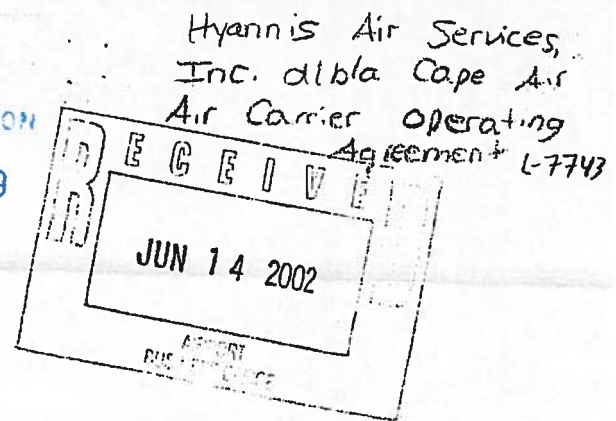


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STATE ETHICS COMMISSION  
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**MASSACHUSETTS PORT AUTHORITY**

TO: Distribution

RE: Hyannis Air Services, Inc. d/b/a  
Cape Air/L-7743

FROM: Michael A. Grieco *MA*  
Assistant Secretary-Treasurer

DATE: June 12, 2002

Attached for your information is a fully executed copy of the above-numbered document.

MAG/pr

Attachment

**Distribution:**

ABO File / Originator – J. Shang (w/TAF)  
Environmental Management – C. Wetherell (w/TAF)  
Accounting – J. Chen (w/TAF)  
Legal (w/TAF)  
Risk Management – L. Smith

## TRANSACTION APPROVAL FORM

For instructions, please refer to the MPA Internal Procedures Manual, effective 11/15/95.

4-7743

TYPE OF TRANSACTION		
<b>1. Check One:</b> <input type="checkbox"/> Prof. Services Consultant Agreement* <input type="checkbox"/> Architect/Eng. Consultant Agreement <input type="checkbox"/> Litigation/Claim-MPA as Payor <input type="checkbox"/> Litigation/Claim-MPA as Recipient <input type="checkbox"/> Purchase Contract* <input type="checkbox"/> Service Agreement** <input type="checkbox"/> Lease-MPA as Landlord*** <input type="checkbox"/> Lease-MPA as Tenant* <input type="checkbox"/> Construction Type I** <input type="checkbox"/> Construction Type II <input type="checkbox"/> License/Release Agreement** <input checked="" type="checkbox"/> Other <u>Air Carrier Operating Agreement</u>	<b>2. Check:</b> <input type="checkbox"/> Sole source (see backside). <input type="checkbox"/> There are other contracts with same vendor (see backside). <input type="checkbox"/> Statement describing selection process is included (see backside). <input checked="" type="checkbox"/> Requesting delivery of final documents to deliver to vendor for execution. Please call me for pick-up when all approvals are obtained.	<b>3. Check One:</b> <input checked="" type="checkbox"/> New Agreement <input type="checkbox"/> Amendment to # _____ <input type="checkbox"/> Renewal to # _____
<b>Summarize Purpose of Transaction (provide details on backside):</b> Massport and Hyannis Air Service, Inc. d/b/a Cape Air.		<b>4. Check One:</b> <input type="checkbox"/> Delegated Item <input checked="" type="checkbox"/> Board Approved on <u>2/24/1999</u> (Attach copy of Board vote, if available)
<b>Execute standard air carrier operating agreement between</b>		
Asterisk notation indicates which of the following forms must be attached: *Legal Services Request **Appropriate MPA Agreement ***Lease Profile, skip to Section C For less complicated and all other transactions, please complete backside of this form.		
<b>Hyannis Air Service, Inc.</b> Legal Name of Company or Individual <u>Cape Air</u> <u>300 Terminal C, Logan International Airport, East Boston, MA 02128</u> Address <u>Doing Business As (d/b/a)</u> <u>Mr. Charles Ferrara</u> Contact Person <u>Telephone #</u> <u>3/1/2002</u> and <u>2/28/03, thereafter year-to-year</u> Commencement Date Termination date		
<b>Check Appropriate Status:</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> ICB <input checked="" type="checkbox"/> None of above		

FINANCIAL IMPLICATIONS		ATTACHMENT CHECKLIST	
<b>Funding Source:</b> Operating Fund: _____ OR Capital Project #: _____		<input type="checkbox"/> Legal Services Request <input checked="" type="checkbox"/> MPA Agreement <input type="checkbox"/> Lease Profile Form <input type="checkbox"/> Selection Process Description <input type="checkbox"/> Explanatory Internal Memo <input checked="" type="checkbox"/> Copy of Board Vote <input type="checkbox"/> Consultant's Proposal <input type="checkbox"/> Request For Proposal <input type="checkbox"/> Insurance Certificate <input type="checkbox"/> Performance/Payment Bond <input type="checkbox"/> Other	
Original Amount: \$ _____ Prior Amendments: (If any) \$ _____ This Amendment: (If applicable) \$ _____ Total \$ _____	Unit _____ Code(s) _____ Location _____		

APPROVALS (sign AND print your name)					
sign <u>Jane K. Shang</u>	sign <u>Brian McMorro</u>	sign <u>Deborah Lauke</u>	sign _____	sign _____	sign _____
print <u>Jane K. Shang</u>	print <u>Brian McMorro</u>	print <u>Deborah Lauke</u>	print _____	print _____	print _____
Originator _____	Department Head or Designee _____	Legal (as to form only) _____	Deputy Executive Director _____	Other _____	Other _____
Date <u>6/26/2002</u>	Date <u>4/29/02</u>	Date <u>5/23/02</u>	Date _____	Date _____	Date _____
sign <u>N/A</u>	sign <u>Leslie A. Kimwan</u>	sign <u>N/A</u>	sign _____	sign _____	sign _____
print _____	print <u>Leslie A. Kimwan</u>	print _____	print _____	print _____	print _____
A&F _____	A&F Director _____	Deputy Executive Director _____	Other _____	Other _____	Other _____
Date _____	Date <u>6/7/02</u>	Date _____	Date _____	Date _____	Date _____
sign <u>N/A</u>	sign _____	sign _____	sign _____	sign _____	sign _____
print _____	print _____	print _____	print _____	print _____	print _____
Other _____	Other _____	Other _____	Other _____	Other _____	Other _____
Date _____	Date _____	Date _____	Date _____	Date _____	Date _____

(After Originator &amp; Dept Head approvals, submit to Legal Dept., attention Deputy Chief Counsel to initiate processing)

11/95

j:/.../airlines/cape air/capeairaircarrierfax.xls

\* dbse

Air Carrier Operating Agreements

Upon a motion duly made and seconded:

VOTED:

To authorize the Executive Director, Secretary-Treasurer or Assistant Secretary-Treasurer to execute on behalf of the Authority, conditional upon receipt of all required documentation, agreements with Aer Lingus, Air Canada, Air Nova, Alitalia Linee Aeree Italiane, S.P.A., Allegheny Airlines, Inc. d/b/a US Airways Express, American Airlines, Inc., American Eagle Airlines, Inc., British Airways, Business Express Airlines, Inc., Champlain Enterprise d/b/a CommutAir Inc. d/b/a US Airways Express, Continental Airlines, Inc., Delta Air Lines, Inc., Delta Air Lines, Inc. d/b/a Delta Express, Delta Air Lines, Inc. d/b/a Delta Shuttle, Federal Express Corporation, Hyannis Air Service, Inc. d/b/a Cape Air, Lufthansa German Airlines, Midwest Express Airlines, Inc., Northwest Airlines, Inc., Sabena Belgian Airlines, Swiss Air Transport Company, Ltd., Trans World Airlines, Inc., US Airways, Inc., US Airways Shuttle, Inc. d/b/a US Airways Shuttle, United Air Lines, Inc., and United Parcel Service, Inc. or to take such other action as may be deemed appropriate to allow the subject Carriers to conduct operations at Logan International Airport. The subject Carriers will pay all applicable fees established by the Authority for use of airport premises, including but not restricted to landing fees, parking fees, rental charges for terminal or other space at the Airport, and such other charges and fees as the Authority has established or may establish from time to time. Before the agreements are executed, or the subject Carriers are otherwise authorized to commence operations, the subject Carriers shall have valid and current certifications and authorizations from all state, federal and other governmental regulatory bodies for the aircraft used and the aircraft operation conducted, and the operating agreements shall be subject to cancellation or termination by the Authority. The agreements shall contain such other terms and conditions as the person executing in accordance with this vote deems necessary or desirable.

Members Carangelo, Cashman, Cogliano, Monahan and Robinson voted Yes.

## OPERATING AGREEMENT

This Air Carrier Operating Agreement (the "Agreement") dated as of April 11, 2002, is made between the **MASSACHUSETTS PORT AUTHORITY** (the "Authority"), a body politic and corporate organized and existing in accordance with Chapter 465 of the Massachusetts Acts of 1956, as amended, and **Hyannis Air Service, Inc. d/b/a Cape Air**, (the "Operator"), a Massachusetts corporation registered to do business in Massachusetts, with a usual place of business at 100 Terminal A, Logan International Airport, East Boston, MA 02128-2057.

WHEREAS, the Authority is the owner and operator of the General Edward Lawrence Logan International Airport located in East Boston, Massachusetts ("Logan" or the "Airport"); and

WHEREAS, the Operator is an air carrier certificated under 14 CFR Part 121, Part 125, Part 127, Part 129, or Part 135, and desires to provide air service at Logan as a certificated air carrier and to undertake the obligations set forth below; and

WHEREAS, the Authority is willing to permit the Operator to provide air service as a US Department of Transportation/Federal Aviation Administration ("USDOT/FAA") certificated air carrier at Logan on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority and the Operator agree as follows:

### ARTICLE 1 - TERM

1.1 Term. The term of this Agreement (the "Term") shall commence on March 1, 2002 (the "Commencement Date"), and shall expire at 12:00 AM on February 28, 2003, unless extended or earlier terminated as provided herein.

1.2 Automatic Extension. Unless terminated by either party by notice not less than thirty (30) days prior to the expiration of the then current Term, the Term of this Agreement shall extend automatically from year to year, without the requirement of any further instrument or approval except as required herein, upon all of the same terms and conditions set forth in this Agreement.

### ARTICLE 2 - PERMITTED ACTIVITIES

2.1 Permitted Operations. The Operator may provide certain non-exclusive air carrier services at Logan in common with others, pursuant to certificates issued in accordance with federal law, upon payment of all applicable fees and charges as established in the Authority's regulations or as otherwise prescribed from time to time by the Authority,

subject to the terms and conditions of this Agreement.

**2.2 Federal Certification.** The Operator may only operate as a commercial air carrier at Logan and only to the extent of and in accordance with its USDOT/FAA certification.

**2.3 Fees and Charges.** The Operator's right to conduct operations hereunder is conditioned upon payment of all fees and charges applicable to its operations at Logan as set forth in Article 3, and upon its compliance with all other terms and conditions of this Agreement.

**2.4 Use of Facilities/ Facilities Plan.** The Operator may use, in common with others authorized to do so, the runways and taxiways at Logan. The Operator's use of common apron and other common use airside facilities shall be in accordance with an approved ramp use plan and a third party handling or service agreement, if applicable, submitted to the Authority by the Operator and approved by the Authority. In the absence of such a plan, the Authority shall designate use of common use facilities within the terminal areas, if applicable, ramp and apron areas, aircraft parking, storage areas, signage and gates.

**2.5 Aviation Services.** To the extent required under applicable law, the Operator may service itself or use any aviation service operator allowed by the Authority, as the airport operator, to service any carrier at Logan in those areas that have been approved by the Authority for the rendering of such services. The Operator also may obtain aviation/commercial services from providers or tenant air carriers that have been authorized by the Authority to provide such services to third parties at Logan. As between the Authority and the Operator, the Operator shall be solely responsible for the quality of any and all services, goods and/or supplies obtained from other vendors, operators, air carriers or contractors at Logan and hereby waives any and all claims against and indemnifies and holds the Authority harmless from and against any claims arising from or in connection with the provision of such services, goods and/or supplies.

The Operator shall not provide services or supplies to other air carriers, tenants, or operators at Logan without the prior written approval of the Authority, which approval may be withheld in the Authority's sole discretion.

**2.6 Storage of Equipment.** The Operator shall not store equipment at Logan unless such storage is in areas that the Operator leases or subleases for such use or in areas for which the Operator has received the prior written approval of the Authority, and has paid the Authority the applicable fee for such storage.

**2.7 Employee Badges and Permits.** The Operator may apply to the Authority for employee security badges, ramp and apron permits and aerodrome motor vehicle operator's permits. No employee of the Operator shall have access to secured areas without such badges/permits. Such permits and badges shall be issued in the Authority's sole discretion, and only if the Operator and its employees meet all of the Authority's criteria for the issuance of such permits. The Authority may revoke any such permits issued by the Authority at any time in its sole discretion. The Operator shall comply with all applicable provisions of the security plan developed by the Authority under FAR Part 107

or 139, and with the Operator's obligations under FAR Parts 108 and 109.

2.8 Signage. The Operator acknowledges that it is necessary for the effective and efficient operation of Logan to require the Operator to make arrangements for directional signage (the "Signage") on Logan roadways and in the terminal areas. To that end, the Operator agrees to make arrangements with the Authority and pay for the Signage as the Authority may require for its operations, including for any additional facilities or for relocated facilities.

### ARTICLE 3 - USE FEES AND OTHER CHARGES

3.1 Payment of Fees. The Operator shall pay to the Authority or its designee all payments for landing, facility-use, equipment storage, parking fees, signage, and such other fees and charges as set forth herein or in rules, regulations or fee schedules or otherwise adopted by the Authority from time to time, applicable to the Operator's use of or activities at Logan. These fees are calculated by the Authority in accordance with 740 C.M.R. 21.00 *et seq.*

3.2 Date of Payment. Except as otherwise set forth in any rules, regulations, or fee schedules, the Operator shall pay all fees described in Article 3 and provide such documentation describing the operations for which fees are payable, verified by an authorized representative of the Operator as the Authority may require, on a monthly basis by the tenth day following the end of each calendar month. The Operator shall remit all such fees directly to the Authority or its designee. The Operator may pay by wire transfer in accordance with Authority procedures.

3.3 Fines. Upon demand from the Authority, the Operator shall pay promptly any and all fines assessed by the Authority on the Operator or the Operator's employees for violations of the Authority's rules and regulations, subject to any applicable appeal provisions regarding the contesting of such fines. Such fines shall be considered an additional payment under section 3.4.

3.4 Additional Payments. The Authority may assess the Operator other charges related or incidental to the conduct of the Operator's activities at Logan. Any such assessment shall be substantially comparable with the rates, fees, and charges imposed on other parties which make similar use of Logan, subject to reasonable classification.

3.5 Late Payments. In the event that any payment required to be made under this Agreement is not made when due, the Operator shall pay interest on such overdue amount at the rate of one and one-half (1½%) percent per month, commencing on the date such payment was due.

3.6 Security Deposit. At least five (5) business days prior to the date of the commencement of scheduled aircraft operations at Logan, the Operator shall deposit with the Authority a security deposit (the "Security Deposit") of an amount equal to forty-five (45) days of landing fees as calculated on a prorated basis according to the number of flights in the Operator's current scheduled plan of operations submitted pursuant to Section 4.1

herein. The amount of the Security Deposit shall be adjusted pursuant to the Authority's directive regarding security deposits, as may be revised from time to time. The Security Deposit shall be held as security for the full and faithful performance of every provision of this Agreement to be performed by the Operator.

If the Operator defaults with respect to any provision of this Agreement, including but not limited to the provisions relating to the payment of fees or charges, the Authority may use, apply or retain all or any part of this Security Deposit for the payment of any fee or charge, or for the payment of any other amount which the Authority may spend or become obligated to spend by reason of the Operator's default or to compensate the Authority for any loss, cost or damage which the Authority may suffer by reason of the Operator's default. If any portion of said Deposit is so used or applied, the Operator shall, within five (5) days after written demand therefor, deposit cash with the Authority in an amount sufficient to restore the Security Deposit to the amount required under this section, and the Operator's failure to do so shall be a material breach of this Agreement. The Authority shall not be required to keep this Security Deposit separate from its general funds, and the Operator shall not be entitled to interest on such Deposit. Upon termination of the Operator's operations at Logan, the Security Deposit or any balance thereof shall be returned to the Operator within a reasonable time after the complete termination of the Operator's operations, provided, however, that the Authority may retain the Security Deposit until such time as any amount due from the Operator for all fees and charges for its operations at Logan has been determined and paid in full. The Operator shall not assign nor encumber its contingent rights in the Security Deposit, and neither shall the Authority nor its successors or assigns be bound by any such assignment or encumbrance.

**3.7 Letter of Credit in lieu of Security Deposit.** The Operator may, upon prior written approval by the Authority, submit an irrevocable letter of credit ("Letter of Credit") in lieu of the Security Deposit provided for in Section 3.6. Said Letter of Credit shall be in the form attached hereto as Exhibit A, for a term of not less than one (1) year, and shall be drawn on a domestic commercial bank (the "Bank") reasonably acceptable to the Authority, in the same amount as that required for the Security Deposit in Section 3.6. The Operator shall post a substitute Letter of Credit not less than thirty (30) days prior to the expiration of the then effective Letter of Credit, provided that if said substitute Letter of Credit is with a bank other than the Bank who provided the then effective Letter of Credit, said substitute Letter of Credit shall be posted not less than ninety (90) days prior to the expiration of the then effective Letter of Credit. The substitute Letter of Credit shall be on the same terms as the original Letter of Credit, whether or not any amounts have been drawn on any previous Letter of Credit. In the event that the Operator does not submit a Letter of Credit as provided herein, the Operator shall submit a Security Deposit as provided in Section 3.6. The Authority shall be entitled to draw on such Letter of Credit and apply the amounts so drawn, pro tanto, in the same manner and to the same extent as provided for with the Security Deposit in Section 3.6.

**3.8 Waiver of Security Deposit Requirement.** In the event that the Operator maintains a good payment history of all amounts due to the Authority and is in compliance with all other terms and conditions of this Agreement, the Authority may waive the requirement of section 3.6 and/or 3.7, as applicable. A good payment history shall mean that, for the prior three-



year period (a) the Operator has paid all undisputed amounts due to the Authority under this Agreement (e.g., landing fees, passenger fees, aircraft parking, security badges, ramp permits, signage, etc.) within three (3) business days of the due date ("Payment Due Date"); (b) the Operator has identified any and all disputed amounts by the Payment Due Date and has made best efforts to resolve and/or pay the disputed amounts within sixty (60) days of the Payment Due Date; and (c) the Operator has reported and paid all Passenger Facility Charges, as required. In the event that the Operator does not maintain a good payment history, the waiver of the security deposit requirement shall be rescinded, and the Operator shall comply with sections 3.6 and/or 3.7 as applicable within ten (10) days of written notice.

3.9 Unpaid Amounts. The Operator concurs with the inclusion of all unpaid amounts allocable to the airfield facility as described in 740 C.M.R. 21.24 in the calculation of the landing fee.

3.10 No Abatement. The Operator shall pay all fees, charges and other payments due hereunder without notice, demand, abatement, deduction or offset.

3.11 Resolution of Past Payment History. In recognition of: (a) the Operator's longstanding operations at Logan; (b) the fact that the Operator has not been the subject of a bankruptcy petition or filing in the three years prior to the Commencement Date; and (c) the fact that the Operator has reported and paid all PFCs as required; the Operator's invoices which are outstanding as of the Commencement Date, shall be deemed to have a Payment Due Date thirty (30) days after the Commencement Date.

#### **ARTICLE 4 - RECORDS AND REPORTING REQUIREMENTS**

4.1 Submission and Update of Records. Prior to the effective date of this Agreement, the Operator shall submit to the Authority the following information to be attached as Exhibit D, which it represents is true and accurate and which it shall update in the event of any material changes thereto:

(A) a copy of the FAA air carrier certification and DOT certificate under which the Operator is operating at Logan;

(B) a copy of the Operator's current scheduled plan of operations at Logan, which shall include for each day and for each flight: the aircraft type, the time of arrival and departure, and the destination after departure from Logan (if a departure), or the scheduled points of departure (if an arrival);

(C) an emergency plan of operations, including aircraft recovery and removal plans, and response plans for the control and remediation of any release of petroleum or hazardous material or hazardous waste; and

(D) documentation demonstrating compliance with the Authority's noise rules and the Massachusetts Environmental Policy Act, M.G.L. c.30, §61 *et seq.*, and all regulations promulgated thereunder, including without limitation, 301 CMR 11.26(4).



The Operator shall submit promptly any other documentation which the Authority may from time to time reasonably request concerning the Operator's compliance with all applicable federal, state and local environmental laws, statutes, ordinances, rules and regulations, including but not limited to laws regarding the use, storage, transportation and disposal of oil, toxic or hazardous substances.

**4.2 Monthly Operations Report.** The Operator shall submit to the Authority within ten (10) days following the end of each calendar month during the Term of this Agreement, information regarding its operations at Logan in the form attached hereto as Exhibit B, as such form may be revised or approved from time to time by the Authority. The Operator shall promptly submit to the Authority such additional information on the Operator's activities at Logan as the Authority shall from time to time reasonably request.

**4.3 Books and Records.** The Operator shall maintain books and records sufficient to describe and document its operations at Logan and its performance of the terms of this Agreement, and to support the informational filings required hereunder. Such records shall include, without limitation, passenger, cargo and operations statistics, noise rule reports and copies of environmental licenses, permits, approvals or manifests relating to the use, storage, generation, transportation or disposal of oil, toxic or hazardous substances. All such books and records shall be kept in accordance with the Operator's normal document and record retention policy, but in all events for a period of at least six (6) years. The Authority or its agent shall have the right upon reasonable advance notice to examine and audit such books and records.

## ***ARTICLE 5 - OPERATION OF LOGAN, DAMAGE TO AUTHORITY PROPERTY***

**5.1 Logan Operations.** The Operator acknowledges that from time to time it may be necessary for the Authority to undertake construction, repair or other activities related to the overall management and operation of Logan which will require temporary accommodation by the Operator. The Operator agrees to take all steps necessary to cooperate with and/or accommodate the Authority in such events. Prior to requiring the Operator to take all steps necessary to cooperate and/or accommodate the Authority in such events, the Authority shall take into consideration the potential impact to the Operator's operations. Even though such activities may inconvenience and partially impair the Operator, it agrees that no liability shall attach to the Authority, its officers, agents, or employees by reason of such inconvenience or impairment, and the Operator waives any right to claim damages of any kind including indirect and consequential damages or other consideration resulting from such inconvenience or impairment, including any claim for a set off or reduction of payments hereunder.

**5.2 Relocation of Operations.** Except as otherwise provided under any lease agreement with respect to those portions of the ramp appurtenant to the gates leased to the Operator from time to time, the Authority shall have the right, from time to time, in its sole discretion, to require the Operator, at the Operator's sole cost, to relocate its ramp and apron operations hereunder to any other area at Logan. The Authority shall consider the potential impact of any relocation upon the Operator's lease, if any, prior to requiring such

relocation. No liability to the Authority shall thereby arise. Notwithstanding the foregoing, the parties acknowledge that there may be other agreements between them regarding other activities, e.g. leases, which shall remain in full force and effect.

5.3 Damage. Any damage to property of the Authority or of the Authority's tenants and invitees caused by the operations of the Operator shall be repaired and restored to the conditions existing prior to such damage in accordance with specifications satisfactory to the Authority. Said repair shall be performed according to the Authority's direction either by the Operator at its expense, or by the Authority, in which case the Operator agrees to pay the Authority for expenses thereby incurred immediately upon presentation of an invoice therefor as an Additional Payment hereunder.

## **ARTICLE 6 - INDEMNIFICATION AND INSURANCE**

6.1 Operator's Insurance. The Operator, at its expense, shall maintain the following insurance coverage at all times during the Term:

(A) Liability Insurance. Commercial general liability insurance including products and completed operations for the mutual benefit of the Authority and the Operator and naming the Authority as an additional insured against claims for personal injury, death or property damage arising from, out of or in connection with the Operator's activities under the Agreement or occurring upon, in or about the Airport including claims arising out of or from the use of all equipment, hoists, motor vehicles and aircraft on the Airport or in connection with hauling of materials or debris therefrom, with primary plus excess coverage limits which shall not be less than Fifty Million Dollars (\$50,000,000.00) per occurrence. Coverage provided under this policy of insurance shall be primary, over and above any other policy held by the Authority to the extent of the Operator's indemnification obligations under this Agreement;

(B) Workers' Compensation Insurance. Workers' compensation insurance as required by law, and employers' liability insurance with minimum limits of which shall not be less than One Million Dollars (\$1,000,000.00); and

(C) Automobile Liability Insurance. For bodily injury and property damage in the combined single limit which shall not be less than Ten Million Dollars (\$10,000,000.00), covering all owned, hired and non-owned vehicles and naming the Authority as an additional insured.

6.2 Policy Requirements. Each policy of insurance required herein shall (A) be in a form and with a company reasonably satisfactory to the Authority that is authorized to do business in Massachusetts; (B) name the Authority as additional insured except for Worker's Compensation; (C) provide that it shall not be altered or canceled by the insurer during its term without first giving at least thirty (30) days prior written notice to the Authority; (D) provide that any act or negligence of the Operator or the Authority shall not prejudice the rights of the Authority as a party insured under said policy, notwithstanding the fact that the Authority has agreed that the proceeds of such insurance shall be used in the restoration or rebuilding of the Airport; and (E) be subject to a commercially reasonable

deductible amount. The commercial general liability policy shall be endorsed specifically to recognize and insure the indemnification provisions appearing in this Agreement.

Prior to commencing operations, the Operator shall submit evidence of each policy of insurance required hereunder to the Authority, and the Operator shall deliver to the Authority not less than ten (10) days prior to the expiration of any then-current policy, evidence of renewal or replacement of such policy in replacement thereof. Upon request, the Operator shall deliver copies of such insurance policies to the Authority. The Operator acknowledges that the minimum insurance limits and types established herein may become inadequate during the Term, and the Operator agrees that it shall provide such increased limits or types of insurance to levels that the Authority may reasonably and in a non-discriminatory manner require during the Term. In the event the Operator carries limits of insurance higher than those required under the terms of this Agreement, such higher limits shall be applicable to the Authority in addition to the Operator. If the Operator shall fail to perform any of its obligations under Section 6.1, then in addition to any other right or remedy of the Authority, the Authority may perform the same and the cost thereof shall be payable as Additional Charge.

In the defense of any claim, demand, expense or liability which is to be covered under insurance policies by the Operator as described in this Agreement (even if such claim, demand, expense or liability is groundless, false or fraudulent), the Operator agrees on its own behalf and shall cause its insurers to agree, not to waive any defense involving in any way the jurisdiction of the tribunal over the person of the Authority, the immunity of the Authority, its members, officers, agents or employees, the governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, without obtaining express advance permission from the Chief Legal Counsel of the Authority.

### 6.3 [Reserved]

6.4 Increase in Insurance Premiums. The Operator shall not do anything or keep anything in or about the Airport which may invalidate or conflict with or increase the premium for any policy of insurance carried by the Authority provided that the Operator has received notice that such activity may have such effect on the Authority's insurance. In the event the Authority's insurance premiums are increased as a result of the Operator's activity, the amount of such increase shall, at the Authority's sole election, be paid by the Operator to the Authority as Additional Fee or Charge.

6.5 Indemnification. To the extent not prohibited by applicable law, the Operator shall indemnify and save harmless the Authority and its members, directors, officers, employees and agents and those in privity of estate with the Authority against and from (a) any and all liability and expenses arising from any and all claims, causes of action, suits by or on behalf of any Person arising out of (1) the conduct of any operations or activities of the Operator at Logan, including, without limitation, the runways, gates, ramp area, apron or elsewhere at Logan, or the exercise by the Operator of its rights under the Agreement, (2) any breach or default by the Operator of any of its obligations under the Agreement, (3) any act, omission or negligence of the Operator or any of its agents, contractors, employees or licensees, or (4) the failure of the Operator, the Operator's contractors,

licensees, agents, employees, or invitees to comply with any rule, order, regulation or lawful direction now or hereafter in force of any governmental agency or public authority, in each case to the extent the same are related, directly or indirectly, to Logan or the Operator's use thereof, or (5) directly or indirectly, from any accident, injury or damage, however caused, to any Person or property on or about Logan related to the Operator's activities, and (b) any and all losses, costs, reasonable counsel fees, investigation costs, adjusting fees, or any other expenses or liabilities incurred in connection with any such claim or any action or proceeding brought thereon (including without limitation costs and fees of any experts in connection therewith); provided, however, that the Operator shall not be required to indemnify the Authority for any liabilities or expenses incurred by the Authority to the extent such liabilities or expenses are caused by or resulting solely from the negligence or willful misconduct of the Authority, its members, officers, employees or agents.

In case any action or proceeding is brought against the Authority or any such member, director, officer, employee or agent by reason of any claim which may be subject to the Operator's indemnification obligations contained in this Section, the Operator, upon notice from the Authority, shall resist or defend such action or proceeding with counsel reasonably acceptable to the Authority. Subject to the foregoing, the Authority shall cooperate and join with the Operator at the expense of the Operator as may be required in connection with any action taken or defended by the Operator.

The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement. The Authority shall give the Operator prompt written notice of any claims threatened or made or any suit instituted against it which could result in a claim of indemnification hereunder. This provision of indemnification shall survive the termination or expiration of this Agreement.

**6.6 Operator's Risk.** To the fullest extent permitted by law, the Operator agrees to use and occupy the areas of Logan that the Operator is herein given the right to use, at the Operator's sole risk. The Authority shall comply with the requirements of 14 CFR part 139 and shall otherwise have no responsibility or liability for any loss of or damage to furnishings, fixtures, equipment or other personal property of the Operator, or of those claiming by, through or under the Operator.

## **ARTICLE 7 - COMPLIANCE WITH LAWS, RULES AND REGULATIONS; ENVIRONMENTAL OBLIGATIONS**

### **7.1 Definitions:**

(A) "Environmental Laws" means all laws, ordinances, statutes, rules and regulations of local, state and federal entities, including any regulations or directives of the Authority, (whether now existing or hereinafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulation, spill

prevention, contamination, clean-up or disclosures, and any judicial or administrative interpretations thereof, including any judicial or administrative orders or judgments including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("CERCLA" or "Superfund"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* ("RCRA"); The Clean Water Act, 33 U.S.C. §§1251 *et seq.*; The Clean Air Act 42 U.S.C. §§7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§2601 *et seq.* ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§1801 *et seq.*; the Massachusetts Hazardous Waste Management Act, Mass. Gen. L. C. 21C §§1 *et seq.*; the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, Mass. Gen. L. C. 21E §§1 *et seq.*; the Massachusetts Toxic Use Reduction Act, Mass. Gen. L. C. 21I §§1 *et seq.*; the Underground Storage Tank Petroleum Product Cleanup Fund Mass. Gen. L. C. 21J §§1 *et seq.*; or any other applicable federal or state statute or municipal ordinance regulating the generation, storage, use, containment or disposal of any Hazardous Material or providing for the protection, preservation or enhancement of the natural environment; any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws related to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, storm water drainage and underground and above ground storage tanks, and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

(B) "Hazardous Materials" means, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

(C) "LSP" shall mean Licensed Site Professional, as such term is defined under the Massachusetts Contingency Plan definitions at 310 CMR 40.006.

(D) "Existing Contamination" shall mean any and all pollution or contamination caused by any Hazardous Material that existed or exists in, or was released onto, the soil or groundwater at or beneath any land or building at the Airport leased to the Operator on or before the date on which the Operator first occupied such land or building.

**7.2 Compliance with Environmental Laws.** The Operator shall comply with all applicable Environmental Laws. In particular, without limiting the foregoing, the Operator shall comply

with Mass. G.L. c. 21E and the Massachusetts Contingency Plan, (310 CMR § 40.000 *et seq.* ("MCP")) and any amendments and/or successors of G.L. c.21E or the MCP.

**7.3 Environmental Representations and Warranties.** The Operator hereby represents and warrants to the Authority as follows:

(A) Except as may be permitted by and only in compliance with applicable Environmental Laws, the Operator shall not cause or allow any Hazardous Materials to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Airport, and shall strictly comply with all Environmental Laws affecting the Airport or relating to the Operator's activities at the Airport, including without limitation those laws regarding the generation, storage, disposal, release and discharge of Hazardous Materials. Without limiting the generality of the foregoing, the Operator has not been and shall not become involved in operations at the Airport involving Hazardous Materials, except as expressly permitted by and only in compliance with applicable law. Moreover, at the request of the Authority, the Operator shall become a co-permittee with the Authority, and with other operators at the Airport if required by the Authority, for storm water discharge permits under applicable federal or state law. The Operator expressly warrants, represents and covenants that the Operator, its employees, agents, contractors, licensees and invitees shall strictly comply with the requirements of all Environmental Laws affecting the Airport or related to the Operator's activities at the Airport and shall immediately notify the Authority of any release or threat of release of Hazardous Materials at, upon, under or within the Airport.

(B) The Operator shall not undertake any activity which: would cause the Airport to be considered a hazardous waste treatment, storage or disposal facility or site as defined under any Environmental Laws; would cause a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands; would cause the discharge into the environment of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued; or would subject the Authority to any liability in connection with any hazardous waste treatment, storage or disposal facility or site.

(C) The Operator shall immediately notify the Authority in writing of any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to its operations at the Airport or in the vicinity of the Airport, or at such other property which could subject the Operator, the Authority or the Airport to a claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Airport under any Environmental Laws, any lien filed, action taken or notice given of the nature described below, any notice given to the Operator from any operator or other occupant of the Airport or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials, or the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental

contamination, liability or problem with respect to or arising out of or in connection with the Airport.

(D) The Operator shall, with all due diligence, and at its sole cost and expense, take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials related to its operations at the Airport (other than Existing Contamination) including the removal, containment and remedial actions in accordance with this Article and all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to the Authority), and shall further pay or cause to be paid at no expense to the Authority all clean up, administrative and enforcement costs of applicable government agencies, or the parties protected by such Environmental Laws, which may be asserted against the Airport. The Authority and the Operator acknowledge and agree that the foregoing sentence shall in no way modify or affect the rights and claims of the parties with respect to Existing Contamination. All costs, including without limitation, those costs set forth above, damages, liabilities, losses, claims, expenses (including reasonable attorneys' fees and disbursements) which are incurred by the Authority in connection with any of the Operator's obligations or warranties and representations, or other matters addressed in this Agreement, without the requirement that the Authority wait for the ultimate outcome of any litigation, claim or proceeding, shall be paid, by the Operator to the Authority, within 30 days after notice to the Operator from the Authority itemizing the amounts incurred, with interest thereon, from the effective date of such notice to the date of a payment to the Authority.

(E) The Operator shall make available to the Authority from time to time upon request by the Authority a copy of any Material Safety Data Sheets, and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c.111F, which the Operator is required to prepare, file or maintain pursuant to said chapter for any substances used or stored at the Airport.

(F) The Operator shall observe, obey and cause its employees, agents, contractors, and subcontractors to observe and obey all Environmental Laws.

**7.4 Environmental Notices.** The Operator shall provide the Authority with copies of any notices of releases of Hazardous Materials which are given by or on behalf of the Operator to any federal, state or local agencies or authorities with respect to the Airport. Such copies shall be sent to the Authority concurrently with their being mailed or delivered to such governmental agencies or authorities. The Operator also shall provide the Authority with copies of any notices of responsibility, or any other notices received by or on behalf of the Operator, from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Airport, including but not limited to notices regarding Hazardous Materials located on or about the Airport.

**7.5 Environmental Compliance Audit.** Except to the extent that (a) the Operator's on-Airport aircraft and vehicle fueling, maintenance and servicing are at all times performed



and conducted solely by an Aviation Service Operator or Commercial Service Operator permitted by the Authority to provide such on-Airport fueling, maintenance and servicing; and (b) the Operator uses, stores, transports and handles no Hazardous Materials on Airport (with the exception of in-vehicle fuel, lubricants and hydraulic fluids), the Operator shall conduct using a qualified independent environmental auditor reasonably approved by the Authority, a comprehensive annual environmental audit of all of the Operator's operations, equipment, facilities and fixtures at the Airport to assess Operator's environmental compliance and pollution prevention practices. The Operator shall submit a current report of the audit results to the Authority on the annual anniversary of the Commencement Date of this Agreement. If the resulting audit report reveals non-compliance by the Operator with any Environmental Laws then the Operator shall deliver to the Authority a corrective action plan ("Compliance Plan"), within sixty (60) days of the submission of the Audit Report, containing an explanation of the non-compliance and a remediation plan and schedule for the Authority's approval. If the Authority disagrees with any portion of the Compliance Plan, the Operator and the Authority agree to attempt to resolve the disagreement through informal good faith negotiations. If the parties are unable to reach an agreement through informal negotiations, either party may request the selection of a neutral panel including a neutral environmental professional familiar with applicable environmental laws and regulations to resolve the dispute. The parties shall jointly select, retain, and share the cost of, a neutral panel agreed to by both parties. This neutral panel shall receive submissions from both parties and shall render a written decision which shall be final and binding on the parties. Within thirty (30) days after the Authority approves the Compliance Plan, the Operator shall commence and expeditiously proceed to complete at its cost and expense the plan set forth therein subject to the conditions, if any, of the Authority's approval. If the Operator does not complete the required actions in the time periods set forth in the Compliance Plan, the Authority shall have the right, but not the obligation, to enter upon any portion of the Airport and implement any actions which it deems necessary or prudent to address such non-compliance. If the Authority implements any action pursuant to the foregoing sentence, the Operator shall pay the Authority's entire cost of performing such work (including an amount for fully allocated administrative charges), without limitation of other claims or damages that the Authority may have against the Operator arising out of the terms of this Agreement or otherwise. Notwithstanding the provisions of any other agreement between the Operator and the Authority to the contrary, as long as this Operating Agreement shall be in effect, the Operator shall not be required to provide more than one (1) comprehensive annual environmental compliance audit of all of the Operator's operations at the Airport in any year.

Notwithstanding anything contained in this Section, the Authority shall have the right to conduct an environmental compliance audit and the Operator's operations, equipment, facilities and fixtures at the Airport which, except in the event that the Operator has failed to perform the annual environmental audit required by this section, shall be at the Authority's own cost and expense. The Authority's audit shall have the same effect as an audit by the Operator and at the discretion of the Authority may be substituted for the Operator's annual audit.

7.6 Environmental Indemnity. The Operator shall unconditionally, irrevocably and

absolutely indemnify, defend with counsel acceptable to the Authority, and save harmless the Authority for, from and against any and all damages, losses, liabilities, obligations, claims, litigation, demands, defenses, judgments, suits proceedings, fines, penalties, costs, disbursements and expenses (including without limitation, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever, which may at any time be imposed upon, incurred by, or asserted or awarded against the Authority and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein relating to the Operator's use of or operations at the Airport, or arising as a consequence of any of the Operator's activities or operations at or relating to the Airport, including, without limitation, matters arising out of any breach of the Operator's covenants, representations and warranties. The Authority shall not assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Airport regardless of any inspections or other actions made or taken by the Authority on the Airport or otherwise. Notwithstanding the foregoing, the indemnity obligation of the Operator shall not apply to any liability, loss, or claim (a) caused by actions taken by or on behalf of the Authority which are caused solely by the negligence or willful misconduct of the Authority, or (b) caused by the Existing Contamination, or (c) to the extent that the Operator demonstrates to the reasonable satisfaction of the Authority that such liability, loss or claim was caused by the negligent or intentional misconduct of (x) any contractor working at the direction of the Authority or (y) any person (including entities, other than the Authority or the Operator) occupying any premises leased to the Operator pursuant to the exercise of the rights of the Authority pursuant to any such lease. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive the expiration or termination of this Agreement. In addition, the covenants and indemnities of the Operator contained herein shall survive termination or expiration of this Agreement and shall survive any exercise of any remedy by the Authority under this Agreement. The Operator shall give the Authority prompt written notice of any claims threatened or made or suit instituted against it which could result in a claim of indemnification hereunder.

#### **ARTICLE 8 - PROHIBITION ON ASSIGNMENT**

8.1 The Operator's rights, duties and obligations under this Agreement may not be assigned or delegated.

#### **ARTICLE 9 - DEFAULT AND REMEDIES**

9.1 Event of Default. Any one or more of the following shall constitute a default by the Operator:

(A) the Operator fails to commence operations at Logan within sixty (60) days of the date of this Agreement or ceases its operations at Logan for a period of thirty (30) consecutive days or longer, provided that a temporary suspension of operations due to a labor dispute shall not be considered to be a cessation of operations at Logan;

(B) any governmental authority, board, agency, or officer of the United States or

with competent jurisdiction terminates or suspends for more than forty-five (45) days any certificate, license, permit or authority without which the Operator would not be legally empowered to conduct its activities hereunder;

(C) the Operator fails to pay any amounts due to the Authority under this Agreement; provided that the Operator may cure said Default by paying all amounts within five business days of written notice by the Authority that said amounts are due;

(D) the Operator fails to perform or observe any term or condition of this Agreement which, because of its character, would immediately jeopardize the Authority's operations or expose the Authority to liability (such as, but without limitation, any failure to carry required insurance or any action that would subject the Authority to liability or present a safety or security hazard), or would constitute a violation of the security or public safety requirements of this Agreement or any applicable FAR, including without limitation Parts 107 or 108;

(E) the Operator fails to perform or observe any other term or condition contained in this Agreement; provided that the Operator may cure said Default within ten (10) days after written notice from the Authority thereof, unless the default is of such a nature that it cannot be cured within such ten (10) day period, in which event there shall be no default, provided the Operator shall commence the curing of such Default within said ten (10) day period and promptly and diligently prosecutes the curing of the same; or

(F) except as otherwise provided by applicable law, the Operator shall be judicially declared bankrupt or insolvent according to law, or any assignment shall be made of the property of the Operator for the benefit of creditors, or a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Operator's property by a court of competent jurisdiction, or a petition shall be filed for the reorganization of the Operator under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or the Operator shall file a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts.

(G) the Operator (i) fails to pay undisputed fees or charges or any portion thereof due under this Agreement after having received more than one (1) other written notice of Default during the preceding twelve (12) month period; or (ii) fails to resolve and/or pay disputed fees or charges within sixty (60) days of the Payment Due Date.

9.2 Remedies. If an Event of Default shall occur, the Authority at its sole election, at any time, may:

(A) revoke all security badges, ramp and apron permits and aerodrome motor

vehicle operator's permits issued to the Operator or its employees and revoke any motor vehicle parking privileges granted to the Operator or its employees;

(B) terminate this Agreement by giving written notice thereof to the Operator effective as of the date set forth in such notice;

(C) without being under any obligation to do so, to pay any such sums or do any act which requires the expenditure of monies which may be necessary or appropriate by reason of the Operator's default, and in the event of the exercise of this remedy, the Operator shall pay to the Authority, immediately upon demand, all sums plus an administrative charge equal to 50% of such sums and the Authority's reasonable legal fees; and

(D) pursue any other legal or equitable right or remedy that it may have.

9.3 Remedies Cumulative. No remedy provided to the Authority is intended to be exclusive of any other available remedy, but each such remedy shall be cumulative. No delay or omission to exercise any right upon default shall impair any such right or be construed to be a waiver thereof, but any such right may be exercised from time-to-time and as often as may be expedient, and the exercise of any one right or remedy shall not impair the right of the Authority to any or all other remedies.

#### **ARTICLE 10 - TERMINATION**

10.1 Termination. Either party may terminate this Agreement without cause at any time by providing not less than thirty (30) days prior written notice to the other party, in which event this Agreement shall expire on the date set forth in such notice; provided, however, that the parties recognize that this Agreement provides for certain mutually beneficial terms and conditions, and that under federal law, as currently in effect, the Operator would continue to have the right to operate at the Airport notwithstanding the termination of the Operating Agreement.

10.2 Survival of Obligations. If this Agreement is terminated, for cause or otherwise, the Operator shall remain liable for indemnification under this Agreement, and for any and all monies and damages which may be due or sustained as a result of the Operator's operations at Logan, and all costs, fees and expenses (including, without limitation, reasonable attorneys' and experts' fees and other expenses) incurred by the Authority in pursuit of its remedies hereunder.

#### **ARTICLE 11 - MISCELLANEOUS**

11.1 Contractual Right. The Operator's rights under this Agreement shall be contractual rights only and shall not be deemed to create a property interest of the Operator in such Agreement or in the Authority's property, nor shall it be deemed to create any right to use or occupy any specific areas of Logan, whether as a leasehold or otherwise. The Authority shall have and hereby reserves all rights to damages or compensation hereafter to accrue

by reason of a taking by condemnation or right of eminent domain or conveyed under threat thereof or by damage or destruction to the Authority's property used by the Operator under this Agreement.

11.2 Emergency Situations. The Operator shall make its employees and/or equipment available for use by the Authority or others in emergency situations, as further described in the Emergency Plan for Boston-Logan International Airport.

11.3 Security. The Operator shall take such security precautions with respect to its operations and employees as the Authority in its sole discretion may from time to time require. The Operator shall be solely responsible for providing such security for its operations and employees in the passenger terminal areas, ramp and apron area, aircraft and storage areas and in any other area where the Operator's activities occur at Logan with no right of reimbursement from the Authority. In the event the Operator fails to do so, the Authority shall have the right, but not the obligation, to provide such security, in which event the Operator shall promptly reimburse the Authority for its costs of doing so, including all administrative and overhead costs allocable to such services as an Additional Payment hereunder.

11.4 No Waiver. No waiver or failure to complain by the Authority of any action, non-action or default on the part of the Operator in the performance of any of the terms, covenants, or conditions hereof to be performed, kept or observed shall be or be construed to be a waiver of any other or subsequent default in the performance of any of the terms, covenants and conditions. No acceptance of payments by the Authority shall constitute a waiver of any right of the Authority on account of any failure of the Operator to carry out its obligations hereunder.

11.5 Non-discrimination and Equal Opportunity. With respect to its exercise of all uses, rights and privileges at Logan, the Operator shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in its use of the Airport, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors. In addition, the Operator shall comply with any affirmative action plans submitted pursuant to the directives of any federal and/or state agency and in accordance with federal and/or state law.

11.6 Revenue Enforcement Certification. In compliance with the provisions of M.G.L. c. 62C, §49A, relative to the certification of payment of state taxes, the Operator, upon execution of this Agreement shall furnish the Authority with a signed statement that to the best of its knowledge it has filed all state tax returns required by law, a form for which is attached as part of Exhibit C.

11.7 Notice. All notices required to be given shall be in writing and shall be deemed duly given, when sent via facsimile (with a confirmation copy by certified mail, hand delivery or overnight courier, as provided herein), when mailed certified mail, return receipt requested, or when hand delivered or when received or refused, if sent by a nationally recognized overnight courier to the following addresses any change in which shall be given to the other

party in writing:

If intended for the Authority, addressed to:

Director, Airport Business Office  
Massachusetts Port Authority  
One Harborside Drive, Suite 200S  
East Boston, MA 02128-2909

With a copy to:

Chief Legal Counsel  
Massachusetts Port Authority  
One Harborside Drive, Suite 200S  
East Boston, MA 02128-2909

If intended for the Operator, addressed to:

Mr. Charles ~~Eorara~~ Ferrara  
Director of Airport Services  
Hyannis Air Service, Inc. d/b/a Cape Air  
300 ~~100~~ Terminal A C  
Logan International Airport  
East Boston, MA 02128-2057

cf OK/OKS

**11.8 Agreements with the United States.** This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the Authority and the United States, the execution of which is required to enable or permit the transfer of rights or property to the Authority for airport purposes or expenditure of federal grant funds for airport improvement, maintenance or development. The Operator shall reasonably abide by the requirements of agreements entered into between the Authority and the United States, and shall consent to amendments and modifications of this Agreement if required by such agreement or if required as a condition of the Authority's entry into such agreement.

**11.9 Trust Agreement.** The Operator acknowledges that the Authority is a party to a Trust Agreement dated as of the first day of August, 1978 between the Authority and the holders of bonds issued by the Authority and State Street Bank and Trust Company as Trustee. The Operator agrees to consent to amendments or modifications to this Agreement reasonably required in the opinion of legal counsel to the Authority who shall have recognized expertise in bond matters to assure the Authority's compliance with its obligations thereof, or with the obligations of successor or additional Trust Agreements into which the Authority may enter in the course of issuing additional or refunding bonds as permitted by law.

**11.10 No Personal Liability.** No member, officer, director or employee of either party shall be personally liable to the other party under any term or provision of this Agreement or

because of any breach thereof or because of its execution or attempted execution.

**11.11 Entire Agreement/Applicable Law.** This Agreement, including exhibits attached hereto at the time of its execution, constitutes the entire agreement between the parties, and all prior agreements (other than any lease agreement) covering the rights and privileges set out in this Agreement are superseded by and merged into this Agreement. If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, unless one or both parties would be substantially and materially prejudiced thereby. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the Commonwealth of Massachusetts. This Agreement may be amended only by a written instrument executed by both the Authority and the Operator. The parties acknowledge that there may be other agreements between them regarding other activities, e.g. leases, which shall remain in full force and effect.

**11.12 Consequential Damages.** The Authority and its directors, officers, agents or employees shall not be liable to the Operator or any third party claiming through the Operator for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Agreement or the operation of the Operator at Logan or from any other cause.

**11.13 Logan Management Activities.** The Operator hereby acknowledges that from time to time it may be necessary or desirable for the Authority, the FAA or other public bodies to undertake construction, repair or other activities related to the overall management of Logan that may temporarily close Logan or otherwise inconvenience or impair the Operator's operations at Logan. In such event, the Operator agrees that no liability shall attach to the Authority, its officers, agents or employees as a result of any such inconvenience or impairment, and the Operator waives any right to claim damages or other consideration from the Authority as a result of such inconvenience or impairment.

**11.14 Work in Harmony.** The Operator covenants that its employees at Logan shall be able to work in harmony with all elements of labor employed at Logan. In the event that the Authority determines that it is necessary for public safety or the efficient operation of Logan to post police details or take other actions as a result of the inability of the Operator's employees to work in harmony with other elements of labor employed at Logan, the Operator shall reimburse the Authority for all reasonable costs incurred by the Authority in doing so.

**11.15 Transportation Management Association.** The Operator acknowledges that the Authority is committed to a Transportation Management Association ("TMA") at Logan for employees of the Authority, and its tenants and employees at Logan. The purpose of the TMA is to provide commuter-related information and services to Logan employees and to develop transportation demand management strategies to reduce the number of employee-related vehicle trips. The Operator recognizes that the TMA may assist the Operator in meeting its legal obligations under 310 CMR 7.16, and may result in cost savings for the Operator and its employees as parking at Logan becomes more scarce and more expensive in future years. Accordingly, the Operator agrees to participate in the TMA



at Logan.

11.16 Authority's Sole Discretion. Wherever this document refers to the Authority's sole discretion, this shall mean that the Authority may consider any factors which the Authority, in its sole and conclusive determination, determines has or may have an adverse impact upon the Authority, Logan or its efficient or productive operations.

11.17 Airport Wide Programs. The Operator agrees to use reasonable efforts to participate in any lawful Airport-wide programs or initiatives of general applicability as the Director of the Airport may require upon notice to the Operator.

Executed under seal as of the dates appearing below.

**Hyannis Air Service, Inc.**

d/b/a Cape Air

By: 

Title: Director Airport Services

Date: 4/11/02

**MASSACHUSETTS PORT AUTHORITY**

By: 

Title: ASSISTANT SECRETARY-TREASURER

Date: 6/10/02

**EXHIBITS:**

- Exhibit A - Letter of Credit Form
- Exhibit B - Monthly Operations Report
- Exhibit C - Certificate of Compliance with Laws
- Exhibit D - Aviation Records

**EXHIBIT A  
LETTER OF CREDIT**

Irrevocable Standby Letter of Credit  
Letter of Credit No. \_\_\_\_\_  
Effective Date: \_\_\_\_\_, 200\_\_

**BENEFICIARY:**

Massachusetts Port Authority  
One Harborside Drive, Suite 200S  
East Boston, MA 02128  
ATTN:

**APPLICANT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN:

Gentlemen:

1. We hereby establish an irrevocable letter of credit in favor of the Beneficiary for the account of \_\_\_\_\_ (the "Applicant") in an aggregate amount not to exceed the sum of \_\_\_\_\_ and 00/100 US Dollars (\$\_\_\_\_\_.00), to be available for payment of the Beneficiary's drafts drawn at sight on us and accompanied, in the case of each draft, by:

(A) A statement purportedly signed by an authorized officer of the Beneficiary to the effect that "The amount represented by the draft accompanying this statement is the amount required to be paid to the Beneficiary on account of the default of the Applicant under the Operating Agreement dated \_\_\_\_\_, 2002, (the "Agreement") by and between the Beneficiary and the Applicant; and

(B) the original letter of credit.

2. This letter of credit shall expire on \_\_\_\_\_, 200\_\_.

3. Each draft must indicate the name of the issuer and be marked "Drawn under Irrevocable Standby Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, 200\_\_".

4. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices at \_\_\_\_\_ on or before the close of business on the expiration date.

5. Except so far as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce Publication No. 500 (1993 Revision).

6. Full, partial and multiple drawings are permitted.

7. It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for additional periods of one year from the present expiration date and the expiration date of such one year extension periods hereof unless no later than sixty days prior to any expiration date we shall advise you by certified mail that we elect not to so extend this letter of credit for any such additional period. Upon receipt by you of such notice, you may draw hereunder your sight draft(s) on ourselves accompanied by the above certification.

8. We hereby agree with you that all drafts drawn under and in compliance with the terms of this letter of credit will be duly honored on presentation to us.

[ISSUER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
Hereunto duly authorized

## EXHIBIT B

### Boston-Logan International Airport Monthly Air Traffic Report

#### IMPORTANT

A separate form should be completed for each service category  
Forms are due at Massport within 10 days after the close of each month

Carrier Name

Month/Year

Service Category:

<input type="checkbox"/>	Domestic ( United States )
<input type="checkbox"/>	Canada
<input type="checkbox"/>	Europe / Africa / Middle East
<input type="checkbox"/>	Bermuda / Bahamas / Caribbean Basin
<input type="checkbox"/>	South America
<input type="checkbox"/>	Trans-Pacific

#### I. FLIGHTS

Scheduled Passenger Flights  
Non-Scheduled / Extra Sections  
Charter Operations  
Non-Revenue / Ferry Flights  
All-Cargo Flights  
TOTAL FLIGHTS



#### INBOUND


#### OUTBOUND


#### II. PASSENGERS

On Scheduled Passenger Flights  
On Non-Scheduled / Extra Sections  
On Charter Operations  
On Non-Revenue / Ferry Flights  
TOTAL PASSENGERS





IN-TRANSIT PASSENGERS



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#### III. MAIL (POUNDS)



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#### IV. FREIGHT / EXPRESS (POUNDS)

Express / Small Packages:

On Passenger Flights  
On All-Cargo Flights  
Freight:





On Passenger Flights  
On All-Cargo Flights





TOTAL FREIGHT / EXPRESS



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Signature:

Phone:

Please return to:

Len King  
MASSACHUSETTS PORT AUTHORITY  
Logan International Airport / T-3  
East Boston, MA 02128

Phone (617) 561 - 1639  
Fax (617) 561 - 1677

## **INSTRUCTIONS FOR COMPLETING MASSPORT'S MONTHLY AIR TRAFFIC REPORT**

Massport requires carriers serving Boston-Logan International Airport to submit data concerning monthly air traffic activity to its Aviation Administration office. Statistics should be completed and forwarded to this office no later than ten (10) calendar days after the close of the reporting month.

The following instructions serve as a guide to completing the Air Traffic Report. If you have any further questions, please contact Len King, Massport's Capital Program Manager at (617) 561-1639.

1. Insert the name of your carrier.
2. Insert the month for which you are reporting data.
3. Place an "X" next to the Service Category for the type of data you are reporting. You are required to submit a separate form for each Service Category of operation. Operations to/from Mexico, Puerto Rico, and the U.S. Virgin Islands will be considered BERMUDA/BAHAMA/CARIBBEAN.
4. Complete the section marked "Flights." Note that domestic segments of international flights are considered DOMESTIC operations and should be listed on a separate form.
5. Complete the section marked "Passengers." Please include non-revenue and crew movements on the appropriate line.
6. As best as you can, please determine the number of in-transit or continuing passengers who remain on-board the aircraft.
7. Provide the total monthly volume of enplaned and deplaned Mail expressed in pounds.
8. Provide the volume of enplaned and deplaned Express/Small Packages expressed in pounds. Please differentiate between Passenger and All-Cargo flights.
9. Provide the total monthly volume of enplaned and deplaned Freight, also broken down by Passenger and All-Cargo flights and expressed in pounds.
10. Finally, add the total of Express/Small Packages and Freight and place it on the last line of the form.

Forward the report to the name and address shown at the bottom of the form. If near the end of 10 calendar days after the close of the reporting month, please FAX the report to (617) 561-1677, and place the original in the mail. Massport thanks you for your cooperation.

**EXHIBIT C**

## CERTIFICATE OF COMPLIANCE WITH LAWS

**Massachusetts Employment Security Law**

Pursuant to G.L.c. 151A, 19 A(b), the undersigned hereby certifies\* under the penalties of perjury that Operator, with D.E.T. ID Number 80-43364-0, has complied with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions.

\*Compliance may be certified if Operator has entered into and is complying with a repayment agreement satisfactory to the Commissioner, or if there is a pending adjudicatory proceeding or court action contesting the amount due pursuant to G.L.c. 151A, 19A(c).

**or check the following:**

           The undersigned certifies that the Massachusetts Employment Security Law does not apply to it because Operator does not have any individuals performing services for it within the Commonwealth to the extent that it would be required to make any contributions or payments to the Commonwealth.

## Massachusetts Child Care Law

Pursuant to Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, the undersigned hereby certifies that Operator (check applicable item):

1. \_\_\_\_\_ employs fewer than fifty (50) full-time employees; or
2.   X   offers either a dependent care assistance program or a cafeteria plan whose benefits include a dependent care assistance program; or
3. \_\_\_\_\_ offers child care tuition assistance, or on-site or near-site subsidized child care placements.

**Revenue Enforcement and Protection Program**

Pursuant to G.L.c. 62C, 49A, the undersigned hereby certifies under the penalties of perjury that Operator's tax payer Identification No. is (complete applicable item): Social Security No. is \_\_\_\_\_ or Federal Identification No. is 04-3005476 and that to the best of his/her knowledge and belief Operator has complied with all laws of the Commonwealth relating to taxes, the reporting of employees and contractors, and withholding and remitting of child support.

In order to comply with all laws of the Commonwealth relating to taxes, the undersigned

certifies that Operator ( check applicable item):

1.  X  has filed all tax returns and paid all taxes required by law; or
2.   has filed a pending application for abatement of such tax; or
3.   has a pending petition before the appellate tax board contesting such tax; or
4.   does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth. The undersigned further certifies that Operator's tax payer Identification no. is (complete applicable item):  
Social Security No.   or Federal  
Identification No.

Signed this  11th  day of  April , 2002.

Name of Operator:  Hyannis Air Service, Inc. d/b/a Cape Air/   
 Nantucket Airline

Authorized Signature:  Karen L. Langfield

Title:  Comptroller   
Karen L. Langfield



**EXHIBIT D**

**AVIATION RECORDS**

Prior to execution of this Agreement, the Operator shall submit to the Authority the following information:

- (A) FAA Air Carrier Certificate/DOT Certificate
- (B) Operator's Initial Scheduled Plan of Operations
- (C) Emergency Plan of Operations
- (D) Compliance with the Authority's noise rules.



U.S. Department  
of Transportation  
Federal Aviation  
Administration

# Air Carrier Certificate

This certifies that

Hyannis Air Service, Inc.  
Barnstable Municipal Airport  
Hyannis, MA 02601

has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as an air carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

This certificate is not transferable and, unless sooner surrendered, suspended, or revoked, shall continue in effect indefinitely.

By Direction of the Administrator.

Certificate number: HYIA145B

Effective date: June 16, 1988

Issued at: NE01

Reissued: March 4, 1997

  
Gary S. Lopez  
(Signature)

Manager  
(Title)

New England, NE-FSDO-01  
(Region / Office)