

1st February 2011, Final

TONGA AIRPORTS LIMITED

Aeronautical Conditions of Use

1 February 2011

Aeronautical Conditions of Use

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AERONAUTICAL CONDITIONS OF USE

AIRPORTS OPERATED BY TONGA AIRPORTS LIMITED (TAL)

OVERVIEW

These conditions of use are applicable and relevant to the following operators of aircraft within the Kingdom of Tonga:

- Those conducting regular air transport operations for domestic and international services;
- General aviation, helicopter and non regular air transport operations;
- Military aircraft that are not providing emergency aid or relief flights due to natural disasters;
- Aircraft providing medivac services.

Aircraft carrying Head of State/VIP passengers are exempted from the provisions of this agreement and are subject to government approval and any conditions of use as specified in such approval.

1 Conditions of Use

- 1.1 These *Conditions of Use* set out the terms and conditions under which you may use our *Airport* and the *Facilities and Services* at the Airport. By using the *Airport* or *Facilities and Services* you agree to be bound by these *Conditions of Use*, as amended from time to time in accordance with clause 1.3.
- 1.2 These conditions take effect from **01 February 2011** and continue in force until we change, replace or waive them.
- 1.3 We may change, replace or waive any of these Conditions of Use (including the charges at Schedule 3) at any time;
- (a) By giving you at least 30 days prior written notice of the change;
- (b) After consultation with you or *Relevant Industry Bodies*, where required by law or where we consider such consultation is reasonably necessary or desirable in the circumstances;
- (c) By entering into a variation agreement in writing with you; or
- (d) With immediate effect if:
- (i) a change to *Legislation* occurs;
- (ii) a mandatory direction is issued by any *Authority*; OR
- (iii) to give effect to any specific corrective or preventative action in relation to hazards,
- to the extent necessary to give effect to such legislative change, direction or action.
- 1.4 These Conditions of Use will also be deemed to be varied to the extent necessary to give effect to any restrictions, instructions, directions or orders published from time to time in the Tonga Aeronautical Information Publication.
- 1.5 Italicised terms used in this agreement have the meaning set out in the dictionary at clause 21.

Clauses 21.2 – 21.6 also set out other rules of interpretation of this Agreement.

2 Using our Facilities and Services

2.1 When using our *Facilities and Services* at the *Airport*, you must comply with:

- (a) all *Legislation*, including the *Civil Aviation Act* and associated Regulations;
- (b) all directions from any *Authority*;
- (c) these *Conditions of Use*;
- (d) the *Aerodrome Compliance Manual*;
- (e) the *Airside Operating Agreement*;
- (f) the *Airport Security Programme*;
- (g) the *Aerodrome Emergency Plan*;
- (h) all directions related to pavement restrictions;
- (i) local flying restrictions;
- (j) noise management procedures and or regulations in place from time to time by the relevant *Authority*; and
- (k) other conditions, instructions, orders, procedures and directions issued by us which are necessary for the safe or efficient day to day operation of activities at the *Airport*.

2.2 You must not do anything that puts us in breach of any *Legislation* or in contravention of a direction by an *Authority*.

2.3 In the event of an inconsistency between these conditions and any *Legislation* or direction by any *Authority*, the *Legislation* or direction by any *Authority* will prevail. In the event of an inconsistency between these conditions and any written agreement we have entered into with you, the provisions of such agreement will prevail to the extent of any inconsistency.

3 Acknowledgements

3.1 You acknowledge and accept that:

- (a) Use of the *Facilities and Services* is subject to the demands of other users of the *Airport*, space constraints and *Airport* planning requirements;
- (b) You will not in any manner obstruct or cause interference to the movement of equipment owned, leased, licensed and operated by other users at the *Airport*.
- (c) We have the sole right to determine the priority of use of the *Airport* or, subject to any other specific agreement between us and you, any parts of the *Airport* by you and others;
- (d) You have read and understood our Operational and Commercial Agreements as provided to you.
- (e) We are not responsible for the security of aircraft or your other property.

4 Excluded Services

- 4.1 For the avoidance of any doubt, the *Facilities and Services* we provide do not include the following:
- (a) Meteorological Services;
 - (b) Ground Handling Services;
 - (c) Engineering Services;
 - (d) Hangar Facilities;
 - (e) Quarantine Waste Disposal;
 - (f) *Apron and Ground Handling Services*;
 - (g) Passenger control between the terminal, other buildings or access points and parked aircraft.
- 4.2 Our charges do not include fees for these services or fees for things we provide outside the scope of these conditions.

5 Information we require before you use our facilities and services

- 5.1 If you conduct *Regular Air Transport Operations* at the *Airport* you must provide us with all of the information set out in Schedule 9.
- 5.2 You must provide us with the details of any changes made to information described in clause 5.1 within 30 days of such change.
- 5.3 Such other information as required per the Aeronautical Information Publication Tonga.

6 Flight schedule information

- 6.1 The airports operated by TAL are classified as Non-Coordinated Airports (Level 1) in accordance with the airport levels classifications contained in the IATA Worldwide Scheduling Guidelines.
- 6.2 If you conduct *Regular Air Transport Operations* at the *Airport*, you must provide us with your planned schedules as soon as reasonably practicable after each *IATA Schedules Conference (SC)*.
- 6.3 The flight schedule data you provide must be in the format prescribed in Chapter 7 of the *IATA Standards Schedule Information Manual (SSIM)*.
- 6.4 We must be advised by you of any amendments to the flight schedule data you provided us under clause 6.3 as soon as practicable after any such amendment. We reserve the right to decline any such amendment where we reasonably believe it impacts upon the safe or efficient operation of the *Airport*.

7 Provision of Information relating to Charges

- 7.1 You must provide to us, and in the format directed by us (as set out in Schedule 3), within 10 days of the month in which you used our *Facilities and Services*, the following information for the purposes of calculating the charges payable by you:
- (a) the number of *Embarking and Disembarking Passengers* on your aircraft operating at the airport for the previous month;
 - (b) any further disaggregation of passenger numbers we reasonably require to determine charges payable by you under Schedule 3; and
 - (c) Details of the type, registration and MCTOW of each aircraft, which you use at the Airport, if you have not already done so.
- 7.2 If you do not comply with clause 7.1, then you agree that we may charge you for use of our *Facilities and Services* for that month on the basis that each seat on aircraft operated by you over that period was in fact occupied by a passenger.
- 7.3 You acknowledge that we may verify from time to time information you have provided to us by means including, but not limited to:
- (a) reference data collected by Tonga Customs and/or Immigration;
 - (b) allowing us (or our agents or accountants) on reasonable notice, to audit, inspect and copy your records and systems relating to your use of the *Facilities and Services*; and
 - (c) directly counting passengers embarking or disembarking aircraft operated by you.
- 7.4 You must use your best endeavours to assist us to identify the reason for any differences between the information provided to us under clauses 7.1 and the information collected by us under clause 7.3.
- 7.5 If requested by us, you must within 45 days of our request, give us certified quarterly statements from your independent auditors verifying the accuracy of information you have given to us under this clause 7.
- 7.6 If we find we have:
- (a) overcharged you, we will within 10 days of becoming aware of the error and on the basis of supporting documentation provided by you, refund the amount of the overpayment or, at our discretion, allow that amount as a credit on subsequent account; or
 - (b) undercharged you, we may include an amount and appropriate supporting documentation in a subsequent invoice to recover the amount of the undercharge.
- 7.7 If the amount of an undercharge is equal to, or is more than, 5% of the actual charges due for the relevant month and the undercharge was caused by a discrepancy or error in the information provided by you for that month, you must reimburse the full costs of any audit conducted by us.
- 7.8 We will use our best endeavours to maintain the confidentiality of any information that you provide to us, which you advise is commercially sensitive, subject to the following:
- (a) we may use the information for the purpose of Airport capacity planning and forecasting (including disclosing the information to our professional advisers on a confidential basis for this purpose);

- (b) we may use the information for aggregation into 'total domestic passenger' or 'total international passenger' data for the Airport, which we may disclose into the public domain. In using the information for this purpose, we will not release any other data in relation to the Airport which will enable the information you provide us to be disaggregated from the 'total domestic passenger' and 'total international passenger' data (unless you consent in writing to us to do so or we are required to do so by law); and
- (c) we may disclose the information you agree in writing, or if we are required to do so by law.

8 Charges

- 8.1 You must pay us charges for using our *Facilities and Services* which, subject to any written agreement to the contrary, are calculated in accordance with Schedule 3 as varied from time to time.
- 8.2 The charges for using our *Facilities and Services* at the Airport:
 - (a) accrue from day to day; and
 - (b) are payable in Tongan pa'anga.
- 8.3 Subject to clause 10, you must pay the charges shown on the invoice as owing within the time stated for payment in the invoice by one of the methods shown on the invoice.
- 8.4 In the event that further costs are incurred by us on account of your operations, we reserve the right to include such further costs in the charges payable by you.

9 CT

- 9.1 The provisions of this clause shall apply to domestic carriers only
- 9.2 Unless otherwise indicated, all consideration for a supply under these Conditions of Use is quoted exclusive of any CT imposed on the supply.
- 9.3 If CT is imposed on a supply under these Conditions of Use, the recipient of the supply on receipt of a tax invoice will on request pay to the supplier an additional amount equal to the CT imposed on the supply.
- 9.4 CT applicable to the charges must be paid at the same time the charges are paid under these Conditions of Use.

10 Late payments and non-payment

- 10.1 If you do not pay any amount you owe on time that is not the subject of a bona fide dispute, we may do any one or more of the following (without limiting any other remedies we may have):
 - (a) Charge you interest on the amount payable from and including the day the amount becomes payable to and including the day you pay the amount, at the rate of 10% per annum, capitalising on the first day of each calendar month;
 - (b) refuse to allow any or all of your aircraft to use our *Facilities and Services* at the *Airport*; and/or

- (c) require payment in one or more instalments of outstanding amounts as a condition of your further use of the *Facilities and Services*; and/or
 - (d) use any reasonable means to detain any of your aircraft pursuant to relevant Legislation until you have paid all due charges and interest provided that:
 - (i) we have first sought to negotiate in good faith any dispute about charges in accordance with clause 10.2;
 - (ii) we have first sought to recover any outstanding charges from you; and
 - (iii) we have given you 7 days notice in writing either during or after the 21 day period that we intend to do this;
 - (e) commence proceedings against you for all monies due and payable, in which case you must pay all our costs on a full indemnity basis.
- 10.2 If you notify us in writing that you dispute any charge shown in an invoice within 14 *Business Days* of receiving that invoice, and in our reasonable opinion you have grounds to dispute it, then the parties will use reasonable endeavours to negotiate a resolution to the dispute, provided that:
- (a) If you do not dispute any amount shown in an invoice within 14 *Business Days* after receiving that invoice, you cannot thereafter dispute that amount; and
 - (b) any undisputed amounts, or portions, are to be paid within the time required by the invoice.
- 10.3 Unless we give you express written consent you are not permitted to make any set-off against or deduction from any amount payable.

11 Information generally

- 11.1 You can contact us at the addresses and by any of the means set out in Schedule 1.
- 11.2 We prefer to receive information electronically where possible. You must let us know as soon as practicable if there is any change to the information you have given us.
- 11.3 The following details are available from us upon request:
- (a) *Aerodrome Compliance Manual*;
 - (b) *Airport Emergency Plan* and associated Procedures;
 - (c) which of our *Facilities and Services* at the Airport are available for you to use; and
 - (d) ICAO Type A Obstacle Chart and Obstacle Limitation Survey Information.
- 11.4 We may charge a reasonable fee for the supply of copies of ICAO Type A Obstacle Charts, and for multiple copies of any other publications of information requested by you under these conditions.
- 11.5 If we provide you with information and ask that you hold it on a secure basis and only disclose it to authorised persons, you must comply with our request.

12 Airport closed or services unavailable

- 12.1 We will endeavour to keep our *Facilities and Services* at the Airport available for you to use, however we may limit, restrict or prevent your access or use of the *Airport* or any *Facilities or Services* at any time where we consider this necessary:
- (a) for operational purposes, maintenance purposes;
 - (b) for development works;
 - (c) for special events;
 - (d) in the event of any circumstances beyond our reasonable control; or
 - (e) where we are required to do so by any *Legislation*.
- 12.2 To the extent reasonably possible, we will endeavour to notify you before we make any service or facility at the airport unavailable and we will use our reasonable endeavours to identify alternative *Facilities and Services* which might be available for use by you. Any use by you of such alternative *facilities or services* shall be at your sole discretion. You acknowledge that, in doing so we will need to balance all the needs of the affected parties so far as we reasonably can.

13 Passenger processing facilities

- 13.1 Subject to any agreement we have entered into with you to the contrary, if you use our *Passenger Processing Facilities* for checking in or processing passengers you must comply with our common user conditions, as contained in Schedule 8.

14 Ground handling

- 14.1 We may require you to nominate a licensed *Ground Handling Agent(s)* for the provision of *Ground Handling Services* for your aircraft at the Airport.
- 14.2 Any person or company that provides *Ground Handling Services* to your aircraft at the Airport, must be licensed by us in accordance with our standard Ground Handling License.

15 Moving aircraft

- 15.1 We may, (subject to air traffic clearances and any operational guidelines issued by us for the use of our *Facilities and Services*) direct you to:
- (a) move an aircraft to another position at the Airport: or
 - (b) remove an aircraft from the Airport;
- at your cost and within a specified time, being a period that we consider, in all the circumstances, to be reasonable.
- 15.2 If you do not comply with our order within the specified time, and provided we have made all reasonable efforts to contact you, we may move or remove the aircraft in accordance with the procedures at Schedule 5 and:
- (a) you must pay our reasonable costs of having the aircraft moved or removed and any

costs incurred by us as a result of having the aircraft moved or removed; and

- (b) you are liable and you indemnify us, our officers, employees and agents against any personal injury, death, loss or damage caused or contributed to by your failure to comply with our order.

16 Breach of these Conditions of Use

- 16.1 In addition to clause 10, we may, subject to our obligations under any *Legislation*, give you 7 days notice in writing not to use our *Facilities and Services* at the *Airport* if you do not comply with these conditions.
- 16.2 If you do not comply with any of the safety or security requirements, we may give you notice in writing requiring you to comply with the relevant obligation or stop using the *Facilities and Services* immediately and refuse to allow you, or limit your access to the *Airport* or any *Facilities and Services*.
- 16.3 We may stop you from using our *Facilities and Services* at the *Airport* if you do not comply with any notice given to you by us pursuant to this clause.
- 16.4 Nothing in this clause limits our right to take any other action that may be available to us, including our right to seek injunctive relief to stop you using the *Airport* or our *Facilities and Services*.

17 Liability and Indemnities

- 17.1 You will be liable for and indemnify us, our employees, officers, agents and contractors against:

- (a) any damage caused to our property or the property of any other person at the *Airport*;
- (b) any costs we incur in detaining of your aircraft under clause 10.1(d);
- (c) any claim for personal injury or death to employees of ours or any other person at the *Airport*;
- (d) any loss of use of property in connection with damage, injury, death or loss referred to in (a) or (c) of this clause,

arising wholly or in part by reason of any act or omission by you or your employees, officers or agents, or a related body corporate of yours, or its employees, officers or agents.

- 17.2 You agree that we are not liable for, and to the full extent permitted by law you release us, our employees, officers, agents and contractors from all liability in connection with:
 - (a) damage caused to any aircraft, its load, equipment or other property of yours or your crew or passengers at the *Airport*; or
 - (b) claims for personal injury or death to your employees, air or ground crew, contractors or passengers at the *Airport*;
 - (c) any loss of use of property in connection with damage, injury or death referred to in (a) or (b) of this clause, or
 - (d) subject to clause 19.2, any breach of any warranty, representation, obligation or other provision of these Conditions by TAL;

unless, and then only to the extent, caused by our gross negligence, wilful default or fraud.

- 17.3 You agree that we are not liable for, and to the full extent permitted by law you release us, our employees, officers, agents and contractors from all liability in connection with:
- (a) any loss you suffer, or any person claiming through you suffers, as a result of closure of the *Airport* or any part of it or as a result of any of the *Facilities and Services* being unavailable; or
 - (b) any loss you suffer, or any person claiming through you suffers, as a result of delays in the movement or scheduling of aircraft; or
 - (c) any indirect, special or consequential loss in connection with the use or the closure of the *Airport* or any part of it referred to in (a) or (b) of this clause.
- 17.4 You indemnify and hold us harmless against all claims, actions, losses and expenses of any nature which we may suffer or incur or for which we may become liable in respect of or arising out of a breach by you of any *Legislation*.

18 Warranties and conditions

- 18.1 Subject to this clause, we do not make any representation or warranty in connection with the use of the *Airport* or the *Facilities and Services*.
- 18.2 If a warranty or condition is implied under any *Legislation* in connection with the goods and services we provide and it can be excluded, we exclude to the maximum extent possible and if we cannot exclude it, then our liability for breach of that warranty or condition is limited to:
- (a) in the case of goods, one of more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of having the goods repaired or:
 - (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 18.3 You acknowledge that any goods or services supplied by us are for business purposes and that the provisions of the *Consumer Protection Act 2000* shall not apply.

19 Insurance

- 19.1 You must at all time have and maintain current insurance in accordance with the minimum insurance requirements set out in Schedule 4. These minimum requirements are not a limit of your liability but merely the reasonable minimum amount of insurance we require you to maintain.
- 19.2 You must upon request produce evidence to our reasonable satisfaction of the insurances required under clause 19.1.

20 Miscellaneous

- 20.1 These conditions constitute an agreement between the parties as to its subject matter.
- 20.2 These conditions are to be governed by and construed in accordance with the laws of the Kingdom of Tonga. Both parties irrevocably and unconditionally agree that the Courts of the Kingdom of Tonga have jurisdiction to hear and determine any proceedings brought in relation to these conditions.
- 20.3 These conditions do not create any lease, tenancy or interest in the *Facilities and Services* at the airport.

21 Dictionary and rules of interpretation

21.1 In this agreement:

Airport means Airports operated by TAL.

Airport Emergency Plan means the manual that forms part of TAL's certification documentation, which prescribes the procedures for the preparation, response and recovery in regards to *Airport* emergencies.

Airport Security Programme means the document that prescribes the security procedures for compliance with the provision of the National Aviation Security Programme in order to protect the security, regularity and efficient of the *Airport*.

Airside means :

- (a) that part of the Airport which is used for the surface movement of aircraft, which includes the Apron; and
- (b) any other areas designated as such by us in accordance with any relevant *Legislation*.

Airside Safety Regulations means the *Airside Operation Agreement* issued by TAL from time to time, which forms part of TAL's certification documentation, required under Civil Aviation Rule part 139.

Apron means that part of the aerodrome used to accommodate aircraft for the purpose of loading or unloading passengers & cargo, refuelling, parking and maintenance.

Authority means and includes every governmental, local, territorial and statutory which has legal authority pursuant to *Legislation* from time to time in relation to the Airport or which provides a service at the Airport.

Baggage make-up means the area used to perform baggage make-up from the *BHS* but does not include transport of the baggage to aircraft.

BHS means the physical baggage handling system which transports baggage from check-in counters along conveyor belts to the *Baggage make-up* area, but does not include the transport of baggage to aircraft.

Business Day means every day except Saturdays, Sundays or a public holiday in the Kingdom of Tonga.

Certificate of Registration means for an aircraft the certificate of registration.

Check-in counter equipment means the counters, baggage scales, PA system.

Child means a passenger 2 years of age or younger, but excludes *Infants*.

CT means Consumption Tax levied under the Consumption Tax Act

Departure Gate Equipment means departure gate counters, PA system controls & microphones.

Disembarking Passengers means all passengers on board an arriving aircraft. This includes *Transit Passengers*, *Transfer Passengers*, *Children*, *Infants*, *Domestic-On- Carriage* and *Positioning Crew*, but excludes *Operating Crew*.

Domestic Service means a regular air transport operation operating wholly within the Kingdom of Tonga.

Domestic-On-Carriage (DOC) means a passenger on an international flight who travels from one Tongan port to another.

Embarking Passengers means all passengers on board a departing aircraft. This includes *Transit Passengers, Transfer Passengers, Children, Infants, Domestic-On-Carriage* and *Positioning Crew*, but excludes *Operating Crew*.

Facilities and Services means our facilities and services as set out in Schedule 2 except to the extent that those facilities are provided to you under a separate contract, lease, license or other authority from us.

General Aviation means any air operation other than *Regular Air Transport Operations*.

Ground Handling Agent means an operator licensed by us to provide *Ground Handling Services* at the *Airport* in accordance with our standard ground handling license.

Ground Handling Services means those services that are listed in Annex A of the *IATA* standard ground handling agreement, 30th Edition, dated January 2010, or such later edition as may be approved by TAL and notified to licensed ground handlers from time to time.

IATA means the International Air Transport Association.

Infant means a child seated on another passenger's lap who has not paid to occupy a seat on an aircraft.

Legislation means all Acts of Parliament, regulations, rules, orders, by-laws, ordinances, Civil Aviation Notices and any other order, or directions of any government or statutory body relevant generally or determination specifically to the *Airport*, or aircraft or vehicles or equipment using it, as amended, re-enacted or replaced from time to time.

MCTOW means for an aircraft the lower of its maximum certified take-off weight as specified by the manufacturer (or as approved by the Civil Aviation Authority) and the maximum authorised operating weight as specified by us.

Operating Crew means your employees operating as flight or cabin crew on an arriving or departing aircraft.

Our Equipment means any equipment (including without limitation counters) supplied by us under these conditions but does not include the terminal equipment supplied by the airline, aircraft operator or *Ground Handling Agent*.

PA system means our public address system throughout the *Airport* terminal.

Passenger Processing Facilities means *Our Equipment* and facilities as set out in Schedule 2 except to the extent that those facilities are provided to you under a separate contract, lease, license or other authority from us.

Personnel includes an employee, officer, agent or contractor of either party as the case may be, and anyone else under the control or direction of such party (other than a passenger or a member of the public).

Positioning Crew means your flight and cabin crew, other than *Operating Crew*, arriving into, or departing from, the *Airport* on company duty travel for the purpose of positioning for, or returning from, crewing duties.

Regular Air Transport Operations means a flight forming part of a series of flights performed by aircraft for the transport of passengers, cargo, or mail between the *Airport* and one or more points in the Kingdom of Tonga or in any other country or territory, where the flights are so

regular and frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public.

Relevant Industry Bodies means a body listed or described in Schedule 7.

Season means, in each year;

- (a) for the Northern Summer *Season*, the period commencing on the last Sunday in March and ending on the last Saturday in October;
- (b) for the Northern Winter *Season*, the period commencing on the last Sunday in October and ending on the last Saturday in March.

Aerodrome Compliance Manual means the relevant components of TAL's manual as required under Civil Aviation Rule Part 139 in regards to the operations of the *Airport* as amended, as made available or otherwise provided to you, from time to time.

TAL means Tonga Airports Limited

Transfer Passenger means a passenger who connects from one international flight to another without being processed by the Tonga Customs Service at the Airport.

Transit Passenger means a passenger whose origin and destination is another port, serviced by the same flight.

we or **us** or **ours** means Tonga Airports Limited and includes our successors and assigns.

website means our world wide web page at the URL www.tongaairports.com

you or **yours** means, in the case of *Regular Air Transport Operations* aircraft, the holder of the *Air Operator Certificate* at the time our *Facilities and Services* at the Airport are used or in the case of *General Aviation* and other non *Regular Air Transport Operations* aircraft, the person identified as "Owner" in the movement request form or if no one is identified the holder of the *Certificate of Registration* at the times our *Facilities and Services* at the Airport are used and includes your executors, administrators, successors and assigns.

21.2 The singular includes the plural and the plural includes the singular.

21.3 Except where a contrary intention is expressed, a reference to:

- (i) A document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaces or novated;
- (ii) Anything (including a right, obligation or concept) includes each part of it
- (iii) "include" (in any form) or "such as" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (iv) the singular includes the plural and the plural includes the singular; and
- (v) a party or a body is a reference to that party's or body's successor or permitted assign.

21.4 If you are, at any time, made up of more than one person or company, then an obligation of those person or companies is joint and several and a right of those persons or companies is held by each of those persons or companies separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

- 21.5 If any part these conditions are unenforceable, these conditions are taken to be modified to remove that part. The rest of these conditions are not affected by that part being removed.
- 21.6 If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

SCHEDULE 1 (clause 11.1)

Contact Information

Address for service of notices on TAL:

By post: Director of Operations
Tonga Airports Ltd
P O Box 876
Nuku'alofa
Kingdom of Tonga

By facsimile: +676 27942

By email: info@tongaairports.com

By telephone: +676 21888

SCHEDULE 2

Facilities and Services

Airports operated by TAL - Airside movement facilities and services

- Airside grounds, runways, taxiways and *Aprons*, and associated markings
- Airside roads/access routes, airside lighting
- Airside safety as prescribed in our *Standards and Operations Procedures Manual*
- Aerodrome serviceability inspections and reporting
- Rescue and Fire Fighting
- Aircraft parking areas
- Visual navigation aids
- Wind direction indicators
- Information published in the Aeronautical Information Publication Tonga

Fua'amotu International Airport - Passenger processing facilities

- Passenger queuing areas
- Check-in Counters (per agreement at each airport)
- Departure Gate counters (per agreement at each airport)
- Terminal lounges and holding lounges (but excluding commercially operated VIP Lounges)
- Immigration, customs and bio-security areas
- Public address systems, closed circuit surveillance systems and security systems
- Baggage make-up, baggage handling systems and baggage reclaim
- Public areas in terminals & public amenities
- Landside roads, landside lighting and covered walkways.

SCHEDULE 3 (clause 8)

Charges

Year one

February 1st, 2011 to 31st January 2012

International

Passenger Service Charge	TOP \$ 25.00
Development Levy	TOP \$ 20.00
Security Charge	TOP \$ 10.00
Aircraft MCTOW (Landing Charge)	TOP \$ 13.63 per tonne
Afterhours Charge	TOP \$ 500.00

Domestic

Passenger Service Charge	TOP \$10.00 plus CT
Aircraft MCTOW (Landing Charge)	TOP \$ 4.03 per tonne
Afterhours Charge	TOP \$ 500.00

Parking Charges (first three hours free of charge)

Exceeding three hours:	3 to 8 hours	Each additional hour
A/C up to 5 tonnes	\$5.00	\$1.00
A/C 6 to 50 tonnes	\$30.00	\$7.00
A/C over 50 tonnes	\$60.00	\$12.00

Year two

February 1st, 2012 to 31st January 2013

International

Passenger Service Charge	TOP \$ 25.00
Development Levy	TOP \$ 20.00
Security Charge	TOP \$ 10.00
Aircraft MCTOW (Landing Charge)	TOP \$ 21.80 per tonne
After Hours Charge	TOP \$ 676.00

Domestic

Passenger Service Charge	TOP \$10.00 plus CT
Aircraft MCTOW	TOP \$ 5.23
Afterhours Charge	TOP \$ 676.00

Parking Charges (first three hours free of charge)

Exceeding three hours:	3 to 8 hours	Each additional hour
A/C up to 5 tonnes	\$5.00	\$1.00
A/C 6 to 50 tonnes	\$30.00	\$7.00
A/C over 50 tonnes	\$60.00	\$12.00

Year threeFebruary 1st, 2013 to 31st January 2014**International**

Passenger Service Charge	TOP \$ 25.00
Development Levy	TOP \$ 20.00
Security Charge	TOP \$ 10.00

Aircraft MCTOW (Landing Charge)	TOP \$ 27.25 per tonne
After Hours Charge	TOP \$ 676.00

Domestic

Passenger Service Charge	TOP \$10.00 plus CT
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Aircraft MCTOW	TOP \$ 7.33
Afterhours Charge	TOP \$ 676.00

Parking Charges (first three hours free of charge)

Exceeding three hours:	3 to 8 hours	Each additional hour
A/C up to 5 tonnes	\$5.00	\$1.00
A/C 6 to 50 tonnes	\$30.00	\$7.00
A/C over 50 tonnes	\$60.00	\$12.00

Notes

1. all charges are in TOP (Tongan Pa'anga)
2. Airport Hourly Operational Charges (after hours charges) including light surcharge, Navaid charges terminal, technical & support services)
3. Passenger Service Charge children 2 years and under, transit (12 hours), crew and involuntary re-routing are exempt
4. Domestic charges are plus consumption tax
5. In calculating landing charges in accordance with the per tonne scale, any weight below 1 tonne shall be rounded up to the nearest half-tonne
6. In calculating the After Hours and Parking charges, parts of the hour shall be rounded up to the nearest half-hour.

SCHEDULE 4 (clause 19)

Minimum public liability insurance requirements

You must maintain insurance with a minimum single limit for third party liability for any one accident/incident or occurrence being no less than NZD\$1,000,000 with the interest of TAL noted on that policy. A copy of the certificate noting TAL's interest must be provided to TAL

If requested by TAL, you agree to provide evidence of insurance held and a copy of the policy document.

SCHEDULE 5 (clause 15.2)

Procedure for moving/removing Aircraft by TAL

In the event that we are required to move/remove an aircraft as a result of a failure by you to comply with an order issued to you under these conditions:

1. We will, where applicable, follow procedures for the recovery of disabled aircraft set out in our *Airport Emergency Plan*.
2. In other circumstances, we will provide you with as much notice as is, in all the circumstances, reasonably practicable:
 - (a) that we intend to move/remove the aircraft;
 - (b) of the proposed location to which the aircraft is to be relocated;
 - (c) of the means by which we intend to move/remove the aircraft; and
 - (d) of any conditions which may apply to the recovery of the aircraft.
3. In the event that the notice referred to in clause 2 above is not practicable, we will notify you as soon as possible that:
 - (a) we have moved/removed the aircraft;
 - (b) the location to which the aircraft has been moved; and
 - (c) any conditions which may apply to your recovery of the aircraft.

SCHEDULE 6

Aircraft Engine Runups

1. All aircraft engine runups are to be conducted in accordance with the Airside Operators Agreement or at the direction of TAL.
2. Confirmed designated aircraft runup areas must be strictly adhered to.

SCHEDULE 7

Relevant Industry Bodies

Industry bodies referred to in these conditions include:

- International Air Transport Association
- Association of South Pacific Airlines

and any other organisation that we agree, in writing, is to be considered an industry body for the purposes of this document.

SCHEDULE 8 (clause 13.1)

Common User Conditions

These common user conditions apply to the *Passenger Processing Facilities* at the Airport. If you use our *Passenger Processing Facilities* for checking in or processing passengers you must comply with the conditions in this Schedule 8.

Ground Handling Agents

Where you have an agreement with a *Ground Handling Agent*, the terms of that agreement must not be inconsistent with any terms of these *Conditions of Use* and you must inform them of your obligations under these conditions.

Repairs and Maintenance

You must pay us for any repairs to our *Passenger Processing Facilities* or any other property due to neglect, misuse or damage by you, your employees, agents or contractors.

We will repair and maintain our *Passenger Processing Facilities* at our own expense in circumstances other than those set out in this Schedule 8.

You or your handling agent must:

1. take proper care of our *Passenger Processing Facilities* and follow our reasonable direction for their use; and
2. tell us immediately if any of our *Passenger Processing Facilities* are faulty, inoperative, or damaged so we can arrange for repair/replacement as soon as practicable; and
3. not allow any person except our employees, contractors or agents to repair, repair or modify our *Passenger Processing Facilities*; and
4. you must give our employees, contractors or agents reasonable access to inspect and or repair the *Passenger Processing Facilities*; and
5. you must prevent your employees, contractors and agents from using any unserviceable or unsafe *Passenger Processing Facilities*.

Charges apply for your use of our *Passenger Processing Facilities*. An annual gross charge is set by us and is prorated, against other users, to you based on the number of flights you process through our *Passenger Processing Facilities* and will be invoiced to you on a quarterly basis.

Allocation of our *Passenger Processing Facilities*

We will:

- (a) allocate our *passenger processing facilities* to you in accordance with our allocation rules and these conditions; and
- (b) use our best endeavours to allocate your requested *passenger processing facilities* having regards to your flight schedules and to historical load factor information available to us.

The allocations will be at our absolute discretion to achieve efficient operation of the Airport.

General conditions

You, or your handling agent must:

- (a) take proper care of our *Passenger Processing Facilities*, and follow our reasonable directions for their use; and
- (b) leave our *Passenger Processing Facilities* in a tidy condition; and
- (c) ensure rubbish is put in the bins provided and is not dropped or left on our *Passenger Processing Facilities*; and
- (d) if required by us, remove your equipment or stationery at the end of a period of use; and
- (e) not do anything, which may adversely affect the efficiency of our *Passenger Processing Facilities*; and
- (f) take all reasonable precautions when using our check-in counters to prevent unauthorised entry into the check-in counter area and the baggage handling system; and
- (g) comply with the baggage handling system operational requirements as notified by us; and
- (h) ensure that the last employee or agent ensures that the baggage handling system is switch off and the baggage shutters are down.
- (i) ensure that your *Personnel* operating our *Passenger Processing Facilities* are trained to operate them safely and in a manner to avoid damage to it, to other property and persons; and
- (j) accept responsibility for the training of your *Personnel* or your *Ground Handling Agent's Personnel* in the use of our *Passenger Processing Facilities*; and
- (k) must act reasonably in the use of the public address system and, without limitation, restrict announcements to whatever is operationally required; and
- (l) ensure that any check-in counter in use by you, whether temporarily or at the end of a period of use, is left in a secure condition.

Termination

We may terminate your right to use our *Passenger Processing Facilities* immediately:

- (a) by giving you written notice if you omit or fail to observe a material condition and do not remedy the breach within 14 days of receiving a written notice from us to do so; or
- (b) when you cease to conduct or provide *Regular Air Transport Operations* at the Airport

SCHEDULE 9 (clause 5)

Information we require from you prior to use

1. Your name, address and contact details;
2. Evidence that you have a security programme that meets the requirements of our security arrangements and any relevant requirements of the Civil Aviation Authority;
3. Reasonable evidence that you have emergency procedures that comply with Airport emergency requirements and applicable laws;
4. Certification confirming that you have in place a safety management system to ensure the health, safety and welfare of all persons you may be affected by your operations at the Airport;
5. The names, addresses, telephone numbers, facsimile numbers, e-mail addresses and all other contact details of your key *Personnel* we can contact any time about emergencies, security, operational or financial matters in connection with your use of the Airport;
6. Evidence of insurance policies you hold that are consistent with the requirements of Schedule 4 and confirmation that these policies will remain current at all times when you are using the *Facilities and Services* at the *Airport*;
7. Ground handling arrangements;
8. Arrangements for the removal of disabled aircraft;
9. Details of the type, registration and MCTOW of each aircraft, which you intend to use at the Airport.

SCHEDULE 10

Schedule of Amendments