



**SPACEPORT**AMERICA<sup>®</sup>

---

AGREEMENT

NEW MEXICO SPACEPORT AUTHORITY

with

EXOS AEROSPACE SYSTEMS & TECHNOLOGIES, INC.

---

Table of Contents

1. RECITALS..... 2

2. DEFINITIONS..... 2

3. TERM. .... 5

4. USE OF PREMISES..... 6

5. RENTALS, FEES AND CHARGES..... 11

6. UTILITIES..... 12

7. MAINTENANCE OF SPACEPORT..... 12

8. CONSTRUCTION, ALTERATIONS, IMPROVEMENTS, PAYMENT BOND. .... 12

9. SPACEPORT SECURITY. .... 14

10. DAMAGE OR DESTRUCTION OF PREMISES. .... 16

11. ENVIRONMENTAL MATTERS. .... 16

12. INSURANCE AND INDEMNIFICATION..... 19

13. TRANSFER BY ASSIGNMENT OR SUBLETTING..... 22

14. REPRESENTATIONS OF EXOS. .... 23

15. REPRESENTATIONS OF THE AUTHORITY. .... 23

16. EXOS DEFAULT..... 23

17. AUTHORITY DEFAULT. .... 24

18. MINIMUM LAUNCH CADENCE..... 25

19. VIRGIN GALACTIC PREFERENCES..... 25

20. GENERAL PROVISIONS..... 25

Exhibit A – The Ground..... 30

Exhibit B – VLA Recovery Zone..... 31

Exhibit C – EXOS User Fees..... 32

Exhibit D – Mortgage Financing..... 33

Exhibit E – Spaceport Advisory Committee..... 36

## AGREEMENT

The New Mexico Spaceport Authority (the "Authority") and EXOS Aerospace Systems & Technologies, Inc. a Texas corporation with registered address at 126 W. Mall Drive, Corsicana, TX 75110 ("EXOS"), being sometimes collectively referred to as the "Parties," agree:

### **1. RECITALS.**

1.1. The Authority operates a licensed commercial space launch facility called Spaceport America (the "Spaceport") pursuant a Part 420 Launch Site Operator License awarded by the Federal Aviation Administration Office of Commercial Space Transportation, License No. LSO-08-011. The Authority also operates the Spaceport as a private general aviation airport, "9NM9", when supporting conventional aviation operations.

1.2. EXOS wishes to lease from the Authority and the Authority wishes to lease to EXOS certain "Ground" (defined in Exhibit A), in accordance with the terms and conditions of this Agreement (the "Lease"), for EXOS to construct and operate a commercial space launch and testing complex.

1.3. EXOS will have a seat on the Spaceport Advisory Committee composed of spaceport tenants that provides input to the Authority on spaceport budgeting, operations, capital improvement planning, and other matters. This Committee also provides input into the Authority's process for scheduling space launches and other site-wide activities to assist the Authority in maximizing each spaceport tenant's launch opportunities.

1.4. Space launch scheduling is based on an annual estimate of each spaceport tenant's flight volume to determine the number of launch reservations needed for that year. Then throughout the year specific dates and time periods for each launch reservation are determined monthly.

### **2. DEFINITIONS.**

2.1. Aircraft. A device that is used or intended to be used for flight in the air owned, leased, or operated by EXOS or other Tenants, but does not include Spacecraft.

2.2. Airfield. All horizontal landing areas, runways, taxiways, ramps, aprons, adjacent field areas and related support facilities, except exclusive use areas of a Tenant.

2.3. Applicable Laws. All federal, State and local laws, statutes, ordinances, rules, codes, regulations, orders, determinations and court decisions applicable to the Spaceport and this Lease.

2.4. Bankruptcy Event. With respect to any Person, the occurrence of any of the following: (a) the commencement by such Person of any case, proceeding or other action: (i) under any Insolvency Law seeking to have an order for relief entered with respect to such Person, or seeking to adjudicate such Person bankrupt or insolvent, or

seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to such Person's debts, or (ii) seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its assets, or such Person will make a general assignment for the benefit of its creditors; or (b) the commencement against such Person of any case, proceeding or other action of a nature referred to in clause (a) above which will not have been dismissed, stayed or bonded pending appeal within sixty (60) days from the entry thereof.

2.5. Environmental Impact Statement (EIS) and Related Documentation. Means the FAA's Record of Decision Spaceport America Commercial Launch Site, Sierra County, New Mexico, December 2008; the Final Environmental Impact Statement for the Spaceport America Commercial Launch Site, Sierra County, NM, November 2008; the Programmatic Agreement Among The Federal Aviation Administration, Bureau Of Land Management, New Mexico State Land Office, New Mexico Spaceport Authority, New Mexico State Historic Preservation Office, And Advisory Council On Historic Preservation Regarding The Spaceport America Project, Sierra County, New Mexico; and related documentation including future updates and additional documents.

2.6. EXOS Facilities. All improvements and fixtures placed on the Ground by EXOS or its Representatives.

2.7. Environmental Law. All applicable federal, State, or local laws, statutes, regulations or ordinances, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Land, including, without limitation, each of the following, as amended: the Comprehensive Environmental Response, Compensation and Liability Act 1980, 41 U.S.C. §§ 9601, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §§ 1251, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq.; the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1, et seq.; the New Mexico Voluntary Remediation Act, NMSA 1978, §§ 74-4G-1, et seq.; the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1, et seq.; the New Mexico Groundwater Protection Act, NMSA 1978, §§ 74-6B-1, et seq.; and the New Mexico Solid Waste Act, NMSA 1978, §§ 74-9-1, et seq. The term "Environmental Law" also encompasses any applicable, enforceable judgment or order from a court of competent jurisdiction or binding settlement agreement pertaining to the environment, the use, removal or disposal of Hazardous Substances, or the manner in which Tenants may use the Land.

2.8. Fiscal Year. The fiscal year of the Authority, which runs from July 1 of one calendar year to June 30 of the next calendar year.

2.9. Hazardous Substance. Any material, waste, or substance that is: (a) included within the definitions of "Hazardous Substances," "hazardous materials," "hazardous waste," "toxic substances," "pollutants," "contaminants," or "solid waste" in or pursuant to any Environmental Law, or subject to regulation under any Environmental Law; (b)



listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. § 172.101, as to date or hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as to date or hereafter amended; or (c) explosive materials, radioactive materials, asbestos or asbestos-containing materials, polychlorinated biphenyls, oil or petroleum products, or lead-based paint.

2.10. Insolvency Law. Collectively, with respect to any Person, any liquidation, insolvency, bankruptcy, moratorium, reorganization, or similar law applicable to such Person.

2.11. Land. All real property managed by the Authority under Business Lease No. BL-1729, including the Spaceport, Premises, and other subleased premises, totaling approximately 18,000 acres located within Sierra County, NM.

2.12. Mission. Each launch and recovery operation constitutes one "Mission," whether successful or not. A launch that is aborted prior to ignition of the motor or engine does not constitute a Mission.

2.13. O&M Expenses. Reasonable and necessary current expenses of the Authority in accordance with generally accepted accounting principles, paid or accrued, for operating, maintaining, and repairing the Spaceport. EXOS' O&M Expenses will be determined pursuant to Paragraph 5.6 of this Lease. EXOS' O&M Expenses will not include (i) liabilities incurred by the Authority as the result of its negligence or willful misconduct in the operation of the Spaceport or other ground of legal liability not based on contract; (ii) any payment to the Authority or any department or political subdivision of the State of any management fee, or other similar fee or charge; (iii) costs for any services provided to any other Tenant, occupant or user of the Spaceport to the extent such services are in excess of those provided to EXOS; (iv) taxes or governmental exactions of any kind whatsoever; (v) principal, interest or other payments due by the Authority in connection with any bonds, loans or financing of any kind whatsoever; and (vi) any maintenance and repair costs that should be capitalized under generally accepted accounting principles.

2.14. Person. An individual, corporation, partnership, limited liability company, unincorporated organization, association, joint stock company, joint venture, trust, estate, real estate investment trust, government, agency or political subdivision or other entity, whether acting in an individual, fiduciary or other capacity or authority.

2.15. Premises. Means the Ground and EXOS Facilities.

2.16. Representatives. Includes agents, employees, contractors, subcontractors, officers, board members, commissioners, directors, licensees, subrogees, assignees, customers, and invitees.

2.17. Rules and Regulations. Those lawful rules and regulations promulgated by the SAC and approved by the Authority, which approval will not be unreasonably withheld,

conditioned or delayed, in addition to any Applicable Laws, for the orderly use of the Spaceport, as the same may be amended, modified or supplemented from time to time.

2.18. Spacecraft. A vehicle built to operate in, or place a payload in, outer space, or a suborbital rocket or other spacecraft owned, leased, or operated by EXOS or other Tenants.

2.19. State. The State of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

2.20. Tenant(s). Means a Person other than EXOS who leases property in the Spaceport for the exclusive use of that Person.

2.21. Vertical Launch Area (VLA). The portion of the Spaceport designated by the Authority for vertical launch and vertical landing operations.

2.22. Virgin Galactic. Means Virgin Galactic, LLC, a Delaware limited liability company, the anchor tenant at the Spaceport under the Facilities Lease of December 31, 2008.

2.23. VLA Common Facilities. Means the Facilities in the VLA that are not designated for the exclusive use of the Authority, EXOS, or a Tenant.

2.24. VLA Recovery Zone. Means the approximately eight acre area defined in Exhibit B which is one of the VLA Common Facilities.

2.25. WSMR. Means the U.S. Army White Sands Missile Range.

2.26. ZAB. Means the Albuquerque Air Route Traffic Control Center.

### **3. TERM.**

3.1. Commissioner Approval. As a condition precedent to Rent Commencement, the Authority will obtain approval from the New Mexico Commissioner of Public Lands ("Commissioner") to lease the Ground to EXOS.

3.2. Term. The Term of this Lease will begin on May 1<sup>st</sup>, 2016, and continue for five (5) years unless terminated earlier as set forth in this Lease.

3.3. Surrender of Premises. Upon the expiration or earlier termination of this Lease, or upon any reentry by Authority as a result of an EXOS Event of Default, EXOS will peaceably quit and surrender possession of the Premises in broom clean, good condition, reasonable wear and tear excepted, and will remove all of EXOS's Property (defined below) and the Authority will have the right to take possession of the Premises. An acceptance of surrender of the Premises must be in writing and signed by the Authority to be valid. Any items that remain within the Land after the end of the Term, or sixty (60) days after an earlier termination date, may at the option of the Authority be deemed to have been abandoned by EXOS and retained by the Authority as its property or be disposed of by the Authority, in which case EXOS must pay all reasonable costs

incurred by the Authority to accomplish the disposal, which obligation to pay survives the expiration or termination of this Lease.

3.4. EXOS Property. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to or built into the Premises, that are installed by EXOS without expense to the Authority and can be removed without structural damage to the Premises, and all furniture, furnishings and other articles of movable personal property owned by EXOS and located in the Premises (the "EXOS Property") will be and will remain the property of EXOS and may be removed by EXOS at any time during the Term of this Lease; provided that EXOS will repair or pay the cost of repairing any and all damage to the Premises resulting from the installation and/or removal of EXOS Property.

3.5. Termination Due to Insufficient Amounts in Spaceport Authority Fund. Nothing in this Lease will be construed as authorizing or obligating the Authority to pay for the Authority's obligations under this Lease from any source other than amounts deposited in the Spaceport Authority Fund established pursuant to NMSA 1978, Section 58-31-17 (the "Amounts"). EXOS may not look to any general or other fund of the State for the payment of the Authority's obligations except Amounts. This Lease will not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation, nor will this Lease be considered or held to be a general obligation of the State. If the Authority is unable, in the Authority's sole discretion, to pay its obligations with Amounts deposited in the Spaceport Authority Fund, the Authority will have the right to immediately terminate this Lease upon written notice to EXOS. Nothing herein will be deemed a concession by the Authority regarding the validity of any contractual impairment claim.

#### **4. USE OF PREMISES.**

4.1. Use by EXOS. Prior to Rent Commencement EXOS will have access to the VLA Common Facilities. After Rent Commencement EXOS will have access to the Premises and VLA Common Facilities. EXOS may use the VLA Common Facilities and Premises for all purposes reasonably necessary for an aerospace industry business, and for no other purposes whatsoever. Only the following uses will be permitted:

- 4.1.1. Construction and operation of vertical launch and related facilities.
- 4.1.2. Construction and operation of payload support infrastructure and processing facilities.
- 4.1.3. Construction and operation of associated infrastructure, pads, footings, fuel storage areas, and fixtures in support of approved uses.
- 4.1.4. Use of related facilities as equipment shelter, office space, storage space, and/or meeting facilities.
- 4.1.5. Construction and operation of landing zones and facilities for the reentry and recovery of space launch vehicles.

- 4.1.6. Construction and operation of aerospace manufacturing facilities.
- 4.1.7. Construction and operation of research and development facilities.
- 4.1.8. Technology demonstrations.
- 4.1.9. Aerospace systems and vehicle testing.
- 4.2. Spaceport Mission Support. The Authority will support EXOS Missions with:
  - 4.2.1. Coordination of the Mission with WSMR, ZAB, FAA, and other required entities.
  - 4.2.2. Safety review of each EXOS Mission flight data package and operational procedures.
  - 4.2.3. Two lavatories in Spectator Area during Missions.
  - 4.2.4. One dedicated security guard in Spectator Area during Missions.
  - 4.2.5. Spaceport ground control during Missions.
  - 4.2.6. Use of Spaceport Operations Center conference room or Control Vans for operations safety briefings and debriefings as appropriate during Missions.
  - 4.2.7. Emergency response standby of one wildlands/brush truck or Class A pumper engine and one ambulance with personnel during Missions.
  - 4.2.8. Wireless internet and network access during Missions.
  - 4.2.9. 24/7 Spaceport perimeter security.
  - 4.2.10. Use of the VLA Recovery Zone during Missions.
- 4.3. Mission and Activity Scheduling. EXOS must request specific dates and time periods for its activities through the Authority's site-wide scheduling process according to the Paragraphs below. The Authority will coordinate EXOS requests with other Spaceport Tenants, users, WSMR, and with other entities and will attempt to accommodate EXOS's requested dates and time periods but these may not be available. The Authority will provide updates on whether requests are confirmed, denied, or pending within seven (7) days of submission from EXOS.
  - 4.3.1. Formal requests for a specific date and time period for a Mission must be submitted to the Authority no fewer than sixty (60) days prior to the desired Mission date to allow sufficient time for the Authority to coordinate the Mission with WSMR's internal scheduling process. However, EXOS may submit informal requests on shorter notice and the Authority will make reasonable efforts to accommodate such requests. Repeated failures to

actually launch during scheduled Mission periods may result in a loss of priority in the site-wide scheduling process.

4.3.2. Requests to conduct tethered or static engine firings and other energetic activities must be submitted to the Authority not less than five (5) days prior but the Authority will make reasonable efforts to accommodate requests on shorter notice. Additional operational support requirements may apply to energetic activities conducted during State declared drought conditions. For the avoidance of doubt, this Paragraph 4.3.2 does not apply to small scale activities conducted within an indoor laboratory facility.

4.3.3. The 9NM9 airfield is available on a first-come first-served basis. Because the local airspace is managed by WSMR the Authority recommends requesting a specific date and time period no fewer than sixty (60) days prior to allow for coordination of airspace availability.

4.3.4. Significant activities, such as major construction, deliveries of heavy equipment, and other activities likely to impact other Spaceport occupants must be scheduled not less than two business days in advance through the Authority. The Authority will make reasonable efforts to accommodate requests on shorter notice.

4.3.5. For the avoidance of doubt, the Authority exercises final discretion over the scheduling of all significant activities by EXOS and Tenants, such as launches, tethered or static engine firings, major construction, deliveries of heavy equipment, and other activities likely to impact other Spaceport occupants. Denial of such requests does not constitute a breach of this Lease. The Authority cannot guarantee approval from other agencies, such as WSMR or ZAB, and the Authority will not be liable to EXOS for the conduct of such other agencies.

4.4. Spectator Area and Parking. The "Spectator Area" is the gravel lot adjacent to the VLA Mission Control and as a VLA Common Facility may be used by EXOS during EXOS Missions on a non-exclusive basis for staging up to fifty (50) EXOS Representatives. EXOS and its Representatives may park no more than twenty (20) vehicles in the Spectator Area. Overflow parking, as space permits, may be available at the Main Entrance parking lot. The Authority reserves the right to charge for visitor parking. For the avoidance of doubt, the Authority and its designees retain the right to also use the Spectator Area during EXOS Missions. EXOS Representatives must comply with all Authority policies, including submission of full names at least forty-eight (48) hours in advance and presentation of government issued photo ID. EXOS will have non-exclusive use of the other VLA Common Facilities for transiting to the Premises and for other reasonable purposes of the VLA Common Facilities in accordance with Authority policies. EXOS must not make permanent modifications to the VLA Common Facilities without prior approval of the Authority.

4.5. "Gateway to Space" Event Services. EXOS will receive a ten percent (10%) discount off the then effective pricing for services purchased from the Authority's



Gateway to Space™ event venue for EXOS Aerospace Systems & Technologies events. For the avoidance of doubt this discount is non-transferable and only applies to events conducted by EXOS directly related to the marketing of EXOS Aerospace Systems & Technologies.

4.6. Branding and Marketing. To the extent permitted by law, EXOS and the Authority will cooperate to maximize positive publicity regarding the Spaceport, for example, through co-branding. EXOS may film, photograph, videotape, or otherwise make recordings or capture footage (“Recordings”) of the Premises and Common Facilities for the sole commercial purpose of promoting the EXOS Aerospace Systems & Technologies brand with prior approval of the Recording’s content from the Authority and with credit to “SPACEPORT AMERICA®, New Mexico, USA, Earth” wherever reasonably practicable. Upon request, EXOS will grant rights for usage of said Recordings to the Authority. For the avoidance of doubt, EXOS may make Recordings for any non-commercial purpose as well.

4.7. Signage. All EXOS signs will be professionally designed, prepared and installed and in good taste so as not to detract from the general appearance of the Spaceport. All EXOS signs require the written approval of the Authority, which approval will not be unreasonably withheld, conditioned or delayed. All signage will be designed to be consistent with and complement the materials, color and architectural style of the Spaceport.

4.8. Right of Public Access to Facilities. EXOS agrees to participate in the Authority’s visitor experience programs through mutually agreeable means that enable visitors to observe exterior areas of the EXOS Facilities consistent with the safety and security of both EXOS and the visitors. At the request of the Authority, EXOS agrees to reasonably accommodate requests for visitors to see the EXOS Facilities under escort. The Authority will coordinate the visitation with EXOS to identify areas that if accessed would result in disruption of EXOS work schedules, would compromise confidential EXOS activities, or would pose a risk under EXOS’s export control compliance practices.

4.9. Commercial Space Launch Act. If Chapter 509 of Title 51 of the US Code, or a license or permit awarded by the FAA Office of Commercial Space Transportation pursuant to 14 CFR Chapter III, or any of those statutes, regulations, or any license or permit terms are in conflict with the provisions of this Lease then such statutes, regulations, or any license or permit terms will control and the failure to comply with the conflicting provisions of this Lease will not constitute a breach thereof.

4.10. Limitations on Use. In connection with the use of the Land, EXOS must not:

4.10.1. Do or permit to be done anything at or about the Land that may interfere with the effectiveness or accessibility of the drainage system; sewage system; natural gas system; electrical system: heating, ventilation and air conditioning system (“HVAC”); fire protection system; or alarm system.

- 4.10.2. Do or permit to be done any act in, on, or about the Land that will invalidate or conflict with any insurance policies applicable to the Land (including, but not limited to, the State of New Mexico's risk pool, liability pool, or pool of excess insurance) or the activities conducted at the Land.
- 4.10.3. Dispose of or permit any other Person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its Aircraft or Spacecraft into the sanitary sewer, storm sewer, ground or trash except in accordance with Applicable Laws. EXOS may use the Authority's common trash disposal facility for non-hazardous waste in accordance with Authority policies.
- 4.10.4. Store flammable or energetic materials, except in storage Facilities especially constructed for such purposes in accordance with best practices and Applicable Laws.
- 4.10.5. Do or permit to be done any act upon the Land in violation of or inconsistent with the Authority's EIS and Related Documentation.
- 4.10.6. Do or permit to be done any act in violation of or inconsistent with Rules and Regulations, Applicable Laws, or Authority policies.
- 4.10.7. Conduct recovery operations beyond the Premises except with prior approval of the Authority and in accordance with Authority requirements.
- 4.10.8. Materially and adversely affect the operations of other Tenants or users at the Spaceport, other than through competition.

4.11. Evacuations. EXOS must evacuate the Premises of all persons and readily portable items of EXOS Property identified by the Authority on those occasions where the Authority determines such evacuation to be necessary to enable other Tenant Missions and on no less than five (5) days advance notice to EXOS. The necessity, scope, and duration of any such evacuation will be determined by the Authority.

4.12. Experimental Activities. EXOS must not conduct developmental or test flights or developmental or test operations at or from the Spaceport unless the following criteria are met:

- 4.12.1. Federal Aviation Administration ("FAA") or other applicable governmental approval has been obtained, if any is required; and,
- 4.12.2. EXOS maintains appropriate liability insurance; and,
- 4.12.3. Such flights or operations will not result in a violation of the terms and conditions of any Tenant's FAA operating license; and
- 4.12.4. Such flights or operations that involve use of the runways or taxiways will not occur during the period blocked for another Tenant Mission.

## 5. RENTALS, FEES AND CHARGES.


5.1. General. In return for use of the Premises, EXOS agrees to pay to the Authority certain rents, fees and charges as set forth below.

5.2. Ground Rent.



5.3. EXOS User Fees. EXOS User Fees are based on EXOS's actual operations at the Spaceport, O&M Expenses, capitalized repair, maintenance, and equipment costs. EXOS must pay an EXOS User Fee for each Mission or each use of 9NM9 according to the rates in Exhibit C, unless those rates are changed by the Authority. The Authority determines EXOS' and each Tenant's User Fee rates on an annual basis and delivers updates to EXOS' User Fee rates, if any, by August 31<sup>st</sup> to go into effect the following Fiscal Year. The SAC provides recommendations into the setting of total User Fees according to the procedure in Exhibit E.

5.4. Intentionally Removed.



5.6. Monthly Activity Reports. EXOS will provide the Authority with a "Monthly Activity Report" giving: (a) the number of launches and landings; (b) the manifest and number of payloads; (c) the number of days required for each Mission; and (d) other information that may be necessary to calculate and assess EXOS User Fees at the Spaceport within five business days after any month during which EXOS conducts one or more Missions. Failure to provide the Monthly Activity Report to the Authority will entitle the Authority to develop its own estimate of activity.

5.7. Payment Provisions.

5.7.1. Rent. After Rent Commencement, Ground Rent will be due and payable in equal monthly installments the first day of each month in arrears without invoice from the Authority.

5.7.2. EXOS User Fees. EXOS User Fees will be due thirty (30) days after each Mission or use of 9NM9.

5.7.3. WSMR Fees. WSMR Fees are due thirty (30) days after EXOS receives an invoice from the Authority.

5.8. Late Payment Fees. If rents, fees, and charges required by this Lease are not received by the Authority within thirty (30) days following the date specified in this Lease or receipt of invoice, EXOS must pay a late payment fee to the Authority of one and one quarter percent (1.25%) on those amounts due and unpaid.

5.9. Taxes. EXOS must pay all taxes of whatever character that lawfully apply and which are not exempted by Applicable Law.

5.10. Business Updates. EXOS will respond to Authority requests for the information described below within a commercially reasonable time period that does not interfere with EXOS's ongoing business activities:

5.10.1. Number of jobs in NM,

5.10.2. Number/value of contracts held with NM based companies,

5.10.3. Value of taxes paid in NM, and

5.10.4. Other spending or economic impact in NM.

## **6. UTILITIES.**

6.1. There is no utility service to the Premises. Any future utility service requires prior approval of the Authority and separately executed agreement or amendment of this Lease.

6.2. EXOS will be solely responsible for all aspects of any electrical generator or energy storage equipment, including operation, maintenance, and fueling, and the Authority will not incur any liability for failure of the equipment to perform.

## **7. MAINTENANCE OF SPACEPORT.**

7.1. Throughout the Term EXOS must keep all EXOS Property in good condition, clean, sanitary, and free of pests.

7.2. After Rent Commencement EXOS must keep the Premises, including any EXOS Facilities and EXOS Property, in good, first-class working order, repair and condition, which condition will also be clean, sanitary, free of pests, and EXOS must keep the appearance of the Ground well-kept within the context of the Vertical Launch Area.

7.3. The Authority will till the VLA Recovery Zone once each year.

7.4. Additional maintenance services are available for purchase from the Authority by separate service level agreement.

## **8. CONSTRUCTION, ALTERATIONS, IMPROVEMENTS, PAYMENT BOND.**

8.1. Alterations and Improvements. Other than interior alterations that do not have any material effect on the Ground or EXOS Facilities structures or systems, which may

be made without the approval of the Authority, EXOS will make no alterations or construction in the EXOS Facilities or Ground without the prior written approval of the Authority.

8.2. Any construction must be aesthetically compatible with existing undeveloped and natural conditions of the Spaceport and areas surrounding the Spaceport; incorporate green technologies where feasible and incorporate approaches to minimize any potential environmental impacts and ensure that the improvements blend with the natural surroundings. The new construction must be respectful of New Mexico heritage and culture and reflect the overall vision of the Spaceport.

8.3. Before commencing any construction EXOS will provide to the Authority design documents showing the general location and scope of the proposed construction. Depending on the complexity or nature of the proposed construction the Authority may also require construction documents setting forth in detail the contemplated construction, including construction drawings and specifications ("Construction Documents"). The Authority will have ten (10) days after receipt of the design or Construction Documents to provide comments and EXOS will incorporate all Authority comments into the final design or Construction Documents.

8.4. If required by Applicable Laws, the final design or Construction Documents will be submitted to the NM Construction Industries Division for review and approval, and EXOS will obtain all permits and licenses required by Applicable Law. EXOS will provide the Authority with copies of all plans and specifications, including a final "as-built" set of plans and specifications, associated with the new construction.

8.5. In addition to the requirements of Paragraphs 8.2, 8.3, and 8.4 above, construction may also require reviews and approvals prior to groundbreaking pursuant to the Authority's EIS and Related Documentation. Should any such reviews and approvals be required prior to commencing construction, the Authority will facilitate and diligently pursue obtaining such approvals with input and cooperation from EXOS provided that the Authority will not be responsible for the outcome of such review and approval process.

8.6. Mortgage Financing. EXOS may encumber the EXOS Facilities in accordance with the terms in Exhibit D.

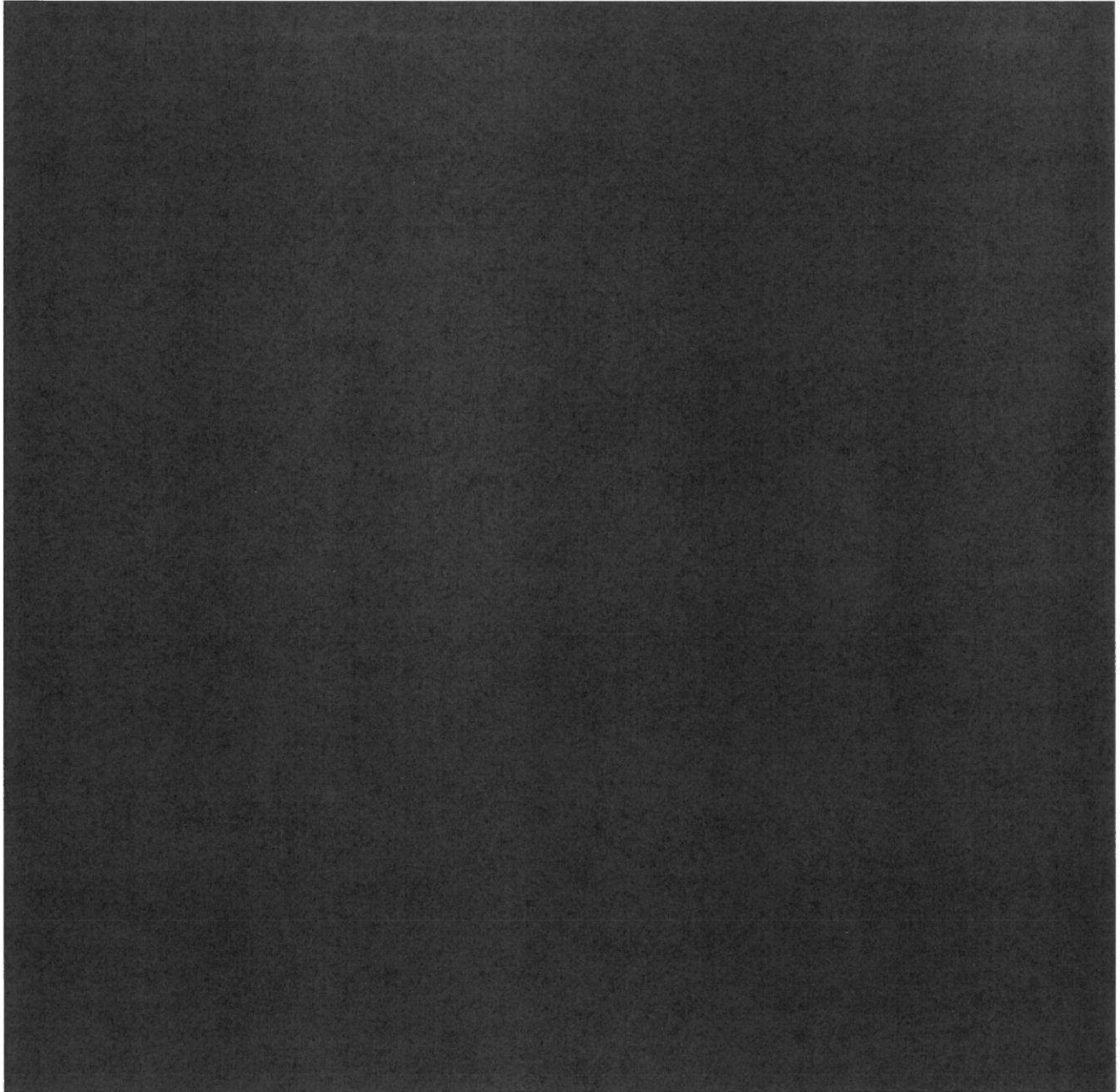
8.7. Any construction will be subject to Applicable Laws and Authority policies including without limitation those concerning payment of prevailing wages, if applicable, and carriage of insurance with the Authority, the State of New Mexico, and the Commissioner as additional insureds.

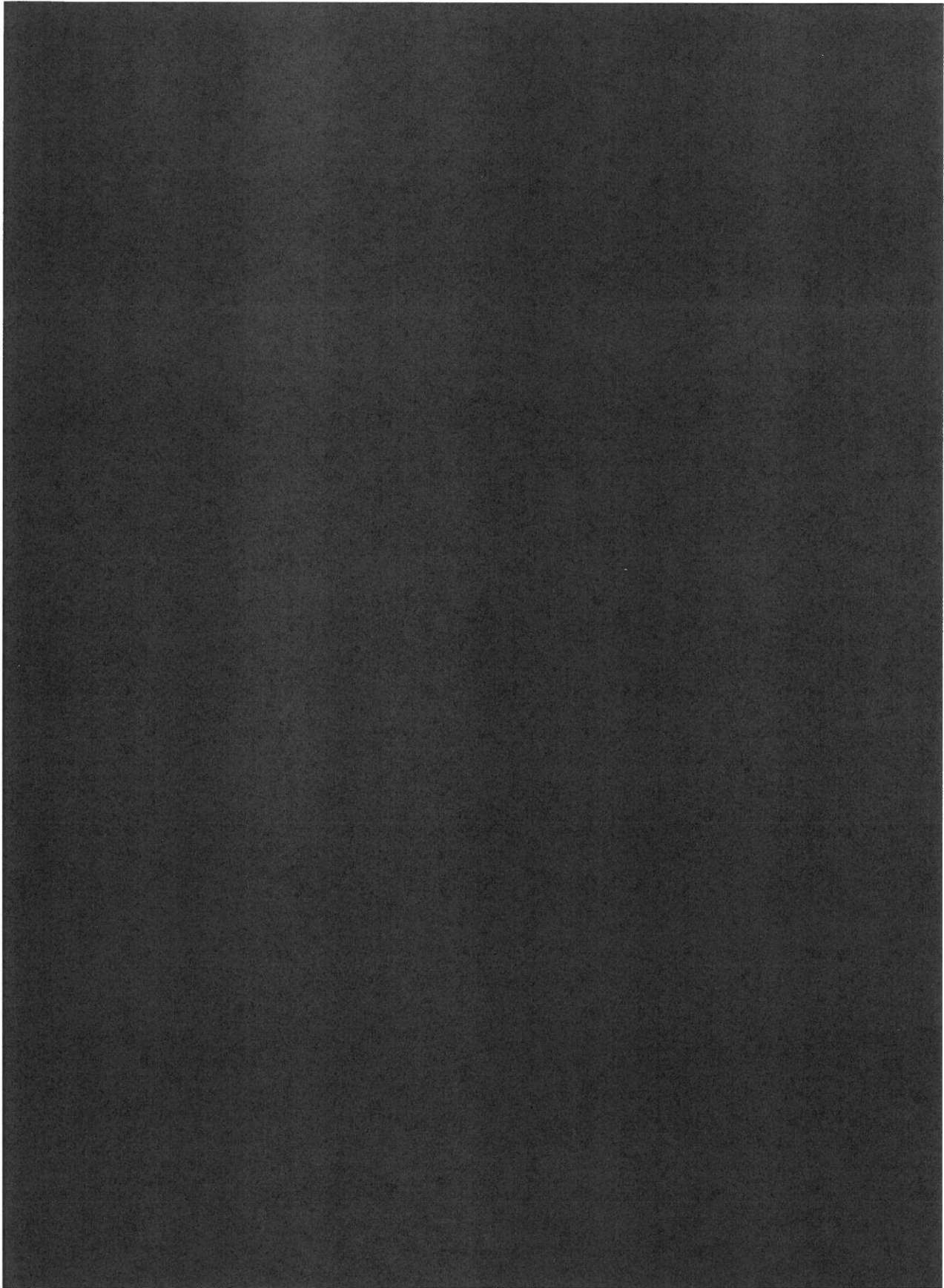
8.8. Payment Bond. EXOS must provide a payment bond in a sum equal to the full contractual amount of the construction to insure the Authority against loss by reason of any lien or liens that may be filed for the construction. EXOS will not permit any mechanics' lien, materialmen's lien, or any other lien or encumbrance to be attached to or to be foreclosed upon any Authority property.



8.9. CONDEMNATION AND EMINENT DOMAIN. If during the Term of this Lease the whole or a portion of the EXOS Facilities is taken, acquired, sold, or under imminent threat of such, to a government for any public or quasi-public use or purpose under any power of eminent domain or condemnation then this Lease will cease and terminate on the date title vests in the condemning authority. EXOS will make all required payments apportioned to the date of such termination and will promptly vacate the EXOS Facilities affected.

**9. SPACEPORT SECURITY.**







**10. DAMAGE OR DESTRUCTION OF PREMISES.**

10.1. Untenantable Condition. If for any reason any of the EXOS Facilities are damaged to such an extent that they are untenable and if EXOS elects not to repair, rebuild, or construct new EXOS Facilities then EXOS must, at a minimum, restore the Ground, including without limitation removal of damaged EXOS Facilities and other EXOS Property, to the condition immediately prior to the initial construction in the reasonable judgment of the Authority or to a condition agreed upon by the Authority. In the event that EXOS does not rebuild, EXOS may cancel the remaining Term without penalty or fee provided that the Ground is so restored, no Contamination is present within the Land, and all rentals, fees, and charges then due are paid in full.

10.2. EXOS will bear the full risk of loss from any and all causes for all of the EXOS Facilities. The Authority will have no responsibility and will not be liable for damage or destruction thereto, or for losses resulting from any such damage or destruction.

**11. ENVIRONMENTAL MATTERS.**

11.1. Environmental Definitions. The following terms have the following meanings in this Paragraph 11.

11.2. Best Management Practices. Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects of a Release or other event, including any practices prescribed by Environmental Laws and standard industry practice in the aerospace industry.

11.3. Environmental Claim. Any investigative action, enforcement action, cleanup mandate, removal mandate, containment mandate, remedial mandate, liability, fine or payment of liens at any time threatened, instituted or completed pursuant to any

applicable Environmental Laws, against EXOS, EXOS's activities, or the Premises or any condition, use or activity on the Land relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Substance. Any Environmental Claim will include damages, impairments, penalties, fines, reasonable attorneys' fees, court costs, remediation costs, expert and consultant fees and costs, consequential damages, diminution of value of the Premises or Land, damages for loss or restriction of use of the Premises or Land, or losses of any kind or nature, whether known or unknown, foreseeable or unforeseeable, whether for personal injury, death, natural resources or property damage or otherwise, whether for aggravation of or contribution to any pre-existing condition or otherwise, and whether civil or criminal.

11.4. Release. Any spill, leak, emission, pumping, pouring, discharging, leaching, dumping, pulverizing, causing to become airborne, percolation or disposal into or on any property or the environment.

11.5. Contamination. The Release or uncontained presence of Hazardous Substances resulting from EXOS activities at the Premises or the Land, or any condition caused by non-compliance with Environmental Laws, whether revealed in a Compliance Audit (defined below), Exit ESA (defined below) or otherwise.

11.6. Environmental Compliance. EXOS's conduct and operations as related to any operations involving or arising from EXOS's use of the Premises or the Land will at all times be in compliance with all Applicable Laws, including, but not limited to, Environmental Laws. Without limiting the generality of this requirement, EXOS will at all times handle Hazardous Substances in a manner consistent with Best Management Practices and Environmental Laws. Upon request EXOS will provide to the Authority any record related to any operations required to be maintained pursuant to any Environmental Law and EXOS will provide to the Authority a list of and information on the Hazardous Substances used, or planned for use, by EXOS.

11.7. EXOS will be solely responsible for the proper removal and disposal of all Hazardous Substances arising from EXOS's activities at the Premises or the Land in accordance with Environmental Laws. Additionally, EXOS will be solely responsible for Contamination that impacts the Premises or the Land as a result of the storage, handling, use, Release, removal or disposal of any substances used by EXOS or its Representatives.

11.8. No later than five (5) days after receipt EXOS must provide the Authority with a copy of any notice of violation, summons, order, complaint or any correspondence threatening or relating to noncompliance with any Environmental Law pertaining to EXOS operations on the Premises or the Land.

11.9. Site Contamination. If a Release or threatened Release of a Hazardous Substance or any Contamination arising from EXOS activities occurs, EXOS will immediately notify the Authority by telephone and will send a written confirmation to the Authority no later than twenty four (24) hours after the Release or threatened Release



has occurred. Such notice is required for any Release of greater than a reasonably de-minimis quantity.

- 11.9.1. EXOS will immediately stabilize the site of the Release or threatened Release in a manner consistent with Best Management Practices and will notify the Authority when such stabilization is complete.
- 11.9.2. If the Release requires reporting under Environmental Law, then EXOS and the Authority, in conjunction with a licensed environmental firm, will develop a remediation action plan ("Remediation Plan") that complies with Environmental Law.
- 11.9.3. Once the Remediation Plan has received approval from EXOS, the Authority, and any governmental body or court that is required to approve the Remediation Plan, EXOS will execute the Remediation Plan as soon as reasonably possible and will work expeditiously to accomplish remediation at EXOS's sole expense. Upon completion, the Authority may request that EXOS provide a Phase I environmental site assessment to be completed at EXOS's expense (the "Post-Remediation ESA").
- 11.9.4. If EXOS fails to clean up, properly dispose of, remove, repair, or remediate any operation or condition that relates to a Hazardous Substance, Release, threatened Release, or violation of Environmental Law, or if EXOS fails timely to complete a Remediation Plan, the Authority may (but is not required to) take all steps it deems necessary to properly clean up, dispose of, remove, repair or remediate that condition or operation. Any such action on the part of the Authority will be at EXOS's sole cost and expense, and EXOS will indemnify, pay for or reimburse the Authority for any and all costs, including administrative overhead and legal fees, that the Authority incurs as a result of such action.
- 11.9.5. If a Release or threatened Release occurs in an area used jointly between EXOS and one or more other Tenants, such Tenants will be liable jointly and severally for carrying out the obligations and making all payments required by Paragraph 11.9.

11.10. Storage Tanks. EXOS will not install any storage tanks without the prior written consent of the Authority, which consent will not be unreasonably withheld, conditioned or delayed. EXOS will maintain any approved storage tank in good working order, consistent with Best Management Practices and in accordance with Environmental Laws, including remediating the presence of any Hazardous Substances or Releases caused by or related to the EXOS storage tanks.

11.11. Environmental Indemnification. In addition to all other remedies available to the Authority, EXOS will indemnify, defend and save harmless the Authority and its Representatives from and against any and all Environmental Claims arising out of the acts or omissions of EXOS or its Representatives any other Person acting by or through or on behalf of EXOS, except to the extent arising out of the negligence or willful



misconduct of the Authority. This indemnity will survive the expiration or termination of this Lease.

11.12. Environmental Audit. On one or more occasions, the Authority may conduct an audit to assess EXOS's compliance with Environmental Laws (a "Compliance Audit"). The Authority will provide EXOS with a reasonable opportunity to consult with and provide comments to the Authority as to the design of the Compliance Audit. If the Compliance Audit reveals EXOS's non-compliance with any Environmental Law, the provisions of this Lease relating to "Site Contamination" will apply.

11.13. Inspection. In addition to any other rights of entry or inspection contained in this Lease, the Authority may, upon no less than forty eight (48) hours' advance written notice to EXOS, enter the Premises to conduct reasonable inspections, tests, samplings, split samples or other investigations pertaining to environmental matters. The Authority will provide to EXOS a copy of the results of any testing that occurs during an inspection.

11.14. End of Occupancy. The Authority may request the preparation of a Phase I environmental site assessment or an update to any existing Phase I environmental site assessment during the final months of the Term ("Exit ESA"). If the Exit ESA reveals EXOS's non-compliance with any Environmental Law, the provisions of this Lease relating to "Site Contamination" will apply.

11.15. No Assumption of Liability. EXOS and the Authority acknowledge that the provisions of this Paragraph 11 may not insulate either party from direct liability assessed by governmental agencies/bodies for environmental investigation and remediation costs. EXOS and the Authority intend that each entity will be responsible for the costs and liabilities associated with Environmental Claims stemming from its own acts and omissions. Any violation by EXOS of any Environmental Laws, and EXOS's obligations and liability under this Paragraph 11, will survive the expiration or termination of this Lease.

## **12. INSURANCE AND INDEMNIFICATION.**

12.1. EXOS will procure and maintain at its own cost during the Term such insurance as is required in this Lease. On request, EXOS will provide to the Authority copies of any or all policies of insurance required in this Paragraph 12. EXOS will not violate the terms or prohibitions of required insurance policies. EXOS will promptly notify the Authority of any claim or loss exceeding the amount of the deductible under such insurance policies.

12.2. The required amounts of insurance provided in this Paragraph 12 are minimums only; the Authority will be entitled to the full benefit and protection of any higher dollar amount of coverage stated in an insurance policy actually carried by EXOS. The insurance requirements set forth in this Lease will not be construed as a representation by the Authority that the satisfaction of such requirements will be sufficient to protect EXOS.

12.3. Commercial General Liability Including Premises Liability, Contractual Liability and Products/Completed Operations. EXOS will procure and maintain comprehensive general liability policies of insurance, including premises liability, contractual liability, and products/completed operations, of no less than two million dollars (\$2,000,000.00) combined single limit per occurrence and in the aggregate as respects products. EXOS will also procure and maintain policies of insurance for automobile liability insurance for all vehicles used in its operation at the Spaceport in amounts not less than one million dollars (\$1,000,000.00) per occurrence and no less than five million dollars (\$5,000,000.00) in the aggregate single limit liability for bodily injury, including death, and property damage. EXOS will also procure and maintain insurance to cover liabilities arising out of EXOS's space launch operations of no less than two million dollars (\$2,000,000.00) combined single limit per occurrence, or the insurance required under Chapter 509 of Title 51 of the US Code, or under any license or permit terms awarded by the FAA Office of Commercial Space Transportation pursuant to 14 CFR Chapter III, whichever is greater. Said policies of insurance will include coverage for premises, operations and EXOS's contractual liability to the Authority under this Lease. Contractual liability coverage will specifically insure all Indemnification provisions of this Lease. The insurance policies will contain "products" and "completed operations" coverage (if applicable) and will not be written on a "claims made" form. The insurance policies will include coverage for all use of, activities on, or operations with respect to the Premises and Land, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. The Authority reserves the right to annually review the limits stated above and to notify EXOS that the Authority believes the coverage limits need to be increased to give effect to the changing risk management environment, changes to EXOS's operations or vehicles, or inflationary trends. Notwithstanding the foregoing, if new or changed State or federal laws mandate an increase in insurance coverage limits EXOS will timely comply with the required limits, including without limitation increases to the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-27).

12.4. Workers' Compensation and Employer's Liability Insurance as Required by New Mexico Law. EXOS will comply with applicable provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. EXOS will procure and maintain during the term of this Lease complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. EXOS hereby covenants and agrees that the Authority and its Representatives will not be liable or responsible for any claims or actions occasioned by EXOS's failure to comply with the provisions of this Paragraph and that the Indemnification provision of this Lease will apply to this Paragraph. It is expressly agreed that the employees of EXOS are not the Authority's employees or agents for any purpose.

12.5. Additional Insured. The Authority, the State, and the New Mexico Commissioner of Public Lands will be named as additional insureds on each insurance policy required in this Paragraph 12.

12.6. Contents Insurance. EXOS will be solely responsible for obtaining insurance policies that provide coverage for losses of EXOS-owned property. The Authority will not

be required to provide such insurance coverage or be responsible for payment for such insurance.

12.7. Builders Risk Insurance. During any period of construction or reconstruction EXOS will carry a policy of builders risk Insurance in an amount sufficient to insure the value of the work.

12.8. Additional Requirements. Insofar as any insurance provides protection against liability for damages to third parties for personal injury, death and property damage, the Authority, the State, and the Commissioner will be included as additional insureds; provided such liability insurance coverage will also extend to damage, destruction and injury to property owned or leased by the Authority, the State, or the Commissioner and to the Authority, State, or Commissioner personnel, and caused by the negligence or willful misconduct of or resulting from work, acts, operations, or omissions of EXOS, or its Representatives, on the Land. Nothing herein will be deemed to override the waiver of claims/waiver of subrogation provision set forth below in this Paragraph 12.8. The Authority will have no liability for any premiums charged for such coverage, and the inclusion of the Authority as an additional insured is not intended to, and will not make the Authority a partner or joint venturer with EXOS in its operations on the Land. All insurance policies issued pursuant to this Paragraph 12 will be written as primary policies that may not be interpreted as contributing policies or as excess coverage. All EXOS property insurance policies will expressly waive all claims or rights of subrogation, if any, against the Authority, the Commissioner, or the State.

12.9. The Authority's Right to Remedy Breach by EXOS. If EXOS fails to provide insurance as required in this Lease, the Authority will have the right, but not the obligation, to prohibit any EXOS space launches or related activities until such insurance is in place.

12.10. Indemnification. EXOS and its Representatives will use due care and diligence in all activities and operations at the Land. EXOS will defend, indemnify and hold harmless the Authority, the State, and the Commissioner, and the Representatives of each from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against the Authority, the State, or the Commissioner or the Representatives of each, because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from the negligence or willful misconduct of EXOS or its Representatives arising out of the operations of EXOS under this Lease, except to the extent arising out of the negligence or willful misconduct of the Authority, the State, the Commissioner, or the Representatives of each. This indemnity will survive the expiration or termination of this Lease. Nothing herein will be deemed to override the waiver of claims/waiver of subrogation provision set forth above in Paragraph 12.8.

12.11. Limitations. The indemnifications contained in this Lease will not be construed to be inconsistent with the requirements of NMSA 1978, Section 56-7-1, to the extent such Section applies to this Lease.

12.12. Scope of Indemnification. With respect to any claims, actions, suits, damages or judgments alleging, caused by, or resulting from the negligence, act or omission or willful misconduct of EXOS or its Representatives, EXOS will (a) investigate accidents involving such injuries; (b) negotiate all claims made, and defend suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages, in the name and on behalf of the Authority, the State, or the Commissioner, as the case may be, subject to the consents and approvals required by applicable State law; (c) pay or cause to be paid: (i) all costs of the Authority, the State, or the Commissioner, as the case may be, in any legal proceeding defended by EXOS pursuant to the above; (ii) any interest accruing up to the date of payment by EXOS; (iii) all premiums charged upon appeal bonds required in such proceedings; and (iv) all expenses incurred by the Authority, the State, or the Commissioner for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred, however, that EXOS will not be responsible for any of the costs of the Authority, the State, or the Commissioner to the extent each is determined to be responsible.

12.13. Non-liability of Authority. The Authority, the State, and the Commissioner will not in any event be liable for any acts, omissions, or any condition resulting from the operations of activities of EXOS or its Representatives. The Authority, the State, and the Commissioner will not be liable for EXOS's failure to perform any of its obligations under this Lease or for any delay in the performance thereof. Authority does not undertake any responsibility for the suitability of the Land or of the Ground for the EXOS Facilities. NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IS MADE BY AUTHORITY WITH RESPECT TO THE SUITABILITY OF THE LAND FOR EXOS'S INTENDED USE THEREOF.

12.14. New Mexico Tort Claims Act. The liability of the Authority, the State, and the Commissioner is subject to the New Mexico Tort Claims Act, as and when amended.

### **13. TRANSFER BY ASSIGNMENT OR SUBLETTING.**

13.1. EXOS must not assign or sublease any part of this Lease without the prior approval of the Authority. Any assignment or sublease will also be subject to the approval of the Commissioner.

13.2. If EXOS fails to obtain advance written approval of any such assignment or sublease, the assignment or sublease will be void, and the Authority may also exercise all rights and remedies set forth in Paragraph 16 of this Lease.

13.3. Notwithstanding anything to the contrary set forth above, EXOS will have the right, without the consent of the Authority, but with advance notice to the Authority, to assign this Lease or to sublease any portion of its rights hereunder: (i) to any entity that EXOS owns, (ii) to the entity that owns EXOS, (iii) to any entity with which EXOS is merged or which acquires all or substantially all of the stock or assets of EXOS.



13.4. EXOS will remain fully responsible for the performance of all obligations under this Lease unless otherwise agreed by the Authority in writing when approving the assignment or sublease.

#### **14. REPRESENTATIONS OF EXOS.**

14.1. EXOS represents and warrants to the Authority as follows:

14.1.1. EXOS is a C Corporation duly organized, validly existing and in good standing under the laws of Texas and has all requisite power and authority to execute, deliver and perform the obligations under this Lease.

14.1.2. This Lease has been duly executed and delivered by EXOS and constitutes a legal, valid and binding obligation of EXOS, enforceable against EXOS in accordance with its terms.

#### **15. REPRESENTATIONS OF THE AUTHORITY.**

15.1. The Authority hereby states to EXOS as follows:

15.1.1. The Authority is duly organized under the laws of the State of New Mexico and has all requisite power and authority to execute, deliver and perform the obligations under this Lease.

15.1.2. No approval, consent, authorization, exemption or other action by, or written notice to, or filing with, any governmental authority or any other person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Authority of this Lease except the approval of the Commissioner per Paragraph 1.1.

15.1.3. This Lease has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.

#### **16. EXOS DEFAULT.**

16.1. Default by EXOS. Each of the following events will be an "EXOS Event of Default" for purposes of this Lease:

16.1.1. Failure to timely pay any rents, fees, or charges;

16.1.2. Failure to maintain the insurance required by this Lease;

16.1.3. Failure to comply with the environmental provisions of this Lease;

16.1.4. Failure to perform the maintenance required by this Lease;

16.1.5. Any representation or warranty made by EXOS in this Lease proves to have been false or misleading in any material respect when made;



16.1.6. Any authorization, approval, filing, registration or other governmental, judicial or public body or authority necessary to enable EXOS to comply with its obligations under this Lease is revoked, rescinded, suspended, held invalid, or otherwise limited in effect in a manner that would affect materially and adversely EXOS's ability to perform its obligations under this Lease; or any law, regulation, rule, decree or directive of a competent authority is enacted or issued that will impair materially and adversely the ability or the right of EXOS, as the case may be, to perform such obligations, or it becomes unlawful for EXOS to perform such obligations; or,

16.1.7. Occurrence of a Bankruptcy Event with respect to EXOS.

16.2. Termination by the Authority. If EXOS fails to cure any EXOS Event of Default described above within a period reasonable for the nature of the Default, but in no event longer than ninety (90) days, the Authority will have the right to terminate this Lease by sending EXOS written Notice of Termination, provided that EXOS will have no cure period and the Authority may terminate immediately upon an EXOS Bankruptcy Event. Termination of this Lease will take effect immediately upon EXOS's receipt of the Notice of Termination, unless stated otherwise in the Notice of Termination. If, however, EXOS has cured the deficiencies identified in the Authority's notice to cure prior to EXOS's receipt of the Authority's Notice of Termination, then such Notice of Termination will be of no force or effect.

## **17. AUTHORITY DEFAULT.**

17.1. Default by Authority, Notice and Cure Periods. Each of the following events will be an "Authority Event of Default" for purposes of this Lease:

17.1.1. Any representation made by the Authority in this Lease proves to have been false or misleading in any material respect when made;

17.1.2. Any authorization, approval, filing, registration or other governmental, judicial or public body or authority necessary to enable the Authority to comply with its obligations under this Lease is revoked, rescinded, suspended, held invalid, or otherwise limited in effect in a manner that would affect materially and adversely the Authority's ability to perform its obligations under this Lease; or any law, regulation, rule, decree or directive of a competent authority is enacted or issued that will impair materially and adversely the ability or the right of the Authority, as the case may be, to perform such obligations, or it becomes unlawful for the Authority to perform such obligations;

17.1.3. Failure to comply with any covenant, agreement or condition contained in this Lease that remains uncured after a period of ninety (90) days after receipt of written notice from EXOS.

17.2. The Authority's termination of this Lease pursuant to Paragraph 3.5 of this Lease will not be an Authority Event of Default.

17.3. Right of Termination by EXOS. If the Authority fails to cure any of the Authority Events of Default within ninety (90) days after receipt of a written notice of an Event of Default, EXOS will have the right to terminate this Lease by sending the Authority a Notice of Termination. If, however, the Authority has cured the Event of Default before receipt of the Notice of Termination, then such Notice of Termination will be of no force and effect.

**18. MINIMUM LAUNCH CADENCE.**

18.1. If EXOS does not conduct at least one Mission every twenty-four months then either Party may elect to terminate this Lease by sending written notice to the other, effective on receipt.

**19. VIRGIN GALACTIC PREFERENCES.**

19.1. EXOS acknowledges that due to Virgin Galactic's business requirements, the Authority has granted Virgin Galactic exclusive use of the Airfield at specified blocks of time to launch and retrieve Spacecraft. As the anchor tenant of the Spaceport, Virgin Galactic has first right in scheduling its Missions and activities through the Authority's site-wide scheduling process and Virgin Galactic's signage will be uniquely prominent and befitting of Virgin Galactic's status as the anchor tenant at the Spaceport.

**20. GENERAL PROVISIONS.**

20.1. Compliance with Law. EXOS and its Representatives will not use the Spaceport or any part thereof for any illegal purposes and will comply with Applicable Laws at all times during the Term.

20.2. Non-Discrimination. In the use and occupation of the Spaceport, EXOS will not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, gender identity, sexual orientation, or physical or mental handicap.

20.3. Consents, Approvals and Notices. All consents, approvals and notices required by this Lease will be in writing sent by certified or registered mail, postage prepaid and return receipt requested. Notice will be deemed to be received seven (7) days after deposit with the United States Postal Service. Unless changed, notices will be delivered as follows:

20.3.1. Authority:

New Mexico Spaceport Authority  
901 E. University Ave Suite 965L  
Las Cruces NM 88001  
Attn: Christine Anderson, Executive Director  
575.267.8500

20.3.2. EXOS:

EXOS Aerospace Systems & Technologies, Inc.  
4096 FM 1565 Caddo Mills Airport  
Caddo Mills, TX 75135 USA  
844.289.2773

20.4. Amendment or Waiver. This Lease may not be amended without the prior written consent of EXOS and the Authority, and no provision of this Lease may be waived without the written consent of the Party to be bound by the waived provision. Any amendment to this Lease requires the prior approval of the Commissioner.

20.5. Construction and Interpretation. Each of the Authority and EXOS consulted with counsel and determined that this Lease accurately and completely reflects the agreement of the Authority and EXOS, and no presumption or rule that ambiguities will be construed against the drafting party will apply to the interpretation or enforcement of this Lease.

20.6. Governing Law. This Lease will be governed by and construed under the law of the State of New Mexico without reference to any choice-of-law provisions of the State of New Mexico that would lead to the applicability of other law.

20.7. Consent to Jurisdiction and Venue. The Authority and EXOS consent to and agree to the exclusive jurisdiction of the courts within New Mexico for the resolution of any disputes arising under this Lease and waive any objection to the personal jurisdiction of the courts within New Mexico over EXOS. The Authority and EXOS agree that venue for litigation arising from this Lease will be in the Santa Fe County, New Mexico, First Judicial District Court. However, claims pursuant to 51 USC § 50914(g) may be brought in the federal courts located within New Mexico and in which case the exercise of supplemental jurisdiction is permissible under this Paragraph.

20.8. Waiver of Jury Trial. The Authority and EXOS each waive all right to trial by jury in any civil legal action brought to enforce or defend any rights or remedies as provided in this Lease.

20.9. Entire Agreement. This Lease contains the entire understanding and agreement of the Authority and EXOS. There are no oral or written representations, understandings, undertakings or agreements that are not contained or expressly referenced in this Lease. All of the Exhibits attached to this Lease are incorporated by this reference into this Lease as if the content of each Exhibit was set out at each point of reference to the Exhibit in this Lease.

20.10. No Third Party Beneficiaries. This Lease is made and entered into for the sole protection and benefit of the Authority and EXOS and their respective permitted successors and assigns. No other Person will have any right of action based upon any provision of this Lease.

20.11. Severability. If any covenant, condition or provision in this Lease is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision will be deemed amended to conform to Applicable Laws so as to be valid or enforceable so this Lease will remain in full force and effect.

20.12. Captions and Paragraph Headings. The captions, section and paragraph headings, and table of contents contained in this Lease are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Lease.

20.13. No Agency, Joint Venture or Partnership. Nothing in this Lease or other documents concerning the subject of this Lease will or will be construed to create an agency relationship, partnership or joint venture between the Authority and EXOS.

20.14. No Waiver. No waiver of rights, of any of the terms, covenants and conditions to be performed in this Lease, or of default by the Authority or EXOS, will be construed as a subsequent waiver of rights or a waiver of any subsequent default of any of the terms, covenants or conditions of this Lease. No failure by the Authority or EXOS to insist upon the strict performance by the other of any agreement, term, condition or covenant of this Lease, or to exercise any right or remedy consequent upon a breach of this Lease, will constitute a waiver of any subsequent breach or of such agreement, term, condition or covenant, including without limit the acceptance of rents, fees, and charges by the Authority following a breach. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, condition and covenant of this Lease will continue in full force and effect with respect to any existing or subsequent breach of this Lease.

20.15. Further Assurances. The Authority and EXOS will, from time to time, take all actions and sign any documents as necessary to further carry out the purposes of this Lease.

20.16. Time of the Essence. Time is of the essence in the performance of this Lease.

20.17. Successors. All covenants, stipulations and agreements in this Lease will extend to and bind the legal representatives, permitted successors, and permitted assigns of the Authority and EXOS.

20.18. Governmental Rights and Powers. Nothing in this Lease will be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by the Authority in the Spaceport property, or waiving or limiting the Authority's control over the management, operations or maintenance of property, except as specifically provided in this Lease, or impairing, exercising, waiving, or defining governmental rights and the police powers of the Authority.

20.19. Recordation. Neither the Authority nor EXOS will record this Lease in any real property records office.

20.20. Brokerage Disclosures. The Authority and EXOS represent and warrant to each other that they have not dealt with any real estate consultant, broker, agent or

salesperson, so as to create any legal right in any such consultant, broker, agent or salesperson to claim a real estate brokerage fee or consultation fee or commission in connection with this Lease.

20.21. True Lease. EXOS and the Authority recognize and agree that this Lease is a true Lease and not a financing arrangement for the EXOS Facilities.

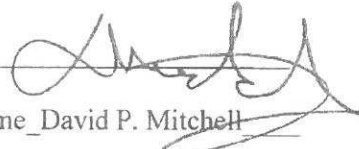
20.22. Consequential Damages. Neither party will be liable to the other for any consequential, special or indirect damages, including loss of profits.

20.23. Counterpart Copies. This Lease may be signed in counterpart or duplicate copies, and any signed counterpart, duplicate or facsimile copy will be equivalent to a signed original for all purposes.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]




EXOS AEROSPACE SYTEMS & TECHNOLOGIES, INC.

By   
Name David P. Mitchell

Title CEO

Date 3/25/2016


NEW MEXICO SPACEPORT AUTHORITY

By   
Name Christine Anderson

Title Executive Director

Date April 5 2016

APPROVED FOR LEGAL SUFFICIENCY BY AUTHORITY GENERAL COUNSEL

By   
Name Ryan T. Noble

Date April 5<sup>th</sup>, 2016

Exhibit A – The Ground

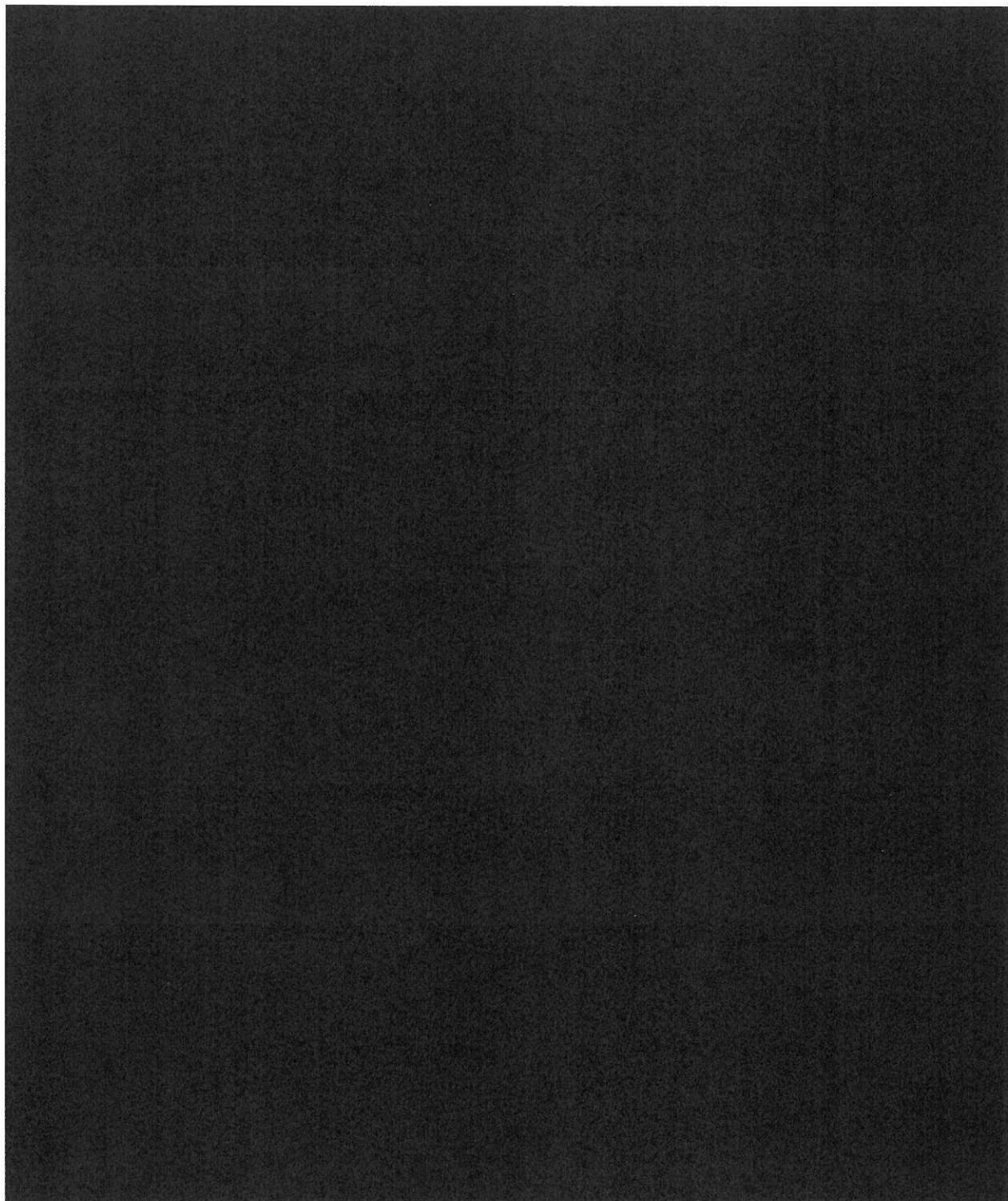


Exhibit B – VLA Recovery Zone

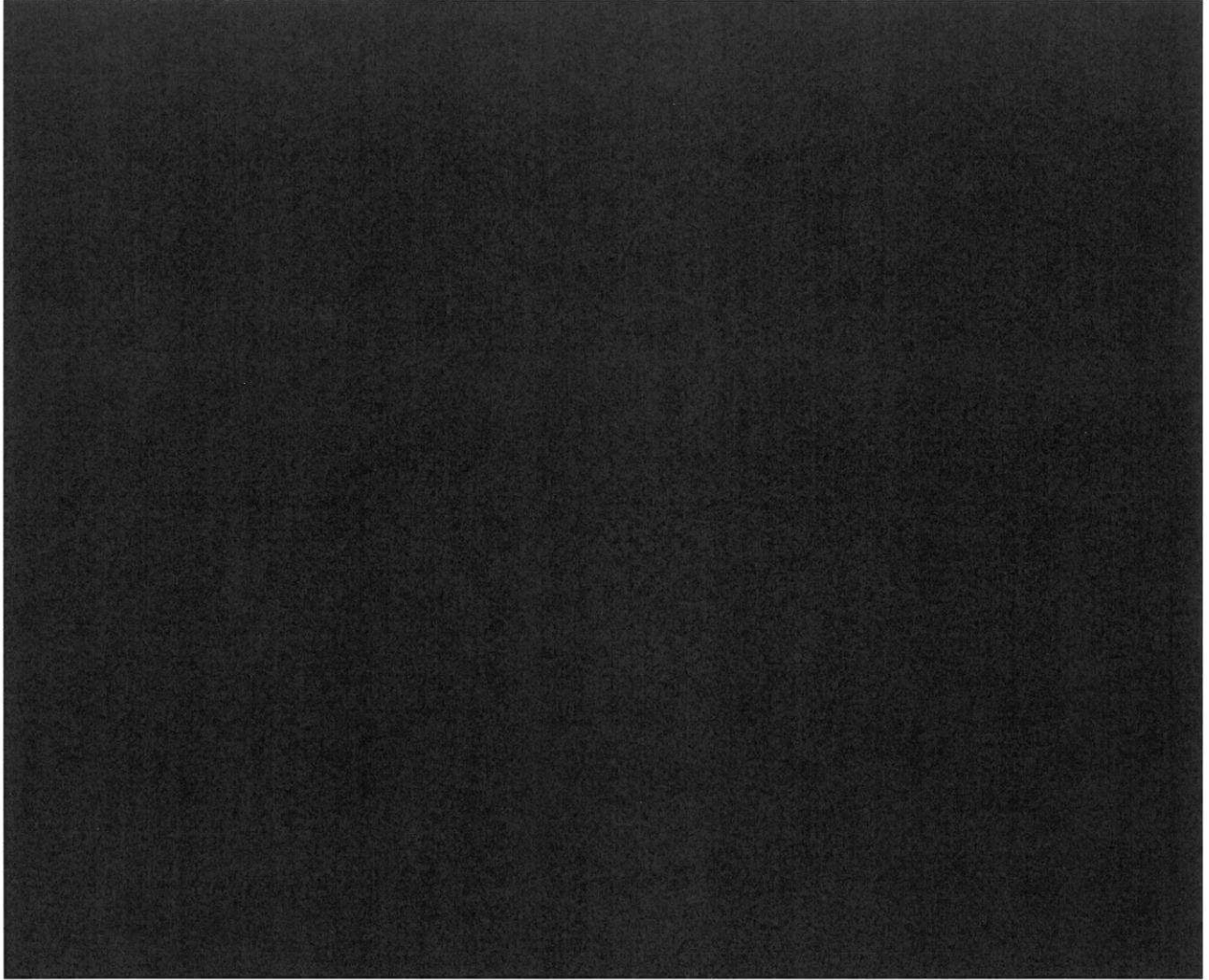
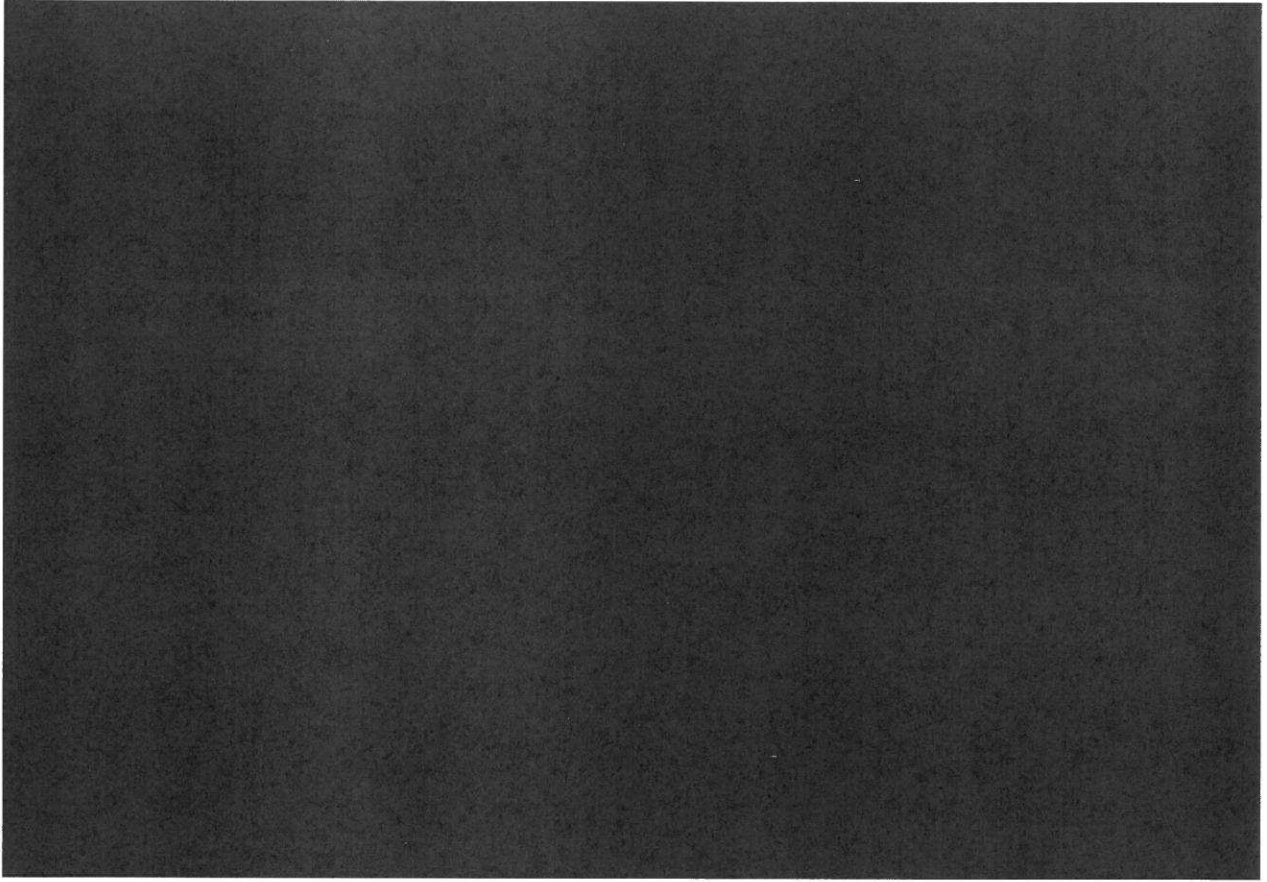


Exhibit C – EXOS User Fees



## Exhibit D – Mortgage Financing

(a) Leasehold Mortgages and Encumbrances; Leased Fixtures. EXOS may mortgage and assign its leasehold interest or any part thereof as collateral security for financing on the terms in this Section (a) and in Section (b) below and in accordance with the terms of this Lease, including any financing replacing the same all subject to the prior consent of the Authority and the Commissioner.

The term “**mortgage**”, when used in this Exhibit, will include, without limitation, mortgages and leasehold mortgages that are in compliance with New Mexico law; the term “**mortgagee**” will include, without limitation, a mortgagee under a mortgage, but only those whose names and addresses have been furnished in writing to Authority; and the term “**foreclosure**” will include, without limitation, judicial foreclosure and conveyances or assignments in lieu of foreclosure. Provided that the Authority must have been furnished with a true and correct copy of the mortgage (and any and all amendments or modifications thereto) meeting the requirements of this Section (a), the name and address of the mortgagee, and the date of recording of the mortgage, until the Authority receives notice that the mortgage has been satisfied or released, the following provisions will apply.

(i) No Termination By Reason of Sale, Foreclosure or Surrender. This Lease will not be subject to termination by the Authority by reason of foreclosure or by resort to any remedy for default under or pursuant to a mortgage, unless this Lease is subject to termination by the Commissioner as a result of any such action. No sale or transfer of the Ground or the Authority’s interest in this Lease, or any portion thereof, to EXOS and no purchase or other acquisition of this Lease, or any interest herein or in the EXOS Facilities, by the Authority, will terminate this Lease by merger or otherwise and this Lease will continue in full force and effect notwithstanding any such transfers so long as any mortgage encumbers the EXOS’s leasehold interest unless such sale or transfer would require the prior consent of the Commissioner and such consent has not been granted. Except with respect to provisions of this Lease not material to the security of any mortgagee and subject to any limitations imposed by Applicable Law, this Lease may not be amended or any provision of this Lease waived by the Authority or the EXOS without the prior written consent of each mortgagee and any such amendment or waiver made without the prior written consent of each mortgagee may be declared void and of no force or effect by the mortgagee. Consent to amendment or waiver may only be withheld by such mortgagee if such amendment or waiver would impair its security interest.

(ii) Right of Mortgagee on Default. In the event of any act or failure to act on the part of EXOS which would entitle the Authority under the terms of this Lease, or by law, to be relieved of the Authority’s obligations hereunder or to terminate this Lease, such event will not result in a release or termination of such obligations or a termination of this Lease as to any mortgagee provided that mortgagee corrects or cures the default condition (i) within the time permitted to EXOS hereunder, plus an additional ten (10) days thereafter following receipt of the Authority’s written notice of



EXOS's act or failure to act in the case of default consisting solely of a failure to pay a sum of money due from EXOS to the Authority, or required to be paid by EXOS under this Lease; or (ii) within the time permitted to EXOS hereunder, plus an additional thirty (30) days thereafter following receipt of the Authority's written notice (as provided above) in the case of any other default by EXOS hereunder.

(iii) Mortgagee Succeeds to EXOS's Interest; Liability of Mortgagee Limited. Upon any lawful assumption of possession of EXOS's leasehold estate or the Premises or the acquisition of EXOS's interest in the Premises by a mortgagee, such mortgagee will have all of the rights and limitations of EXOS under this Lease and will be limited to using the Premises for the purposes enumerated in this Lease, and will have the duty to perform all of EXOS's obligations hereunder accruing thereafter, but only for so long as it holds such possession of, or interest in, the Premises.

Provided, however, to the extent that a mortgagee elects to undertake any cure pursuant hereto, such mortgagee must act with reasonable diligence in accordance with the terms and conditions of this Lease. Any timely actions by a mortgagee to cure a default of EXOS will be accepted by the Authority as if performed by EXOS so long as such actions are in compliance with the terms and conditions of this Lease.

(iv) Assignment And Assumption After Foreclosure. Notwithstanding any provision in this Lease to the contrary, if a mortgagee has succeeded to EXOS's interest by foreclosure or otherwise and all existing defaults under this Lease have been cured such mortgagee may sell and assign this Lease with the prior consents of the Authority and the Commissioner, whereupon such mortgagee will be relieved of all further liability for performance of the obligations hereunder arising from and after the date of such assignment; provided, however, that the Authority must be given notice of the mortgagee's intent to sell and assign this Lease, and such notice must include the name of the proposed transferee, and the purchase price and terms of the proposed sale and assignment, and any other information requested by the Authority or Commissioner pursuant to the Authority's or Commissioner's review of the sale or assignment which may be approved or denied in the sole discretion of the Authority or Commissioner. The Authority will have a right of first refusal, and may, within thirty (30) days of receipt of such notice, notify the mortgagee of the Authority's intent to exercise its right to purchase the mortgagee's interest at the purchase price and on the terms offered by or to the proposed transferee. Further provided, that any person to whom this Lease is assigned by mortgagee following foreclosure must assume all of the obligations of EXOS under this Lease accruing from and after the date of assignment, and must deliver to the Authority in recordable form within ten (10) days of the assignment a duplicate original of the instrument of assignment and an instrument of assumption by the assignee of all of EXOS's obligations under this Lease. As long as the Authority has not exercised its right to purchase hereunder, any subsequent sale or assignment of the mortgagee's

interest in this Lease will be subject to the Authority's right of first refusal, as described in the foregoing.

Any purchaser at a foreclosure sale other than a mortgagee must assume all of the obligations of EXOS hereunder and will have no right in respect of the Premises unless the purchaser so assumes and delivers within ten (10) days of the sale (or order approving the sale, in the event such order is required by law) an instrument of assumption in recordable form assuming all of EXOS's obligations hereunder.

(b) Substitution for Obligation. Except as otherwise provided in this Section (b) and in Section (a) above, EXOS must obtain the Authority's and Commissioner's prior consent, which consent the Authority or Commissioner may withhold in its reasonable discretion, to any financing, refinancing, or substitution of financing previously approved that is to be secured by the EXOS Facilities, or any portion thereof or interest therein.

EXOS must provide the Authority with copies of all documents and agreements that EXOS's lender will require EXOS to execute related to any such refinancing or substitution, and any other information requested by the Authority or Commissioner pursuant to the Authority's or Commissioner's review of the refinancing or substitution which may be approved or denied in the reasonable discretion of the Authority or Commissioner.

(c) Cooperation for Mortgage Protection. The Authority, Commissioner, and EXOS will cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by the proposed leasehold mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such mortgagee reasonable means to protect or preserve the lien of a Leasehold mortgage on the occurrence of a default under the terms of this Lease, provided the amendment is consistent with Applicable Laws as determined by the Authority and Commissioner. The Authority and EXOS each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment must not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Authority under this Lease.

## Exhibit E – Spaceport Advisory Committee

20.1. The Spaceport Advisory Committee (“SAC”) is composed of the Authority and other Tenants that operate Aircraft or Spacecraft at the Spaceport. EXOS joins the SAC after Rent Commencement.

20.1. Representatives. Each member will designate an individual who will act on the member’s behalf at meetings of the SAC (the “SAC Representative”). EXOS’s SAC Representative must: (a) be fully acquainted with the Spaceport; and (b) provide the information and services necessary to fulfill the obligations of EXOS under this Lease.

20.2. Voting. Matters before the SAC will be put to a vote of the Tenants through the Tenants’ SAC Representatives, and each Tenant’s voting power will be equal to that Tenant’s percentage of total rents and fees paid by all Tenants to the Authority in the preceding Fiscal Year. Decisions of the SAC will be made by majority vote and, in the event no majority decision is reached, the Tenant with the greatest voting power has final decision-making authority on behalf of the SAC.

20.3. Reports. The Authority, the SAC, and its members exchange various reports each year to assist the Authority in managing the Spaceport and preparing annual operating budgets for the Spaceport, these budgets including (a) O&M Expense budget; (b) debt service and/or cost amortization charges; (c) upcoming capital improvements or major maintenance; and (d) projected total User Fees (the “Budget”). For purposes of the following Paragraphs the then current Fiscal Year is denoted by “FY1.” The then upcoming Fiscal Year is denoted by “FY2.” And the then next Fiscal Year is denoted by “FY3.” As a notional example FY1 would be Fiscal Year 2016, FY2 would be Fiscal Year 2017, and FY3 would be Fiscal Year 2018.

20.3.1. Authority FY2 Budget Brief. By June 1<sup>st</sup> of each year the Authority will submit to the SAC a copy of the Authority’s State-approved FY2 operating Budget.

20.3.2. EXOS Reports. EXOS will provide the SAC and the Authority with the following information by June 1<sup>st</sup> of each year: (a) the estimated number of launches from the Spaceport for FY2 and FY3; and (b) the estimated manifest and number of payloads that will be launched in FY2 and FY3. (“EXOS Report”). Additional information may be requested by the SAC and the Authority in reviewing or, as applicable, preparing the Budget, provided that no Tenant will be required to disclose information that it reasonably determines to be commercially sensitive information, proprietary technical information or trade secrets, and further provided that any information disclosed will be public unless such information is marked “confidential” and is subject to an exception set out in the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 et. seq., as amended. The Monthly Activity Reports will be in a form mutually agreed to by the Authority and the Tenants on the SAC.

20.3.3. Preliminary Operating Budget. By June 30<sup>th</sup> of each year the Authority will submit to the SAC a copy of its preliminary operating Budget for the Spaceport for FY3 that will include: (a) O&M Expense budget; (b) debt service and/or cost amortization charges; (c) upcoming capital improvements or major maintenance; and (d) projected total User Fees for FY3. The SAC will submit to the Authority any comments it may have with respect to the preliminary operating Budget within thirty (30) days of receiving the preliminary operating Budget. The SAC may provide recommendations to the Authority in regard to: (i) the Budget; (ii) operational practices and procedures for the Spaceport; (iii) maintenance and repair schedules for the Spaceport, (iv) capital improvement plans for the Spaceport, which may include, but not be limited to, expansions of capacity and additional services; (v) safety practices and procedures; and (vi) annual setting of total User Fees. The Authority acknowledges that the recommendations of the SAC will be given the highest regard, and the Authority will not act contrary to the SAC's recommendations without due consideration. Nothing in this Paragraph will prevent EXOS from bringing an action to contend that any allocation of costs for the items identified in (i), (iv) and (vi) above is inequitable.

20.4. The Authority will timely furnish all Tenants and the SAC with a copy of the final approved Budget.

20.5. Green Energy. Any plans by the Authority for future locally based generation of utility services will be reviewed by the SAC and allow for SAC recommendations on alternate green systems. Green systems may include without limit solar, wind or geothermal systems that are designed to reduce the environmental impact of the generation of power and the cost of providing that power over more traditional generation techniques.

20.6. Modifications to Common Facilities. Before making any modifications or reductions of any kind to the Common Facilities, the Authority will provide a detailed description of all proposed modifications or reductions to the SAC and will allow at least thirty (30) days for the SAC to review and make comments to the Authority with respect to the proposed modifications or reductions. The Authority will give due consideration to, and use all reasonable efforts to accommodate, all comments made by the SAC.

20.7. Notice of Experimental Activities. In addition to the requirements in Paragraph 4.12, EXOS must not conduct developmental or test flights or developmental or test operations at or from the Spaceport unless the SAC is given notice of any such flights or operations at least five (5) days in advance. EXOS may deliver such notice to the Authority for forwarding to the SAC.