

FINAL 08-05-2016



---

LEASE AGREEMENT  
NEW MEXICO SPACEPORT AUTHORITY  
with  
ENERGETICX.NET, LLC

---

## TABLE OF CONTENTS

1. RECITALS.....	1
2. DEFINITIONS.....	1
3. LEASE OF PREMISES; TERM.....	4
4. RIGHT OF FIRST REFUSAL AND EXPANSION .....	5
5. USE OF PREMISES.....	7
6. RENTALS, FEES AND CHARGES.....	11
7. UTILITIES.....	13
8. MAINTENANCE OF SPACEPORT.....	13
9. CONSTRUCTION, ALTERATIONS, IMPROVEMENTS, PAYMENT BOND.....	13
10. SPACEPORT SECURITY.....	15
11. DAMAGE OR DESTRUCTION OF PREMISES.....	17
12. ENVIRONMENTAL MATTERS.....	18
13. INSURANCE AND INDEMNIFICATION.....	21
14. TRANSFER BY ASSIGNMENT OR SUBLETTING.....	24
15. REPRESENTATIONS OF EGX.....	24
16. REPRESENTATIONS OF THE AUTHORITY.....	24
17. EGX DEFAULT.....	25
18. AUTHORITY DEFAULT.....	26
19. MINIMUM LAUNCH CADENCE.....	26
20. VIRGIN GALACTIC PREFERENCES.....	26
21. GENERAL PROVISIONS.....	27
Exhibit A – The Ground, ROFR Areas and Authority Facilities .....	32
Exhibit B – EGX Fees.....	35
Exhibit C – Mortgage Financing .....	37
Exhibit D – Spaceport Advisory Committee .....	40



## LAUNCH COMPLEX 4 LEASE

The New Mexico Spaceport Authority (the "Authority") and EnergeticX.net, LLC a Washington State Limited Liability Corporation with address at 1314 S. Grand Blvd, Spokane, WA 99202 ("EGX"), 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. EGX wishes to lease from the Authority and the Authority wishes to lease to EGX certain "**Ground**" (defined in Exhibit A), and certain EGX Facilities (defined below), in accordance with the terms and conditions of this LAUNCH COMPLEX 4 LEASE agreement (this "**Lease**"), for EGX to construct and operate a commercial space launch and testing complex. As a condition precedent to the effectiveness of this Lease the Authority will obtain approval from the New Mexico Commissioner of Public Lands (the "**Commissioner**") to enter into this Lease and approval for the uses and purposes contemplated by this Lease, including without limitation the installation of improvements consistent with this Lease.

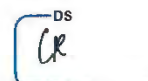
1.3. EGX will have a seat on the Spaceport Advisory Committee ("**SAC**") composed of spaceport tenants that provides input to the Authority on spaceport budgeting, operations, capital improvement planning, and other matters. This Committee also provides input into the Authority's process for scheduling 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 EGX 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.

  
EGX INITIALS

  
NMSA INITIALS

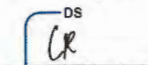
2.3. Applicable Laws. All federal, State and local laws, statutes, ordinances, rules, codes, policies, procedures, regulations, orders, determinations and court decisions applicable to the Spaceport and this Lease.

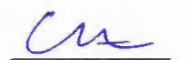
2.4. Authority Facilities. Means those improvements, fixtures and property located on the Ground belonging to the Authority and leased to EGX under the terms of this Lease

2.5. 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.

2.6. 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.

2.7. Environmental Law. All applicable federal, State, or local laws, statutes, regulations or ordinances, and any judicial or administrative order or judgment thereunder, now or hereafter in effect, pertaining to human health or safety, industrial hygiene, natural resources 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 of 1980, 41 U.S.C. §§ 9601, et seq.; the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Federal 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. §§ 5101, et seq.; the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1, et seq.; the Voluntary Remediation Act, NMSA 1978, §§ 74-4G-1, et seq.; the Water Quality Act, NMSA 1978, §§ 74-6-1, et seq.; the Ground Water Protection Act, NMSA 1978, §§ 74-6B-1, et seq.; the New Mexico Solid Waste Act, NMSA 1978, §§ 74-9-1, et seq.; and the Air Quality Control Act, NMSA 1978, §§ 72-2-1 et seq. The term "Environmental Law" also encompasses any applicable, enforceable judgment or order from a court of competent

  
EGX INITIALS

  
NMSA INITIALS



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. FAA. Means the United States Government Federal Aviation Administration.

2.9. 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.

2.10. Ground Testing. Any R&D activity wherein no Authority support resources are required, no Aircraft or Spacecraft are launched or recovered, and no airspace coordination is required.

2.11. 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," "solid waste" or terms of similar import or regulatory effect 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.

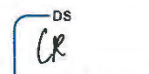
2.12. EGX Facilities. Other than the Authority Facilities, all improvements, fixtures, equipment and other property constructed, acquired and installed on the Ground or in or upon the Premises including but not limited to the EGX Property and owned by EGX and its Representatives. .

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

2.14. 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.

2.15. 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. For the avoidance of doubt, Ground Testing does not constitute a Mission.

2.16. 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. EGX O&M Expenses will be determined pursuant to Paragraph 6.3 of this Lease.

  
EGX INITIALS

  
NMSA INITIALS

2.17. 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.

2.18. Premises. Means the Ground and EGX Facilities.

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

2.20. 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.

2.21. 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 EGX or other Tenants.

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

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

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

2.25. 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.

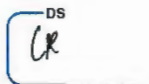
2.26. VLA Common Facilities. Means the Facilities in the VLA that are not designated for the exclusive use of the Authority, EGX, or a Tenant.


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

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

### **3. LEASE OF PREMISES; TERM.**

3.1. Lease of Premises; Term. In consideration of the payments as provided in Section 5.7 and for other good and valuable consideration, the Authority leases the Premises to EGX and EGX leases the Premises from the Authority for the Term, subject to the terms and conditions of this Lease. The "**Term**" of this Lease will begin on August 1<sup>st</sup>, 2016, and continue for two (2) years unless terminated earlier as set forth in this Lease.

  
EGX INITIALS

  
NMSA INITIALS



3.2. Surrender of Premises. Upon the expiration or earlier termination of this Lease, or upon any reentry by Authority as a result of an EGX Event of Default, EGX will peaceably quit and surrender possession of the Premises in broom clean, good condition, reasonable wear and tear excepted, and will remove all of EGX's Property (defined below) and the Authority will have the right to take possession of the Premises and any and all Authority Facilities on the Premises shall be the property of the Authority. 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 EGX and retained by the Authority as its property or be disposed of by the Authority, in which case EGX 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.

3.3. EGX 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 EGX 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 EGX and located in the Premises (the "**EGX Property**") will be and will remain the property of EGX and may be removed by EGX at any time during the Term of this Lease; provided that EGX will repair or pay the cost of repairing any and all damage to the Premises resulting from the installation and/or removal of EGX Property.


3.4. 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**"). EGX 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 EGX. Nothing herein will be deemed a concession by the Authority regarding the validity of any contractual impairment claim.


#### **4. RIGHT OF FIRST REFUSAL AND EXPANSION**

4.1. ROFR Area. As shown on Exhibit A attached to this Lease (the "ROFR Area").

4.2. Right of First Refusal.


4.2.1. If, at any time during the Term of this Lease, the Authority receives a bona fide offer from a third party to lease the ROFR Area from the Authority and so long as no EGX Event of Default remains uncured, then EGX will have a

  
EGX INITIALS

  
NMSA INITIALS

right of first refusal to lease the ROFR Area on terms comparable to the bona fide offer. If EGX declines to exercise its right of first refusal and the third party offer to lease the ROFR Area is consummated, EGX's rights to lease the ROFR Area will be extinguished. However, if the third party offer to lease the ROFR Area is not consummated within one hundred and twenty (120) days following the Authority's receipt of the written acceptance from the third party, EGX's right of first refusal to lease the ROFR Area will resume.

- 4.2.2. EGX shall have the right to expand operations into the ROFR area at any time while this lease is in effect, unless leased to a third party in accordance with this Paragraph 4. The terms for EGX expansion areas will be at substantially similar terms at current market rates however they will not exceed the rate per acre then in effect for the Premises, as described in Exhibit A.
- 4.2.3. If EGX does not exercise the ROFR but there is a portion of land still available after the other party contracts with the Authority, the remaining land will remain available to the expansion clauses.
- 4.2.4. Upon receiving a bona fide offer from a third party to lease the ROFR Area, the Authority will give EGX written notice of the offer and have one hundred and twenty (120) days to exercise its ROFR. If the Authority does receive written acceptance from EGX within the 120 day period, the Authority and EGX will diligently pursue an amendment to this Lease to effect the terms of the offer. The Term of this Lease with respect to the ROFR Area will commence on the date EGX begins conducting operations from the ROFR Area, or will commence 120 days following the Authority's receipt of the written acceptance from EGX, whichever occurs first, and will expire co-terminus with the Term applicable to the original Lease or otherwise agreed upon by the Authority and EGX. If the Authority and EGX fail to accomplish the amendment to this Lease affecting the terms of the offer within 120 days following the Authority's receipt of the written acceptance from EGX then the Authority may deem such failure to mean that EGX has declined the offer to lease the ROFR Area under Paragraph 4.2.
- 4.2.5. The rent payable by EGX, if EGX chooses to exercise its option to the ROFR Area, will commence on the date EGX begins conducting operations from the ROFR Area, or will commence 120 days following the Authority's receipt of the written acceptance from EGX, whichever occurs first.
- 4.2.6. Any Lease of ROFR Area occurring under this Paragraph 4 will be memorialized by an amendment to this Lease and subject to approval by the Commissioner.

  
EGX INITIALS

  
NMSA INITIALS

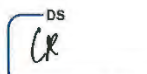


- 4.2.7. If EGX elects to conduct construction of EGX Facilities in the ROFR Area, the design and construction must be performed in accordance with the requirements of Paragraph 4.2 above which construction will become EGX Facilities and be subject to all provisions of this Lease.

## **5. USE OF PREMISES.**

5.1. Use by EGX. EGX 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:

- 5.1.1. Construction and operation of vertical launch and related facilities and equipment.
  - 5.1.2. Construction and operation of payload support infrastructure and processing facilities.
  - 5.1.3. Construction and operation of associated infrastructure, pads, footings, fuel storage areas, and fixtures in support of approved uses.
  - 5.1.4. Use of related facilities as equipment shelter, office space, storage space, and/or meeting facilities.
  - 5.1.5. Construction of non-water producing wells.
  - 5.1.6. Construction and operation of aerospace manufacturing facilities.
  - 5.1.7. Construction and operation of research and development facilities.
  - 5.1.8. Technology demonstrations.
  - 5.1.9. Aerospace systems and vehicle testing.
- 5.2. Spaceport Mission Support. The Authority will support EGX's Missions with:
- 5.2.1. Coordination of the Mission with WSMR, ZAB, FAA, and other required entities.
  - 5.2.2. Safety review and approval of each EGX Mission flight data package, including planned trajectories and operational procedures.
  - 5.2.3. Spaceport ground control during Missions.
  - 5.2.4. Use of Spaceport Operations Center Mission Control room for operations management, safety briefings and debriefings as appropriate during Missions.

  
EGX INITIALS

  
NMSA INITIALS

- 5.2.5. Wireless internet and network access to launch site via mobile wireless fiber cart during Missions.
- 5.2.6. Access to VLA CCTV camera capable of monitoring launch site from Spaceport Operations Center Mission Control room during Missions.
- 5.2.7. 24/7 Spaceport perimeter security.
- 5.3. Mission and Activity Scheduling. EGX 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 EGX requests with other Spaceport Tenants, users, WSMR, and with other entities and will attempt to accommodate EGX'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 EGX.
- 5.3.1. Formal requests for a specific date and time period for a Mission must be submitted to the Authority no fewer than forty-eight (48) 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, EGX 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.
- 5.3.2. Requests to conduct Ground Testing, such as tethered or static engine firings and other energetic activities, must be submitted to the Authority not less than five (5) days prior to such activity, 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 5.3.2 does not apply to small scale activities conducted within an indoor laboratory facility.
- 5.3.3. 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.
- 5.3.4. 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.
- 5.3.5. For the avoidance of doubt, the Authority exercises final discretion over the scheduling of all significant activities by EGX and Tenants, including but

  
EGX INITIALS

  
NMSA INITIALS




not limited to 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 EGX for the conduct of such other agencies.

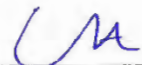
5.4. Spectator Area and Parking. The "**Spectator Area**" is the gravel lot adjacent to the VLA Mission Control and as a VLA Common Facility may be used by EGX during EGX Missions on a non-exclusive basis for staging up to fifty (50) EGX Representatives. EGX and its Representatives may park no more than 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 EGX Missions. EGX Representatives must comply with all Authority policies, including submission of full names at least forty-eight (48) hours in advance of each Mission and presentation of government issued photo ID for each EGX Representative. EGX 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. EGX must not make permanent modifications to the VLA Common Facilities without prior approval of the Authority.

5.5. "Gateway to Space" Event Services. EGX 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 EnergeticX events. For the avoidance of doubt this discount is non-transferable and only applies to events conducted by EGX directly related to the marketing of EnergeticX.

5.6. Branding and Marketing. To the extent permitted by law, EGX and the Authority will cooperate to maximize positive publicity regarding the Spaceport, for example, through co-branding. EGX may film, photograph, videotape, or otherwise make recordings or capture footage ("**Recordings**") of the Premises and the VLA Common Facilities for the sole commercial purpose of promoting the EnergeticX 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, EGX will grant rights for usage of said Recordings to the Authority. For the avoidance of doubt, EGX may make Recordings for any non-commercial purpose as well.

5.7. Signage. All EGX 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 EGX 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.

  
EGX INITIALS

  
NMSA INITIALS

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

5.9. 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.

5.10. Limitations on Use. In connection with the use of the Land, EGX must not:

- 5.10.1. 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; fire protection system; or alarm system.
- 5.10.2. 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.
- 5.10.3. 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. EGX may use the Authority's common trash disposal facility for non-hazardous waste in accordance with Authority policies.
- 5.10.4. Store flammable or energetic materials, except in storage Facilities especially constructed for such purposes in accordance with best practices and Applicable Laws.
- 5.10.5. Do or permit to be done any act upon the Land in violation of or inconsistent with the Authority's EIS and Related Documentation.
- 5.10.6. Do or permit to be done any act in violation of or inconsistent with Rules and Regulations, Applicable Laws, or Authority policies.

DS  
CR  
EGX INITIALS

MA  
NMSA INITIALS



5.10.7. Conduct recovery operations beyond the Premises except with prior approval of the Authority and in accordance with Authority requirements.

5.10.8. Materially and adversely affect the operations of other Tenants or users at the Spaceport, other than through competition.

5.11. Evacuations. EGX must evacuate the Premises of all persons and readily portable items of EGX 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 EGX. The necessity, scope, and duration of any such evacuation will be determined by the Authority.

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

5.12.1. Federal Aviation Administration ("FAA") or other applicable governmental approval has been obtained, if any is required; and,

5.12.2. EGX maintains appropriate liability insurance; and,

5.12.3. Such flights or operations will not result in a violation of the terms and conditions of any Tenant's FAA operating license; and


5.12.4. Such flights or operations that involve use of the runways, taxiways, or other launch infrastructure will not occur during the period blocked for another Tenant Mission.

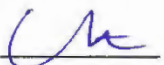
## **6. RENTALS, FEES AND CHARGES.**

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

6.2. Ground Rent. The "**Rent**" in the amount of one thousand five hundred dollars (\$1,500.00 USD) per month or Eighteen Thousand Dollars (\$18,000.00 USD) per year, or prorated for any partial year, commences upon the earlier of: (i) the placement of any EGX Facility on the Ground; or, (ii) the conduct of any Mission or Ground Testing.

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

  
EGX INITIALS

  
NMSA INITIALS

6.4. WSMR Fees. EGX must reimburse the Authority for any costs from WSMR, including without limit, airspace coordination, radars, telemetry, tracking, US Army Air recovery services, and flight safety analysis.

6.5. Initial Development Area Fee. EGX must pay a one-time fee equal to one month of Rent to the Authority for the creation of the "**Initial Development Area**", for which the Authority shall clear area sufficient for initial EGX Facilities within the Ground further described in Exhibit A. Such fee shall also cover initial relocation of the Storage Container to a mutually agreed location within the Ground, as described in Exhibit B. Fees for Authority maintenance of the road to the Initial Development Area per Paragraph 8.2 are included in the EGX User Fees.

6.6. Monthly Activity Reports. EGX 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 EGX User Fees at the Spaceport within five business days after the end of any month during which EGX 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.

6.7. Payment Provisions.

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

6.7.2. EGX User Fees. EGX User Fees for each month, including each Mission, use of 9NM9, or use of storage facilities or other services, will be due and payable the first day of each month in arrears without invoice from the Authority.

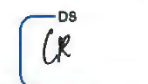
6.7.3. WSMR Fees. WSMR Fees are due thirty (30) days after EGX receives an invoice from the Authority.

6.7.4. Initial Development Area Fee. Initial Development Area Fee will be due prior to Rent commencement and no later than August 1<sup>st</sup>, 2016.

6.8. 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, EGX must pay a late payment fee to the Authority of one and one quarter percent (1.25%) on those amounts due and unpaid.

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

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

  
EGX INITIALS

12

  
NMSA INITIALS



- 6.10.1. Number of jobs in NM,
- 6.10.2. Number/value of contracts held with NM based companies,
- 6.10.3. Value of taxes paid in NM, and
- 6.10.4. Other spending or economic impact in NM.

## **7. UTILITIES.**

7.1. 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.

7.2. EGX 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.

## **8. MAINTENANCE OF SPACEPORT.**

8.1. EGX shall keep any EGX Facilities, EGX Property, and the Ground in good, first-class working order, repair and condition, clean, sanitary, and free of pests. EGX must keep the appearance of the Ground and the Initial Development Area well-kept within the context of the Vertical Launch Area.

8.2. The Authority shall maintain the basic road to the Initial Development Area so as to enable year-round operational access.

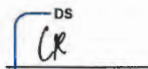
8.3. Other maintenance services are available for purchase from the Authority by separate service level agreement.


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

9.1. Alterations and Improvements. Other than interior alterations that do not have any material effect on the Ground or EGX Facilities structures or systems, which may be made without the approval of the Authority, EGX will make no alterations or construction in the EGX Facilities or Ground without the prior written approval of the Authority.

9.2. 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.

9.3. Before commencing any construction of the EGX Facilities, EGX will provide to the Authority design documents showing the general location and scope of the

  
EGX INITIALS

  
NMSA INITIALS

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 EGX will incorporate all Authority comments into the final design or Construction Documents.

9.4. If required by Applicable Laws, the final design or Construction Documents will be submitted to the NM Construction Industries Division and NM Office of the State Engineer for review and approval, and EGX will obtain all permits and licenses required by Applicable Law. EGX 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.


9.5. In addition to the requirements of Paragraphs 9.2, 9.3, and 9.4 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 EGX provided that the Authority will not be responsible for the outcome of such review and approval process.


9.6. Mortgage Financing. EGX may encumber its lessee interest in this Lease with the approval of the Commissioner and may encumber the EGX Facilities in accordance with the terms in Exhibit C.

9.7. 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.

9.8. Payment Bond. EGX 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. EGX 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.

9.9. CONDEMNATION AND EMINENT DOMAIN. If during the Term of this Lease the whole or a portion of the EGX 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. EGX will make all required payments apportioned to the date of such termination and will promptly vacate the EGX Facilities affected.

  
EGX INITIALS

  
NMSA INITIALS




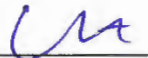
## **10. SPACEPORT SECURITY.**

10.1. Under the "**Spaceport Security Program**," the Authority will provide security for the EGX Facilities and equipment associated with Spaceport operations up to the perimeter of, but not within the Premises. The Spaceport Security Program will provide for security that complies with all applicable rules, regulations, ordinances, statutes, laws and orders of any federal, state, or local government entity regarding security for the Spaceport and in keeping with security programs of other spaceports and Airfields of comparable size and scope of operations. The Spaceport Security Program will provide as a minimum:

- 10.1.1. Twenty four (24)-hour manned security for a seven (7) day per week operation,
- 10.1.2. Control of gates, doors and perimeter fencing,
- 10.1.3. Control of access to restricted areas and to EGX Facilities,
- 10.1.4. Cooperation with state and local law enforcement and emergency services,
- 10.1.5. Monitoring of all vehicular movements within the Airfield perimeter,
- 10.1.6. Escort procedures for guests, vendors and contract workers,
- 10.1.7. Challenge procedures for unauthorized entry to secured areas,
- 10.1.8. Monitoring of designated areas by electronic surveillance,
- 10.1.9. Action plans for emergency responses,
- 10.1.10. Initial orientation and security training and familiarization of all procedures, regulations and responsibilities of all Authority and EGX employees,
- 10.1.11. Refresher training for all employees in case of security breaches or apparent lapses in security measures centered around specific instances, and
- 10.1.12. As needed training updates to procedures and regulations that may be implemented due to changing statutes or regulations that would affect the Spaceport.

10.2. EGX and all Tenants must submit their own security plan for their operations and leased area that reflects the basic understanding of controlling federal agency regulations and the Spaceport Security Program. EGX may adapt or modify the Spaceport Security Program to apply to the EGX Facilities as long as the EGX security

  
EGX INITIALS

  
NMSA INITIALS

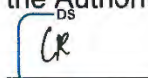
program is not in conflict with the Spaceport Security Program. The EGX Security Program must be submitted to the Authority for approval on an annual basis.

10.3. EGX and all Tenants will cooperate to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Spaceport:

- 10.3.1. All access points will be secured at all times.
- 10.3.2. Persons not properly displaying Spaceport identification will be challenged.
- 10.3.3. Personnel will remain within authorized areas.
- 10.3.4. All badged personnel must attend Spaceport security training, all badged personnel must comply with Spaceport security rules and regulations outlined in the training, and, because security requirements and access control procedures change, all badged personnel are made aware of, and comply with, all reasonable changes to Spaceport security rules and regulations.
- 10.3.5. Visitors must be properly escorted at all times.
- 10.3.6. EGX must participate in the Spaceport's orientation and security program and comply with all applicable security or safety policies and procedures including, but not limited to, the wearing of Spaceport ID badges.
- 10.3.7. EGX must immediately notify applicable law-enforcement or security officers, or both, of any suspicious activity observed in the Spaceport.
- 10.3.8. Any unresolved questions concerning Spaceport security will be directed to the Authority.

10.4. EGX further agrees to reimburse the Authority for any and all penalties or fines levied against the Authority by the FAA, US Departments of State or Commerce, or other state or federal government body due to EGX's failure to abide by the security measures described in this Lease, provided however, EGX will have the right, to the extent allowed pursuant to Applicable Law, to defend against such enforcement action.

10.5. The Authority will periodically evaluate the procedures set forth in this Paragraph 10, and make revisions as required to comply with Applicable Law. Failure of EGX or EGX's personnel to fully comply with the procedures set forth in this Paragraph 10 or as later revised will be sufficient grounds for the Authority to immediately take any necessary corrective measures, including, but not limited to, measures that limit or delay EGX's access to the Spaceport or the EGX Facilities, until security acceptable to the Authority is restored.

  
EGX INITIALS

  
NMSA INITIALS



10.6. Throughout the Term of the Lease the Authority and EGX will cooperate in investigations of violations of State and local laws, ordinances, and rules and regulations, of any federal, State and/or local government entity regarding Spaceport security. The Authority and EGX will provide necessary assistance to, and cooperate with, the other in case of any emergency. Each will, upon request, provide the other with relevant information that will enable both to provide efficient and effective management in response to any Spaceport emergency.

10.7. Entry in Event of Emergency. If circumstances occur or threaten to occur on the Premises which the Authority reasonably concludes could pose an imminent threat to the security or safety of persons or property, the Authority may immediately enter the Premises to respond to such threat.


#### **11. DAMAGE OR DESTRUCTION OF PREMISES.**


11.1. Restoration. If for any reason any of the Premises are damaged or destroyed then EGX must, at a minimum, restore the EGX Facilities and Ground, including without limitation removal of damaged EGX Property, to the condition immediately prior to the initial occurrence of such damage or destruction in the reasonable judgment of the Authority or to a condition agreed upon by the Authority.

11.2. Untenantable Condition. If for any reason any of the EGX Facilities developed by EGX are damaged to such an extent that they are untenable and if EGX elects not to repair, rebuild, or construct new EGX Facilities then EGX must, at a minimum, restore the Ground, including without limitation removal of damaged EGX Facilities and other EGX 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 EGX does not rebuild, EGX may cancel the remaining Term without penalty or fee provided that the Ground is so restored, no Contamination or Hazardous Substances are present within the Land, and all rentals, fees, and charges then due are paid in full.

11.3. EGX will bear the full risk of loss from any and all causes for all of the EGX 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.

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

  
EGX INITIALS

  
NMSA INITIALS

## **12. ENVIRONMENTAL MATTERS.**

12.1. **Environmental Definitions.** The following terms have the following meanings in this Paragraph 12.

12.2. **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.

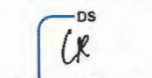
12.3. **Environmental Claim.** Any investigative action, enforcement action, cleanup mandate, removal mandate, containment mandate, remedial mandate, liability, fine or payment of liens at any time threatened, instituted or completed pursuant to any applicable Environmental Laws, against EGX, EGX's activities, 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.


12.4. **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.

12.5. **Contamination.** The Release or uncontained presence of Hazardous Substances resulting from EGX 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.

12.6. **Environmental Compliance.** EGX's conduct and operations as related to any operations involving or arising from EGX'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, EGX will at all times handle Hazardous Substances in a manner consistent with Best Management Practices and Environmental Laws. Upon request EGX will provide to the Authority any record related to any operations required to be maintained pursuant to any Environmental Law and EGX will provide to the Authority a list of and information on the Hazardous Substances used, or planned for use, by EGX.

12.7. EGX will be solely responsible for the proper removal and disposal of all Hazardous Substances arising from EGX's activities at the Premises or the Land in accordance with Environmental Laws. Additionally, EGX will be solely responsible for

  
EGX INITIALS

  
NMSA INITIALS



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 EGX or its Representatives.

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


12.9. Site Contamination. If a Release or threatened Release of a Hazardous Substance or any Contamination arising from EGX activities occurs, EGX 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 or if notification of governmental agencies/bodies is required under Environmental Laws.


12.9.1. EGX 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.

12.9.2. If the Release requires reporting under Environmental Law, then EGX will timely make the required notification and notify the Authority that it has done so. In this event, EGX and the Authority, in conjunction with a licensed environmental firm, will develop a remediation action plan ("**Remediation Plan**") that complies with Environmental Law.

12.9.3. Once the Remediation Plan has received approval from EGX, the Authority, and any governmental agency/body or court that is required to approve the Remediation Plan, EGX will execute the Remediation Plan as soon as reasonably possible and will work expeditiously to accomplish remediation at EGX's sole expense. Upon completion, the Authority may request that EGX provide a Phase II environmental site assessment to be completed at EGX's expense and in accordance with ASTM-E1903-11, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, or other assessment specified by the Authority (the "**Post-Remediation ESA**").

12.9.4. If EGX 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 EGX 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 EGX's sole cost and expense, and EGX will, pursuant to Paragraph 12.11 and subject to Paragraph 13.11, indemnify, defend and hold harmless the Authority, and pay for or reimburse

  
EGX INITIALS

  
NMSA INITIALS

the Authority for any and all costs, including administrative overhead and legal fees, that the Authority incurs as a result of such action.

12.9.5. If a Release or threatened Release occurs in an area used jointly between EGX and one or more other Tenants, EGX and such Tenants will be liable jointly and severally for carrying out the obligations and making all payments required by Paragraph 12.9.

12.10. Storage Tanks. EGX will not install any storage tanks without the prior written consent of the Authority, which consent will not be unreasonably withheld, conditioned or delayed. EGX 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 EGX storage tanks.

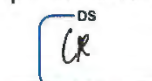
12.11. Environmental Indemnification. In addition to all other remedies available to the Authority, EGX will, subject to Paragraph 13.11, indemnify, defend and save harmless the Authority and its Representatives from and against any and all Environmental Claims arising out of the acts or omissions of EGX or its Representatives any other Person acting by or through or on behalf of EGX, 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.


12.12. Environmental Audit. On one or more occasions, the Authority may conduct an audit to assess EGX's compliance with Environmental Laws (a "**Compliance Audit**"). The Authority will provide EGX 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 EGX's non-compliance with any Environmental Law, the provisions of this Lease relating to Paragraph 12.9. Site Contamination will apply.

12.13. 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 EGX, enter the Premises to conduct reasonable inspections, tests, samplings, split samples or other investigations pertaining to environmental matters. The Authority will provide to EGX a copy of the results of any testing that occurs during an inspection.

12.14. End of Occupancy. The Authority may request the preparation of a Phase II environmental site assessment to be completed at EGX's expense and in accordance with ASTM-E1903-11, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, an update to any existing Phase II environmental site assessment or other assessment specified by the Authority during the final months of the Term ("**Exit ESA**"). If the Exit ESA reveals EGX's non-compliance with any Environmental Law, the provisions of this Lease relating to Paragraph 12.9. Site Contamination will apply.

12.15. No Assumption of Liability. EGX and the Authority acknowledge that the provisions of this Paragraph 12 may not insulate either party from direct liability

  
EGX INITIALS

  
NMSA INITIALS



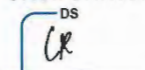
assessed by governmental agencies/bodies for environmental investigation and remediation costs. EGX and the Authority intend that each entity will be responsible for the costs and liabilities associated with Environmental Claims stemming from its own acts and omissions. Any violation by EGX of any Environmental Laws, and EGX's obligations and liability under this Paragraph 12, will survive the expiration or termination of this Lease.

### **13. INSURANCE AND INDEMNIFICATION.**

13.1. EGX will procure and maintain at its own cost during the Term such insurance as is required in this Lease. On request, EGX will provide to the Authority copies of any or all policies of insurance required in this Paragraph 13. EGX will not violate the terms or prohibitions of required insurance policies. EGX will promptly notify the Authority of any claim or loss exceeding the amount of the deductible under such insurance policies.

13.2. The required amounts of insurance provided in this Paragraph 13 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 EGX. 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 EGX.

13.3. Commercial General Liability Including Premises Liability, Contractual Liability and Products/Completed Operations. EGX 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. EGX 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. EGX will also procure and maintain insurance to cover liabilities arising out of EGX'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 EGX'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 EGX that the Authority believes the coverage limits need to be increased to give effect to the changing risk management environment, changes to EGX's operations or vehicles, or inflationary trends.

  
EGX INITIALS

  
NMSA INITIALS



Notwithstanding the foregoing, if new or changed State or federal laws mandate an increase in insurance coverage limits EGX 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).

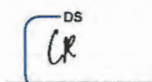
**13.4. Workers' Compensation and Employer's Liability Insurance as Required by New Mexico Law.** EGX will comply with applicable provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. EGX will procure and maintain during the term of this Lease complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. EGX hereby covenants and agrees that the Authority and its Representatives will not be liable or responsible for any claims or actions occasioned by EGX's failure to comply with the provisions of this Paragraph 13.4 and that the Indemnification provision of this Lease will apply to this Paragraph 13.4. It is expressly agreed that the employees of EGX are not the Authority's employees or agents for any purpose.


**13.5. 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 13.

**13.6. Contents Insurance.** EGX will be solely responsible for obtaining insurance policies that provide coverage for losses involving the EGX Facilities. The Authority will not be required to provide such insurance coverage or be responsible for payment for such insurance.

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

**13.8. 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 EGX, 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 13.8. 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 EGX in its operations on the Land. All insurance policies issued pursuant to this Paragraph 13 will be written as primary policies that may not be interpreted as contributing policies or as excess coverage. All EGX property insurance policies will expressly waive all claims or rights of subrogation, if any, against the Authority, the Commissioner, or the State.

  
EGX INITIALS

  
NMSA INITIALS


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


13.10. Indemnification. EGX and its Representatives will use due care and diligence in all activities and operations at the Land. EGX 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 EGX or its Representatives arising out of the operations of EGX 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 13.8.

13.11. No Violation of Public Policies Involving Indemnity. 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.

13.12. 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 EGX or its Representatives, EGX 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 EGX pursuant to the above; (ii) any interest accruing up to the date of payment by EGX; (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 EGX 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.

13.13. 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 EGX or its Representatives. The Authority, the State, and the Commissioner will not be liable for EGX's failure to perform any of its obligations under this Lease or for any delay in the performance thereof. Authority does not undertake any

  
EGX INITIALS

  
NMSA INITIALS



responsibility for the suitability of the Land or of the Ground for the EGX Facilities. NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IS MADE BY AUTHORITY WITH RESPECT TO THE SUITABILITY OF THE LAND FOR EGX'S INTENDED USE THEREOF.

13.14. 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.

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

14.1. EGX 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.

14.2. If EGX 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 17 of this Lease.

14.3. Notwithstanding anything to the contrary set forth above, EGX 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 EGX owns, (ii) to the entity that owns EGX, (iii) to any entity with which EGX is merged or which acquires all or substantially all of the stock or assets of EGX.

14.4. EGX 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.

#### **15. REPRESENTATIONS OF EGX.**

15.1. EGX represents and warrants to the Authority as follows:


15.1.1. EGX is a Limited Liability Corporation duly organized, validly existing and in good standing under the laws of Washington and has all requisite power and authority to execute, deliver and perform the obligations under this Lease.

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

#### **16. REPRESENTATIONS OF THE AUTHORITY.**

16.1. The Authority hereby states to EGX as follows:

16.1.1. 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 of the Authority under this Lease.

  
EGX INITIALS

  
NMSA INITIALS



16.1.2. 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 1.2.

16.1.3. This Lease has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority.

#### **17. EGX DEFAULT.**

17.1. Default by EGX. Each of the following events will be an "**EGX Event of Default**" for purposes of this Lease:

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

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

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

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

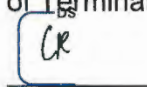
17.1.5. Any representation or warranty made by EGX in this Lease proves to have been false or misleading in any material respect when made;

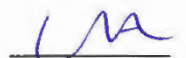
17.1.6. Failure to comply with any covenant, agreement or condition contained in this Lease that remains uncured after a period of ninety (90) days after receipt of written notice from the Authority.

17.1.7. Any authorization, approval, filing, registration or other governmental, judicial or public body or authority necessary to enable EGX 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 EGX'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 EGX, as the case may be, to perform such obligations, or it becomes unlawful for EGX to perform such obligations; or,

17.1.8. Occurrence of a Bankruptcy Event with respect to EGX.

17.2. Termination by the Authority. If EGX fails to cure any EGX 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 EGX written Notice of Termination, provided that EGX will have no cure period and the Authority may terminate immediately upon an EGX Bankruptcy Event. Termination of this Lease will take effect immediately upon EGX's receipt of the Notice of Termination, unless stated otherwise in the Notice of Termination. If, however, EGX

  
EGX INITIALS

  
NMSA INITIALS

has cured the deficiencies identified in the Authority's notice to cure prior to EGX's receipt of the Authority's Notice of Termination, then such Notice of Termination will be of no force or effect.

#### **18. AUTHORITY DEFAULT.**

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

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

18.1.2. 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;

18.1.3. 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 EGX.

18.2. The Authority's termination of this Lease pursuant to Paragraph 3.4 of this Lease will not be an Authority Event of Default.


18.3. Right of Termination by EGX. 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, EGX 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.

#### **19. MINIMUM LAUNCH CADENCE.**

19.1. If EGX 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.

#### **20. VIRGIN GALACTIC PREFERENCES.**

20.1. EGX 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

  
EGX INITIALS

  
NMSA INITIALS



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.

## **21. GENERAL PROVISIONS.**

21.1. Compliance with Law. EGX 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.

21.2. Non-Discrimination. In the use and occupation of the Spaceport, EGX 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.

21.3. 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:

21.3.1. Authority:


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

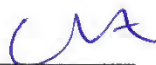
21.3.2. EGX:

EnergeticX.net, LLC  
1314 S. Grand Blvd Suite 2-239  
Spokane, WA 99202  
Attn: Chuck Russell, Member  
Mark C. Russell, Member  
509.994.8577

21.4. Amendment or Waiver. This Lease may not be amended without the prior written consent of EGX 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.

21.5. Construction and Interpretation. Each of the Authority and EGX consulted with counsel and determined that this Lease accurately and completely reflects the agreement of the Authority and EGX, and no presumption or rule that ambiguities will be

  
EGX INITIALS

  
NMSA INITIALS

construed against the drafting party will apply to the interpretation or enforcement of this Lease.

21.6. 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.

21.7. Consent to Jurisdiction and Venue. The Authority and EGX 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 EGX. The Authority and EGX 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.

21.8. Waiver of Jury Trial. The Authority and EGX 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.

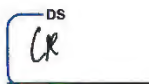
21.9. Entire Agreement. This Lease contains the entire understanding and agreement of the Authority and EGX. There are no oral or written representations, understandings, undertakings or agreements that are not contained or expressly referenced in this Lease. All of the Exhibits attached to this Lease 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.

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

21.11. 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.

21.12. 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.

21.13. 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 EGX.

  
EGX INITIALS

  
NMSA INITIALS



21.14. 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 EGX, 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 EGX 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.

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

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

21.17. 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 EGX.


21.18. 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.

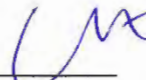
21.19. Recordation. Neither the Authority nor EGX will record this Lease in any real property records office.

21.20. Brokerage Disclosures. The Authority and EGX 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.

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

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

  
EGX INITIALS

  
NMSA INITIALS

21.23. 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]

  
EGX INITIALS


30

  
NMSA INITIALS

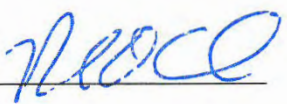
ENERGETICX.NET, LLC

DocuSigned by:  
Charles Russell  
By 64E85062F6DD483  
Name Charles Russell  
Title LLC. Member  
Date 8/19/2016

NEW MEXICO SPACEPORT AUTHORITY

By   
Name Christine Anderson  
Title Executive Director  
Date 8/19/16

NEW MEXICO SPACEPORT AUTHORITY

By   
Name Dr. Rick Holdridge  
Title Chair, Board of Directors  
Date 8/19/16

DS  
CR  
EGX INITIALS

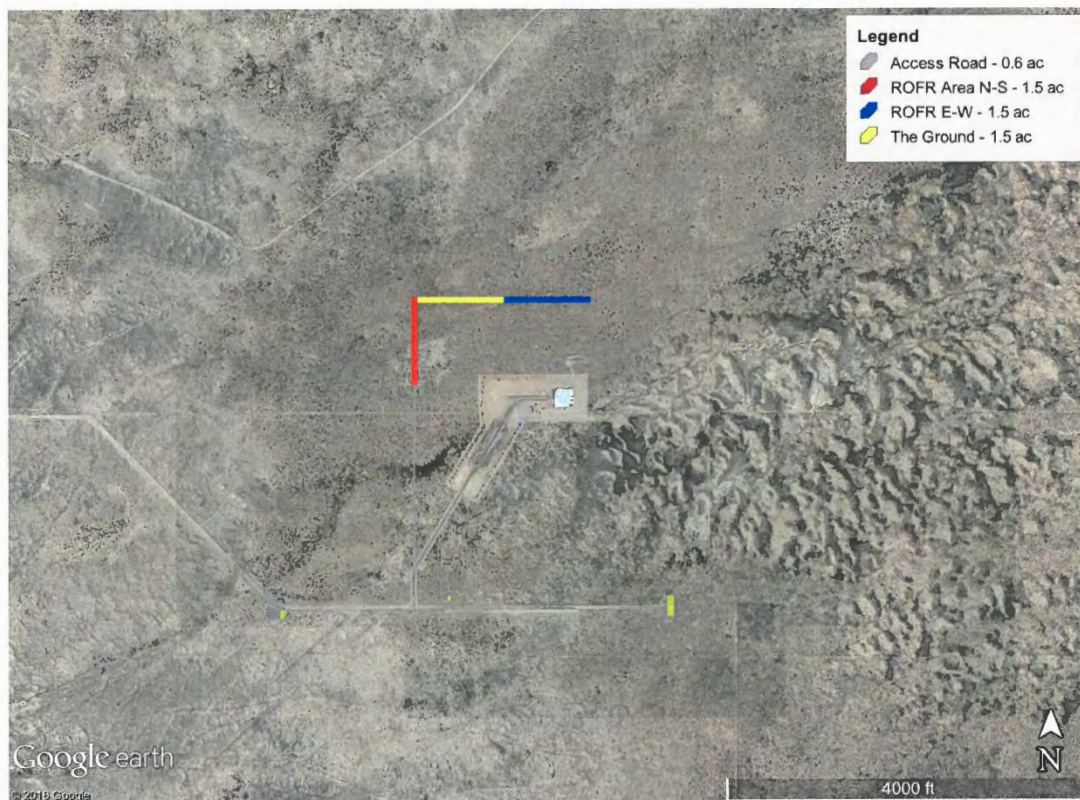
  
NMISA INITIALS

Exhibit A – The Ground, ROFR Areas and Authority Facilities

**The Ground:**

1.5 acre area of dimensions 1 chain by 1.5 furlongs (66 ft x 960 ft)

Legal description: R1W T16S S2 E 1/2




Approximate coordinates clockwise from the NE:

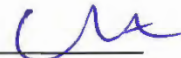
NE: 32°56'58.9"N 106°54'45.3"W

SE: 32°56'58.3"N 106°54'45.3"W

SW: 32°56'58.3"N 106°54'56.6"W

NW: 32°56'58.9"N 106°54'56.6"W

  
EGX INITIALS

  
NMSA INITIALS



**Initial Development Area:**

Westernmost 66 ft x 150 ft area of The Ground

**ROFR Areas:**

ROFR Area E-W: 66 ft x 960 ft (1.5 acres) East-west parcel adjacent to east of The Ground

Approximate coordinates clockwise from the NE:

NE: 32°56'58.9"N 106°54'34.1"W

SE: 32°56'58.3"N 106°54'34.1"W

SW: 32°56'58.3"N 106°54'45.3"W

NW: 32°56'58.9"N 106°54'45.3"W

ROFR Area N-S: 66 ft x 960 ft (1.5 acres) North-south parcel adjacent to west of The Ground


Approximate coordinates clockwise from the NE:

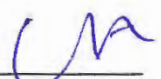
NE: 32°56'58.9"N 106°54'56.6"W

SE: 32°56'49.4"N 106°54'56.6"W

SW: 32°56'49.4"N 106°54'57.4"W

NW: 32°56'58.9"N 106°54'57.4"W

  
EGX INITIALS


  
NMSA INITIALS

**Authority Facilities:**



The Authority Storage Container is a standard shipping container to be relocated to the Ground and licensed for use in equipment storage.

Dimensions: 40' x 8' x 8.5'

  
EGX INITIALS

  
NMSA INITIALS

**Exhibit B – EGX Fees**

EGX must pay EGX User Fees according to the rates in the tables below. The Authority determines EGX's User Fee rates on an annual basis and delivers updates to EGX's User Fee rates, if any, by August 31st 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 D.

**EGX Missions (annually):**


	Missions 1-25	Missions 26-100	Missions > 100
EGX User Fee per Mission	\$100	\$500	\$250

**Use of Spaceport Operations Center Mission Control Capabilities:**

EGX User Fee for non-exclusive daily use of Mission Control room, including CCTV camera	\$500 per day
EGX User Fee for wireless broadband fiber network extension to remote location	\$1,000 per week
EGX User Fee for exclusive access to IP CCTV camera feed, on-site and off-site	\$500 for 1 <sup>st</sup> user \$50 per additional seat

**Use of On-site Storage Areas:**

EGX User Fee for exclusive use of Authority Storage Container	\$50 per day \$250 per month \$750 per relocation
---	---

  
EGX INITIALS

  
NMSA INITIALS



**Conventional, manned aviation operations at 9NM9:**

EGX User Fee for the first 5 monthly aircraft landing and takeoff cycles during non-exclusive use of the 9NM9 Airfield during business hours	\$500/month
EGX User Fee for additional aircraft landing and takeoff cycles during non-exclusive use of the 9NM9 Airfield, and/or during non-business hours	\$1,500 per cycle

**Rent:**

The Ground	\$1,500 per month
The Ground and ROFR Area E-W or ROFR Area N-S	\$2,950 per month
The Ground and ROFR Area E-W and ROFR Area N-S	\$4,300 per month

  
 EGX INITIALS

  
 NMSA INITIALS

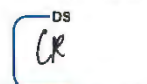
### Exhibit C – Mortgage Financing

(a) Leasehold Mortgages and Encumbrances; Leased Fixtures. EGX may mortgage and assign its leasehold interest and encumber the EGX Facilities 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 EGX and no purchase or other acquisition of this Lease, or any interest herein or in the EGX 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 EGX’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 EGX 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 EGX 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 EGX hereunder, plus an additional ten (10) days thereafter following receipt of the Authority’s written notice of

  
EGX INITIALS

  
NMSA INITIALS



EGX's act or failure to act in the case of default consisting solely of a failure to pay a sum of money due from EGX to the Authority, or required to be paid by EGX under this Lease; or (ii) within the time permitted to EGX 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 EGX hereunder.

(iii) Mortgagee Succeeds to EGX's Interest; Liability of Mortgagee Limited. Upon any lawful assumption of possession of EGX's leasehold estate or the Premises or the acquisition of EGX's interest in the Premises by a mortgagee, such mortgagee will have all of the rights and limitations of EGX 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 EGX'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 EGX will be accepted by the Authority as if performed by EGX 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 EGX'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 EGX 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 EGX'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.

DS  
EGX INITIALS


NMSA INITIALS

Any purchaser at a foreclosure sale other than a mortgagee must assume all of the obligations of EGX 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 EGX's obligations hereunder.

(b) Substitution for Obligation. Except as otherwise provided in this Section (b) and in Section (a) above, EGX 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 EGX Facilities, or any portion thereof or interest therein.

EGX must provide the Authority with copies of all documents and agreements that EGX's lender will require EGX 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 Mortgagee Protection. The Authority, Commissioner, and EGX 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 EGX 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.

  
EGX INITIALS

  
NMSA INITIALS



Exhibit D – Spaceport Advisory Committee

21.1. The Spaceport Advisory Committee ("**SAC**") is composed of the Authority and other Tenants that operate Aircraft or Spacecraft at the Spaceport.

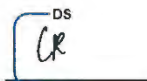
21.1. Representatives. Each member will designate an individual who will act on the member's behalf at meetings of the SAC (the "**SAC Representative**"). EGX's SAC Representative must: (a) be fully acquainted with the Spaceport; and (b) provide the information and services necessary to fulfill the obligations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

21.2. 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.

21.3. 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.

21.3.1. Authority FY2 Budget Brief. By June 1<sup>st</sup> of each FY1 the Authority will submit to the SAC a copy of the Authority's State-approved FY2 operating Budget.

21.3.2. EGX Reports. EGX will provide the SAC and the Authority with the following information by June 1<sup>st</sup> of each FY1: (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. ("**EGX 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.

  
EGX INITIALS

  
NMSA INITIALS


21.3.3. Preliminary Operating Budget. By August 31st of each FY3 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 EGX from bringing an action to contend that any allocation of costs for the items identified in (i), (iv) and (vi) above is inequitable.

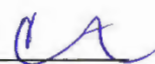
21.4. The Authority will timely furnish all Tenants and the SAC with a copy of the final approved Budget.

21.5. 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.

21.6. 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.

21.7. Notice of Experimental Activities. In addition to the requirements in Paragraph 4.12, EGX 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. EGX may deliver such notice to the Authority for forwarding to the SAC.

  
EGX INITIALS

  
NMSA INITIALS





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. EXOS becomes obligated to pay "Ground Rent" in the amount of thirty thousand dollars (\$30,000.00) per year, or prorated for any partial year, upon the earlier of: (i) the placement of any EXOS Facility on the Ground; or, (ii) if EXOS Property remains on the Land longer than twelve (12) consecutive days, and then EXOS must continue to pay Ground Rent throughout the remainder of the Term. "Rent Commencement."

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.

5.5. VLA Recovery Zone Fee. By June 1<sup>st</sup>, 2016, EXOS must pay a one-time fee of nine thousand dollars (\$9,000.00) to the Authority for the preparation of the VLA Recovery Zone. Fees for Authority maintenance of the VLA Recovery Zone per Paragraph 7.2 are included in the EXOS User Fees.

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.**

9.1. Under the "Spaceport Security Program," the Authority will provide security for the EXOS Facilities and equipment associated with Spaceport operations up to the perimeter of, but not within the Premises. The Spaceport Security Program will provide for security that complies with all applicable rules, regulations, ordinances, statutes, laws and orders of any federal, state, or local government entity regarding security for the Spaceport and in keeping with security programs of other spaceports and Airfields of comparable size and scope of operations. The Spaceport Security Program will provide as a minimum:

- 9.1.1. Twenty four (24)-hour manned security for a seven (7) day per week operation,
- 9.1.2. Control of gates, doors and perimeter fencing,
- 9.1.3. Control of access to restricted areas and to EXOS Facilities,
- 9.1.4. Cooperation with state and local law enforcement and emergency services,
- 9.1.5. Monitoring of all vehicular movements within the Airfield perimeter,
- 9.1.6. Escort procedures for guests, vendors and contract workers,
- 9.1.7. Challenge procedures for unauthorized entry to secured areas,
- 9.1.8. Monitoring of designated areas by electronic surveillance,
- 9.1.9. Action plans for emergency responses,
- 9.1.10. Initial orientation and security training and familiarization of all procedures, regulations and responsibilities of all Authority and EXOS employees,
- 9.1.11. Refresher training for all employees in case of security breaches or apparent lapses in security measures centered around specific instances, and



9.1.12. As needed training updates to procedures and regulations that may be implemented due to changing statutes or regulations that would affect the Spaceport.

9.2. EXOS and all Tenants must submit their own security plan for their operations and leased area that reflects the basic understanding of controlling federal agency regulations and the Spaceport Security Program. EXOS may adapt or modify the Spaceport Security Program to apply to the EXOS Facilities as long as the EXOS security program is not in conflict with the Spaceport Security Program. EXOS' Security Program must be submitted to the Authority for approval on an annual basis.

9.3. EXOS and all Tenants will cooperate to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Spaceport:

9.3.1. All access points will be secured at all times.

9.3.2. Persons not properly displaying Spaceport identification will be challenged.

9.3.3. Personnel will remain within authorized areas.

9.3.4. All badged personnel must attend Spaceport security training, all badged personnel must comply with Spaceport security rules and regulations outlined in the training, and, because security requirements and access control procedures change, all badged personnel are made aware of, and comply with, all reasonable changes to Spaceport security rules and regulations.

9.3.5. Visitors must be properly escorted at all times.

9.3.6. EXOS must participate in the Spaceport's orientation and security program and comply with applicable security procedures including, but not limited to, the wearing of Spaceport ID badges.

9.3.7. EXOS must immediately notify applicable law-enforcement or security officers, or both, of any suspicious activity observed in the Spaceport.

9.3.8. Any unresolved questions concerning Spaceport security will be directed to the Authority.

9.4. EXOS further agrees to reimburse the Authority for any and all penalties or fines levied against the Authority by the FAA, US Departments of State or Commerce, or other state or federal government body due to EXOS's failure to abide by the security measures described in this Lease, provided however, EXOS will have the right, to the extent allowed pursuant to Applicable Law, to defend against such enforcement action.

9.5. The Authority will periodically evaluate the procedures set forth in this Paragraph 9, and make revisions as required to comply with Applicable Law. Failure of EXOS or

EXOS's personnel to fully comply with the procedures set forth in this Paragraph 9 or as later revised will be sufficient grounds for the Authority to immediately take any necessary corrective measures, including, but not limited to, measures that limit or delay EXOS's access to the Spaceport or the EXOS Facilities, until security acceptable to the Authority is restored.

9.6. Throughout the Term of the Lease the Authority and EXOS will cooperate in investigations of violations of State and local laws, ordinances, and rules and regulations, of any federal, State and/or local government entity regarding Spaceport security. The Authority and EXOS will provide necessary assistance to, and cooperate with, the other in case of any emergency. Each will, upon request, provide the other with relevant information that will enable both to provide efficient and effective management in response to any Spaceport emergency.

9.7. Entry in Event of Emergency. If circumstances occur or threaten to occur on the Premises which the Authority reasonably concludes could pose an imminent threat to the security or safety of persons or property, the Authority may immediately enter the Premises to respond to such threat.

## **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 untenantable 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.

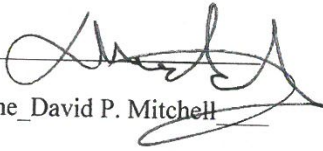
20.21. True Lease. EXOS and the Authority recognize and agree that this Lease is a true Lease and not a financing arrangement for the EXOS Facilities.

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 4/5/16

APPROVED FOR LEGAL SUFFICIENCY BY AUTHORITY GENERAL COUNSEL

By 

Name Ryan T. Noble

Date April 5, 2016



## Exhibit A – The Ground

2.5 acre area (Legal description R1W T16S S2 SE 1/4 of the SW 1/4)



Approximate coordinates clockwise from the NE:

NE: 32°56'25.0"N 106°54'54.7"W

SE: 32°56'20.0"N 106°54'54.7"W

SW: 32°56'20.0"N 106°54'57.2"W

NW: 32°56'25.0"N 106°54'57.2"W

## Exhibit B – VLA Recovery Zone

Approximately 100 meter radius circle about the point: 32°56'42.7"N, 106°55'18.06"W



### Exhibit C – EXOS User Fees

EXOS must pay EXOS User Fees according to the rates in the tables below. The Authority determines EXOS' User Fee rates on an annual basis and delivers updates to EXOS' User Fee rates, if any, by August 31st 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.

<b>EXOS sounding rocket Missions:</b>	<b>Mission 1</b>	<b>Mission 2 thru Mission 5</b>	<b>Mission 6 and Following</b>
All Inclusive EXOS User Fee per Mission	\$0.00	\$6,250	\$7,500

<b>Conventional, manned aviation operations at 9NM9:</b>	<b>One aircraft landing and takeoff cycle per Mission</b>
EXOS User Fee for nonexclusive Airfield use	Included in Mission User Fee for first 5 Missions. Then \$1,500 per cycle for Mission 6 and following.

## 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 Mortgagee 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.





### LEASE AGREEMENT, AMENDMENT NO. 1

This LEASE AGREEMENT (the "Agreement") is made and entered into as of the date of the last signature below (the "Effective Date") by and between Space Exploration Technologies Corp., ("Tenant" or "SpaceX"), a privately-held Delaware corporation and the NEW MEXICO SPACEPORT AUTHORITY (the "NMSA"), an agency of the State of New Mexico (the "State") and its successors and assigns, collectively, the "Parties" and individually, a "Party".

1. **Recitals.** NMSA recognizes the value of aerospace research, vehicle development, and prototype flight testing activity to New Mexico and wishes to encourage expansion of such activity at Spaceport America (the "Spaceport"); and Tenant desires to perform a series of test flights (each a "Flight"), including a First Flight and Subsequent Flights; and Tenant wishes to lease from the NMSA and the NMSA wishes to lease to Tenant certain Premises, as defined below, for the Term and any Optional Term (as defined below), at the rental amounts, and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.
2. **Definitions.** "Essential Services" as used in this agreement includes Spaceport-supplied protective services in support of launch activity, including adequate crash, fire, rescue, safety and security.

The word "Premises" as used in this Agreement shall mean the tracts of land containing the number of acres set forth in and as more particularly described on Exhibit A attached hereto and incorporated herein (the "Land").

"Tenant Fitout" as used in this Agreement includes any improvements to the Premises made by the Tenant at the Tenant's expense that are to be removed by the Tenant at the end of the Term, as defined below, including but not limited to office trailers, fuel tanks, generators and other temporary equipment. Tenant Fitout may also include, business and trade fixtures such as fencing, satellite dish and/or similar communications equipment, solar equipment and Tenant's exterior imaging, signs, banners, fascia, monument and/or other displays.

"Tenant Improvements" as used in this Agreement includes any improvements to the Premises made by the Tenant at the Tenant's expense that are not removed by the Tenant at the end of the Term, as defined below, including but is not limited to launch pads, taxi ways, fuel pads, and other permanent equipment. Tenant Improvements and Tenant Fitout shall be herein referred to collectively as the "Tenant Facilities," and are more particularly described on Exhibit B attached hereto and incorporated herein.

3. **Term.** The term of this Agreement shall be a period of three (3) years commencing on the Effective Date of this Agreement ("Initial Term").

If permitted by applicable law or regulations, in the event Tenant is not in default on the date of expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) additional terms of one (1) year (each an "Optional Term") on substantially the same terms and conditions as herein set forth.

Tenant shall have the option, upon at least two (2) months written notice prior to the expiration of the Initial Term or the first Optional Term, to terminate this Agreement. Initial Term and any Optional Terms exercised shall be herein referred to collectively as the "Term". If Tenant chooses to terminate the Agreement prior to the expiration of the Term, its option to renew the Agreement for any remaining

Optional Terms shall also expire. The Initial Term of this Agreement, as that term is used in this Agreement, shall include the entire time between the Effective Date of this Agreement and the final expiration or termination of this Agreement excluding any Optional Term, unless otherwise noted.

4. **Rent.** Tenant shall pay NMSA as rent ("Initial Rent") for the Premises the sum of Three Thousand Six Hundred and Fifty One and No/100s Dollars (\$3,651.00) per month, during the Initial Term. Tenant shall pay the first month's rent on the Effective Date, such rent to be applied to rent due to NMSA from Tenant but shall not be refundable if the Tenant does not take possession of the Premises. Initial Rent shall be paid monthly in advance on the date Tenant takes possession of the Premises or begins construction of Tenant Improvements on the Premises, whichever is earliest (also the "Initial Rent Commencement Date") and on the first day of each month thereafter, without any deduction, offset, prior notice or demand whatsoever (except as expressly provided herein).

Beginning with the first exercised Optional Term, Tenant shall pay NMSA such rental fees ("Optional Term Rent") to be calculated as the Initial Rent, subject to adjustment increase or decrease of those rates at the end of the three (3) year period of the Initial Term starting as of the Initial Rent Commencement Date based on the change in the Consumer Price Index (the "CPI", for all Urban Consumers, Selected Areas-West Region All Items, 1982-1984=100, issued by the Bureau of Labor Statistics, US Department of Labor) for the latest available three (3) year period. Thereafter, any rental fees during additional Optional Terms shall be subject to annual adjustment based on the percentage change in the CPI, determined by comparing the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year (or from the Initial Term to the first Optional Term) be greater than 3%. At least sixty (60) days before the start of any Optional Term, the NMSA will notify Tenant of the annual CPI adjustment in the Optional Term Rent. Initial Rent and Optional Term Rent shall be herein referred to collectively as the "Rent". In the event that the Agreement terminates on any day other than the last day of a month when Rent is due, the rental amount for such payment shall be pro-rated based on the number of days during such month.

Payments made by Tenant shall be applied against the earliest unpaid charge whether for Rent or other charges. In the event NMSA makes any payment for services or expenses set forth herein as Tenant's obligations, Tenant's obligation to pay or reimburse NMSA therefore shall, if so elected by NMSA, be deemed an obligation to pay "Additional Rent," in the same manner as Rent. Rent, Additional Rent, User Fees (as defined in Section 6) and any other Tenant obligation to pay or reimburse NMSA shall be deemed, for the purposes of this Agreement, a "Tenant Payable."

Tenant shall pay all such Tenant Payables in lawful money of the United States of America to NMSA at the Notice Address contained within the Agreement or to such other address as NMSA may designate in writing.

No security deposit shall be collected by NMSA in connection with this Agreement.

If Tenant remains in possession of all or any part of the Premises after the expiration or termination of the Term, with or without the express or implied consent of the NMSA, such tenancy shall be from month to month only, and not a renewal of this Agreement or an extension for any further term, at a rental rate equal to one hundred fifty percent of (150%) the Rent payable immediately prior to the expiration of the Term, and other monetary sums due under this Agreement shall be payable in the amount and at the time specified herein and such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained herein.

5. Use. Subject to the other terms and provisions of this Agreement, the NMSA hereby leases to Tenant for the Term of the Agreement, and Tenant hereby leases from the NMSA for the Term of the Agreement, the Premises. The Tenant and its representatives, employees, contractors, agents, independent producers, suppliers, licensees, sponsors, successors and assigns (collectively, "Representatives") may use the Premises and Tenant Facilities twenty-four (24) hours/per day, seven (7) days/per week, twelve (12) months/per year for the operation of suborbital Flights and related activities. Tenant's usage includes, but shall not be limited to:

- Operating a fixed launch site facility including activities associated with assembling, testing, fueling, launching, and recovering space vehicles and developmental space vehicles;
- Operating sleeping quarters for Tenant personnel;
- Operating services for guests and invitees;
- Performing mission control operations;
- Providing office space for Tenant personnel;
- Housing Tenant's operating base;
- Rehearsing, photographing, filming and otherwise recording certain scenes of Flight operations, pre-Flight activity, or post-Flight activity, including without limitation photographing the Spaceport and reproducing the Spaceport elsewhere for the purpose of photographing the same by means of film, tape, videotape or any other medium;
- As an equipment and materials storage site;
- Conducting all activities reasonably associated with the foregoing and any other uses that are compatible with the growth of commercial space activities, as long as such uses do not materially and adversely affect the operations of other tenants or users of the Spaceport.

Tenant shall, at Tenant's expense, comply promptly with all applicable federal, State, and local statutes, ordinances, rules, regulations, orders, and requirements in effect and applicable to Tenant's use of the Premises and Tenant Facilities during the Term. Tenant also agrees to comply with and ensure its guests' and invitees' compliance with all requirements, directions, and recommendations of the NMSA and the NMSA's contractors, including but not limited to its range safety officer, construction manager or security manager, regarding any Flights.

In addition, Tenant shall have access, as necessary, to various portions of the Spaceport's vertical launch infrastructure ("Launch Infrastructure") and all other "Common Facilities" at the Spaceport not designated for exclusive use of the NMSA or any other tenants, as defined in Exhibit C, for the purposes of conducting Tenant's business on the Premises. Tenant Facilities and Common Facilities shall be herein referred to collectively as the "Facilities".

NMSA acknowledges that due to Tenant's business requirements, the NMSA will need to grant Tenant exclusive use of Launch Infrastructure at specified blocks of time to launch and retrieve spacecraft (each launch and recovery operation being referred to herein as a "Flight"). Tenant's Flights will include the following rights to be provided or arranged by NMSA: (i) evacuation of any Common Facilities or other Spaceport buildings, roadways, and runways, including those ramps, taxiways and aprons as reasonably determined by Tenant and NMSA to be necessary to ensure safety of the Flight, (ii) adequate control over the airspace above, and in the vicinity of, the Spaceport to permit the take-off and/or landing, as applicable, (iii) adequate access to and use of the fuel storage/fuel supply area and facilities, (iv) adequate access to and use of the water storage area and facilities, (v) use of the Spaceport's air traffic control system and (vi) emergency and fire rescue personnel and equipment prepared and ready to respond.

As a minimum, Tenant will be allotted two (2) blocked periods of time per week, throughout the Term for its Flights (each blocked period referred to herein as a "Flight Period"). Each Flight Period will initially

be eight (8) hours but subsequent Flight Periods may be shortened upon mutual agreement of Tenant and the NMSA. Multiple Flights may occur during a single Flight Period without incurring additional charges. NMSA, as the manager of the Spaceport operations, will work with Tenant to coordinate these activities with all other agencies and tenants affected by Tenant's Flight Periods to provide Tenant the rights and services described above for each Flight Period.

NMSA's approval for any Flight Period and the reservation of the Launch Infrastructure (so long as Tenant has not exceeded the one (1) Flight Period per day allotment) will not be withheld by NMSA so long as NMSA, exercising its best efforts, is able to arrange the airspace clearance. NMSA will seek to provide 8 hour Flight Periods initially with the airspace controlling entity. Subsequent flight periods may be shortened upon mutual agreement of Tenant and NMSA. If the Flight Periods reserved by Tenant are not needed for any previously scheduled segment for any reason other than Force Majeure events, the acts or omissions of the NMSA, its agents, employees, contractors, officers, board members, licensees or invitees or the airspace reservation being cancelled by one of the agencies having jurisdiction, Tenant must notify the NMSA within twenty-four (24) hours of Tenant's decision to cancel the reserved Flight Period and allow other tenants or transient customers access to the Launch Infrastructure. Tenant, in agreement and coordination with the NMSA, will provide a detailed schedule of planned Flights for submission to the FAA or other controlling entity with responsibility for the airspace over the Spaceport and surrounding area at least seven (7) days in advance of the projected Flight Period and NMSA will request the airspace reservation as soon as received. NMSA will seek to provide Tenant with confirmation of the reservation within five (5) days of the notification by the FAA or other controlling entity. If Tenant is delayed prior to any Flight Period or after any Flight Period has commenced, Tenant is required to notify the NMSA and the controlling agency for the airspace reservation as soon as is practical. Tenant acknowledges that cancellation of the reservation of the overlying airspace by the FAA or controlling agency may result in postponement of a Flight Period and that the NMSA will not be liable to Tenant for any costs, expenses or damages related to or arising from such cancellation, but the NMSA will use its best efforts to obtain the airspace reservation rights for all requested Flight Periods and will work with the FAA and any controlling agency to avoid any cancellation of any previously granted reservation. In addition, Tenant will be included on a regular basis in discussions with the controlling agencies of the overlying airspace to ensure Tenant's needs are being adequately addressed. Tenant will be entitled to reserve all time not occupied by Flight Periods on a first-come, first-served basis along with all of the other tenants of the Spaceport, using a pre-booking procedure that will be worked out by the NMSA in consultation with the Spaceport Advisory Committee (the "SAC"). Tenant and the NMSA will work cooperatively to ensure the pre-booking procedure addresses the needs of all Spaceport tenants as equitably as possible while not materially and adversely affecting Tenant's operations.

In connection with the use of the Premises, Tenant Facilities and the Common Facilities, Tenant will not:

- Do or permit to be done anything at or about the Spaceport that may interfere with the effectiveness or accessibility of the drainage system; sewage system; electrical system; heating, ventilation and air conditioning system ("HVAC"); fire protection system; or alarm system.
- Do or permit to be done any act in, on, or about the Spaceport that will invalidate or conflict with any insurance policies applicable to the Spaceport (including, but not limited to, the State's risk pool, liability pool, or pool of excess insurance) or the activities conducted at the Spaceport.
- Dispose of or permit any disposal of any waste material taken from or products used (whether liquid or solid) with respect to its vehicles into the sanitary sewer, storm sewer, ground or trash at the Spaceport except in accordance with Applicable Laws.
- Keep or store, during any twenty four (24) hour period, flammable liquids within any enclosed portion of the Tenant Facilities in excess of Tenant's working requirements during said twenty



four (24) hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by applicable insurance underwriters and Applicable Laws.

- Do or permit to be done any act upon the Spaceport that will invalidate or conflict with the SLO Ground Lease or the Ranch Agreements with Bar Cross Ranch, Inc., and Lewis Cain Ranch, Inc.

6. **User Fee.** In full consideration of NMSA entering into this Agreement and granting to Tenant all rights granted hereunder, NMSA shall provide use of Common Facilities, including Launch Infrastructure, as defined in Exhibit C, according to the fees outlined in Exhibit D (the "User Fee"), subject to revision based upon any additional, optional services required by Tenant and to the list of additional recipients of evacuation fees as the Parties deem necessary. Also set forth within Exhibit D are one-time, upfront fees to cover NMSA time and materials in preparing Common Facilities for Tenant use. Such one-time fees shall be payable to NMSA on the Initial Rent Commencement Date.

User Fees will be based upon operations and maintenance expenses; capitalized repair, maintenance and equipment costs. User Fees will be charged to and payable by Tenant at the rates set forth in Exhibit D for each of the Flight Periods in the applicable year, subject to annual adjustment increase or decrease of those rates based on the change in the CPI, determined by comparing the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year be greater than 3%.

The minimum annual guarantee for Tenant's share of User Fees (the "Minimum Annual Guarantee") will equal \$15,000.00 per year, regardless of the number of Flights or Flight Periods, payable to NMSA within thirty (30) days of the end of NMSA's Fiscal Year, which runs from July 1 to June 30. Any costs incurred by NMSA pertaining to the use not specifically outlined within the Agreement shall be the responsibility of Tenant.

If rents, fees, and charges required by this Agreement are not received by the NMSA on or before the date specified in this Agreement, Tenant will pay an interest charge to the Authority of one and one-quarter of one percent (1 1/4 %) per month on all amounts due and unpaid, including without limitation, interest, for each month or partial month that any payment due is not received. Notwithstanding the foregoing, the NMSA must provide Tenant notice and 10 business days' right to cure any such late payments on two (2) occasions in a calendar year before the interest charge due hereunder will become due with respect to any additional late payments in such calendar year.

7. **Utilities.** NMSA shall provide access to the Spaceport's main distribution facility environment for housing and connection to the site's fiber backbone. NMSA shall facilitate connection between the fiber backbone and Tenant-furnished fiber optic cable terminated in the Spaceport's main distribution facility. Tenant agrees to pay all usage charges or other expenses for water, electric generators and/or associated fuel, telephone, communications infrastructure housing, janitorial and domestic trash pickup and any other utilities provided by NMSA on the Premises. Billing shall be conducted in accordance with a mutually acceptable "Service Level Agreement".

Except to the extent caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees, invitees, or predecessors in interest, in the event of any failures or interruptions of NMSA-provided utility services to the Facilities, including electricity, water and IT communications, that are caused by the negligence of the NMSA, its agents, employees or contractors or the failure of the NMSA, its agents, employees or contractors to properly maintain the facilities providing such services or some other infrastructure or facility necessary for delivery of such services, and which (i) materially, adversely affect Tenant's use of the Facilities, and (ii) continue for 7 or more days (or 7 or more days in any 30 day period) then the Rent will be abated in proportion to the adverse effect on Tenant's operations until the interrupted services are restored so that

there is no longer any material, adverse effect on Tenant's business operations (e.g. If 50% of scheduled Flights must be cancelled and cannot be made up in the period promptly following the restoration of services, the abatement would be 50% of the Rent for the period of time the service is interrupted).

8. **Maintenance and Repair.** NMSA, at its own expense, shall keep and maintain access to the Premises in good safe and attractive order and condition and repair, and shall suffer no waste with respect thereto, NMSA shall be solely responsible for snow removal and dust/sand/windblown debris removal as required to maintain such access. Tenant is responsible for the costs of its business operations of whatever nature, to be conducted on the Premises during the Term and maintenance and repair of Tenant's Facilities.

If Tenant fails to surrender the Premises to NMSA upon expiration or earlier termination of this Agreement (excluding Tenant Fitout) in good condition, ordinary wear and tear excepted, NMSA shall give Tenant written notice to do such acts as are reasonably required to place the Premises in good order and condition. If Tenant fails to commence the work within twenty (20) days of such notice and diligently prosecute it to completion, then NMSA shall have the right (but not the obligation) to do such acts and expend such funds as are reasonably required to perform such work satisfactorily. Any amount so expended by NMSA shall be paid by Tenant within twenty (20) days after demand, with interest at the Interest Rate from the date of demand, as Additional Rent.

Tenant Facilities shall be handled in the following manner:

- (a) Tenant shall not make any Tenant Improvements or install any Tenant Fitout on the Premises without, in each case, obtaining the prior written consent of the NMSA, which consent shall not be unreasonably withheld.
- (b) All work done at the Premises by Tenant shall be performed in accordance with applicable statutes, ordinances, rules and regulations of any governmental body or agency having jurisdiction over the Premises. NMSA shall cooperate, as requested, with Tenant in obtaining approvals and permits for such work, without cost or liability to NMSA. Any alterations or additions will be made in a good workmanlike manner without cost to NMSA, and shall be free and clear of mechanics' and materialmen's liens provided that if any such lien is filed, Tenant shall discharge the lien as soon as practicable and it may contest the claim in good faith.
- (c) All Tenant Improvements, shall at the expiration or earlier termination of this Agreement, become the property of the NMSA and remain upon and be surrendered with the Premises. All Tenant Fitout, such as personal property and business and trade fixtures, other than those affixed to the Premises so that they cannot be removed without material damage to the Premises (as determined in Tenant's sole discretion), shall remain the property of the Tenant, and may be removed by the Tenant subject to the provisions of this Agreement, at any time during the Term when Tenant is not in default as provided in Section 15 of this Agreement.

In the event any of the Tenant Fitout are subject to a lien or title retention instrument, then during the Initial Term or any Optional Term but not thereafter, the holder of any such lien or title retention instrument shall have the right and be able to enforce the same as stated therein and NMSA waives any rights to the contrary, except NMSA reserves the right to require Tenant to restore the Premises to the condition required by this Agreement, after removal.

9. **Security and Essential Services.** In leasing the Premises and the Common Facilities to Tenant, the NMSA will provide to Tenant all of the Essential Services as part of the User Fees noted in Exhibit D.

As a general provision for all tenants of the Spaceport, the NMSA and Tenant will cooperate to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Spaceport:

- During all hours, the NMSA will cause all access points to secure areas of the Spaceport that are under NMSA control to be secured.
- Tenant personnel will challenge any person in secure areas not properly displaying Spaceport identification.
- Tenant will restrict the activities of its personnel who are authorized to be in secure areas to that portion of those areas in which Tenant is authorized to operate.
- Tenant is responsible for ensuring that all of Tenant's personnel attend Spaceport security training, that all Tenant personnel comply with all reasonable Spaceport security rules and regulations outlined in the training, and, because security requirements and access control procedures change, that all Tenant personnel are made aware of, and comply with, all reasonable changes to Spaceport security rules and regulations.
- Tenant will not allow any unauthorized person under its control to enter secure areas unless that person is properly escorted at all times.
- Tenant will participate in the Spaceport's security program and comply with applicable security procedures including, but not limited to, the wearing of Spaceport ID by Tenant personnel.
- Tenant will immediately notify applicable law-enforcement or security officers, or both, of any suspicious activity observed in the Spaceport.
- Any unresolved questions concerning Spaceport security will be directed to NMSA.

**10. Right of Entrance.** Subject to compliance with applicable export control laws, NMSA and its agents shall have the right at any time during normal business hours and upon reasonable notice to enter the Premises and/or Tenant Facilities to provide utility services and undertake maintenance and repair as necessary in accordance with Section 7 and Section 8 hereof and provided Tenant has either arranged for an escort or affirmatively waived the right to provide an escort. NMSA and its agents shall not make any alterations or additions to the Premises or Tenant Facilities without Tenant's prior written approval, and such activity shall be conducted only during normal business hours and upon reasonable notice. In undertaking maintenance and repair work or making alterations or additions to the Premises, NMSA shall use reasonable efforts to avoid and minimize interference with Tenant's business operations. Notwithstanding the foregoing, NMSA shall have the right to use any and all means that NMSA may deem proper to enter the Premises or Tenant Facilities in an emergency that involves fire or police activity.

Tenant has the right to control the movement of visitors to the Premises and Tenant Facilities. At the request of the NMSA and in accordance with Spaceport security policies, Tenant agrees to reasonably accommodate requests, but will not be obligated to do so, for visitors to see the Premises and Tenant Facilities provided that Tenant will have the right to require a Tenant representative be present to escort all such visitors. Non-Tenant personnel will coordinate the visitation with Tenant management to assure that no areas are accessed that would result in disruption of Tenant work schedules or would compromise confidential Tenant activities and that a Tenant representative is available to escort such visitors. The NMSA may elect to have an NMSA representative and/or Spaceport Security personnel escort any such visitors, along with the Tenant representative.

**11. Damage to the Premises.** Tenant is solely responsible for addressing damage occurring to any Tenant Facilities. In the event of damage causing a partial or total destruction of the Tenant Facilities during the Term, Tenant may cause the Tenant Facilities to be promptly repaired to a condition existing immediately prior to such damage, or as close thereto as applicable law will allow, with this Agreement to continue in full force and effect.

Notwithstanding the above provisions, if the damage to Tenant Facilities is caused by willful act, willful misconduct, or wanton or reckless disregard of NMSA or its agents, employees, contractors, officers, directors, licensees or invitees, rent shall abate hereunder and NMSA will be responsible for either: (i) reimbursing the Tenant promptly for the cost and expense incurred in such repair, rebuilding or construction; or (ii) directly incurring the cost and expense in such repair, rebuilding or construction, with such work to be approved prior to commencement by Tenant's written permission and completed to Tenant's satisfaction. Tenant will receive a pro rata abatement of the Rent based on the proportion of its business operations that are interrupted as a result of such damage. If applicable, this abatement will be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed to the extent necessary for Tenant to recommence the interrupted operations on a commercially reasonable basis. Thereafter, Tenant Payables will be calculated without regard for the period such Rent was reduced.

In its sole discretion, Tenant may utilize any insurance proceeds available to Tenant to repair damages to the Tenant Facilities and other property of Tenant; and NMSA's obligation of timely repair shall not be subject to or reduced or limited by receipt of any proceeds from Tenant. Insurance proceeds from NMSA's policies shall be held and disbursed by NMSA's lender or another financial institution approved by both NMSA and Tenant, as insurance trustee for the benefit of such lender (if any), NMSA and Tenant.

Damage to any Common Facilities that impedes Tenant business operations however caused, except as otherwise provided in this Agreement, shall be immediately repaired, to Tenant's reasonable satisfaction, at the sole cost and expense of NMSA.

Notwithstanding the above provisions, if the damage to Common Facilities is caused by willful act, willful misconduct, or wanton or reckless disregard of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees, rent shall not abate hereunder and Tenant will be responsible for either: (i) reimbursing the NMSA promptly for the cost and expense incurred in such repair, rebuilding or construction; or (ii) directly incurring the cost and expense in such repair, rebuilding or construction, with such work to be approved prior to commencement by NMSA's written permission and completed to NMSA's satisfaction. In order to expedite such repair, rebuilding or construction of Common Facilities so damaged, NMSA may apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 21. If the insurance proceeds available for the Common Facilities are not sufficient to pay the entire cost of such repairs, rebuilding or construction, Tenant will be responsible for all excess costs of the reconstruction. In the event the cause of the damage or destruction is by risk that is not covered by insurance of the type required in Section 21, and the damage is caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees or invitees, then Tenant will have the responsibility to provide promptly the funds necessary to pay the cost of the repairs, rebuilding or construction.

In the event of any total or partial destruction to the Common Facilities during the last three (3) months of the Term, if Tenant has not exercised any right to renew this Agreement, then notwithstanding the provisions above, NMSA shall have the right, exercisable by written notice to Tenant within 30 days following the event giving rise to the casualty or damage, to elect to retain all the proceeds of its own insurance for damage to the Common Facilities or Premises and to terminate this Agreement.

In the event that the damaged Facilities cannot be repaired as required herein under applicable laws, regulations, codes and restrictions, notwithstanding the availability of insurance proceeds, this Agreement shall terminate effective with the date of the damage occurrence, and NMSA and Tenant shall be entitled to retain all insurance proceeds available under their respective policies.



12. **Tenant's Assignment and Sublease.** Tenant shall have the right to assign or sublease the Premises or any part of the Premises at any time to a subsidiary or affiliate of Tenant that is majority held or controlled by Tenant, or to another qualified tenant with the prior written consent of NMSA. Tenant shall notify NMSA immediately upon the effective date of any sublease or assignment. All rent payable under a sublease, up to the full amount of the Rent due hereunder for the sublease term, shall be payable directly to NMSA, and Tenant's obligation to pay all or the portion of the Rent payable under the sublease shall cease during the term of such sublease. Upon assignment of this Agreement, the assignee shall succeed to all the rights, interests and obligations of Tenant, as tenant under this Agreement and all references hereunder to Tenant from and after the effective date of such assignment shall be a reference to Tenant's assignee as successor tenant. From and after such assignment, SpaceX shall be released from all obligations as Tenant arising from and after the effective date of such assignment, including but not limited to the obligation to pay Rent.
13. **Superiority.** This Agreement shall be prior and superior to the lien of any mortgages, deeds of trust or any other encumbrance in any amount(s) whatsoever now or hereafter placed by NMSA or any of its agents on or against the Premises or NMSA's leasehold interest in the Premises.
14. **Quiet Enjoyment.** NMSA covenants and agrees with Tenant that upon Tenant paying all Rent and other sums due under this Agreement, performing its covenants and conditions of the Agreement, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term and any Optional Term as against any adverse claim of NMSA or any party claiming under NMSA subject, however, to the terms of the Agreement.
15. **Default, Remedies.** The occurrence of any of the following shall constitute a material default and breach of this Agreement by Tenant:
- (a) Any failure by Tenant to pay the Rent or any other sums required to be paid hereunder, or any failure by Tenant to provide any required insurance, where any such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant; or
  - (b) A failure by Tenant to observe and perform any other provision of this Agreement to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant. However, if the nature of the default is such that the default cannot be reasonably cured within the ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period of time commence such cure and thereafter diligently prosecute the same to completion.

In the event of any such default or breach by Tenant, NMSA may at any time thereafter, to the extent permitted by law or regulation:

- (a) Obtain any insurance which Tenant has failed to obtain within the required time (in accordance with Section 21, below) at the expense of Tenant and without waiving the default until Tenant reimburses such cost;
- (b) Maintain this Agreement in full force and effect, and recover the Rent and charges as they become due and/or sue for damages due to Tenant's default hereunder, without terminating this Agreement and Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Premises.

As an agency of the State, NMSA, its board members, executives, employees, contractors, agents and other persons acting for and on behalf of NMSA, without exception, shall not be personally liable for any obligation or liability arising under this Agreement.

Without notice by Tenant, NMSA shall be in default under this Agreement if NMSA fails to perform any obligations required of NMSA in a prompt manner, but in no event later than ten (10) days after the date on which the obligation is required to be performed. However, if the nature of NMSA's obligation is such that more than ten (10) days are required for performance, (other than maintaining the effectiveness of all insurance coverage required by NMSA under Section 21 hereof), then NMSA shall not be in default if NMSA commences performance within such ten (10) day period and thereafter diligently prosecutes same to completion. Tenant agrees that any such mortgagee or deed of trust holder shall have the right to cure such default on behalf of NMSA within a period of not more than thirty (30) days from the date on which the obligation was required to be performed.

If NMSA shall default or breach in the performance of any of its obligations under this Agreement, Tenant shall be entitled to institute any suit, action or proceeding in the exercise of any right or remedy at law or in equity which Tenant may have by reason of such default or breach, including, but not limited to pursuing damages or other remedies as may be appropriate, including the appointment of a receiver.

- 16. License.** NMSA hereby grants to Tenant ("Licensee") and its Representatives the exclusive right to film, photograph, videotape or otherwise make recordings or capture footage ("Recordings") of and at the Spaceport during the Flight operations, pre-Flight activity, or post-Flight activity, within and for the specific purposes of making a Flight highlights reel, referred to herein as the "Production".

NMSA further grants to Licensee and/or its Representatives the non-exclusive, worldwide, royalty-free and perpetual right to use the SPACEPORT AMERICA name and logo as listed in Exhibit E ("Licensed Marks"), and all other various trademarks and/or service marks depicted in any Recordings, within and for the specific purposes of the Production.

NMSA acknowledges and agrees that Licensee and its Representatives shall solely and exclusively own and control all right, title and interest in the Recordings and the Production and all elements and components thereof, including all exploitation thereof, in all media worldwide, in perpetuity. Licensee and its Representatives may exhibit, advertise, broadcast, distribute and promote the Production or any portion thereof, whether or not such uses contain audio and/or visual reproductions with or without visual alteration of the Spaceport so long as the Spaceport's other tenants are not identified, in any and all media which currently exist or which may exist in the future in the universe and in perpetuity. Licensee and its Representatives may copyright all advertisements and/or promotional materials containing representations of the Production, however, submission for review and approval by NMSA of the excerpts of the Production and any advertisement or promotional material containing Licensed Marks shall be required. Captions accompanying Recordings that identify the Spaceport's location must either refer to its location as Spaceport America, New Mexico or mention that Spaceport America is a registered trademark of the State of New Mexico.

Following Licensee's initial public distribution of the Production or any Recordings, NMSA may request, non-exclusive, worldwide, royalty-free and perpetual rights for usage of the Production and/or said Recordings from the Licensee for promotion of and use within its onsite public visitor experience, approval of such requests shall not be unreasonably withheld, conditioned or delayed.

- 17. Trademark Use; Ownership; Enforcement; Validity.** Licensee shall use the Licensed Marks at all times only relating to the Production. When using the Licensed Marks under this Agreement, Licensee undertakes to comply substantially with all pertinent laws (United States and foreign) pertaining to service marks and trademarks. This provision includes compliance with marking requirements as set forth within NMSA's brand/identity standards manual, including proper use of the ® symbol and ™ symbol with the Licensed Marks and inclusion of statements that NMSA is the owner of the Licensed Marks. Notwithstanding anything to the contrary herein, the Licensed Marks may not appear on any of

Licensee's business documents, such as business cards, invoices, order forms and stationery without the prior written approval of NMSA, except that on such documents Licensee shall be permitted to state that it is an official licensee of the Licensed Marks from NMSA.

The Licensed Marks may not be joined or juxtaposed with any mark or name or logo of the Licensee or any mark or name of any third party (e.g., Virgin Galactic) without written permission from NMSA. The Licensed Marks may be used in association with images (e.g., photographs, drawings, artwork) provided such images are: (1) owned by Licensee; or (2) licensed to Licensee by the owner of such image(s), such as set forth above; and (3) do not constitute a mark or name or logo of either the Licensee or a third party.

The Parties acknowledge NMSA's exclusive right, title and interest in and to the Licensed Marks and any registrations that have issued or may issue thereon, and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair part of such right, title and interest. In connection with the use of the Licensed Marks, Licensee shall not in any manner represent that it has any ownership in the Licensed Marks or registrations thereof, and the Parties acknowledge that all use of the Licensed Marks shall inure to the benefit of NMSA. Licensee will not at any time adopt or use or register without NMSA's prior written consent, any word or mark or symbol which is likely to be considered confusingly similar to the Licensed Marks. On expiration or termination of this Agreement in any manner, Licensee will cease and desist from all use of the Licensed Marks, and will deliver up to NMSA, or its duly authorized representatives, all materials regardless of the medium (e.g., printed, electronic) in or upon which any of the Licensed Marks appears or is incorporated.

NMSA retains the right to sue or take other action against infringers of the Licensed Marks and Licensee will reasonably cooperate with NMSA including, at the request of NMSA, joining in any suit or enforcement action and signing all necessary documents. The expenses of such actions or suits shall be paid in advance by NMSA, and any and all recoveries from any such action, suit or settlement thereof shall belong exclusively to NMSA. At its own cost and expense, Licensee may retain counsel of its own choosing. In the event that NMSA declines to sue or take other action, subject to a written understanding between the Parties, Licensee may sue or take other appropriate action.

Licensee agrees to immediately notify NMSA whenever Licensee is aware or becomes aware of an unlicensed third party infringing or possibly infringing the Licensed Marks.

In the event that Licensee questions or challenges, directly or indirectly, the validity or enforceability of the Licensed Marks or assists any other person in doing so, NMSA shall have the right to terminate this Agreement.

- 18. Warranties; Disclaimers.** Licensee acknowledges, represents, and warrants that it has authority to enter into this Agreement, and that the person signing on its behalf is duly authorized to sign.

NMSA represents and warrants that it is the owner of the Licensed Marks, that it is not aware of any adverse claim to the Licensed Marks, that the undersigned has the full right and complete authority to enter into this Agreement and that the consent of no other party is necessary to grant the rights conveyed to Licensee hereunder or to use the Spaceport as described above.

EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, THE LICENSED MARKS ARE LICENSED "AS IS". NMSA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND IN THIS AGREEMENT AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THIS AGREEMENT.

Without limiting the preceding disclaimer, NMSA makes no representations or warranties, express or implied, as to the validity or scope of protection of any of the Licensed Marks, or that the Licensed Marks may be used without infringing intellectual property rights of third parties.

19. **Confidentiality.** Tenant has disclosed or will disclose to NMSA information, whether written, graphic, oral, electronic, or in any other form. Certain of that information ("Confidential Information") is proprietary technical information and/or relates to the possible relocation or expansion of a business. When Tenant submits Confidential Information or updates thereto to NMSA, Tenant shall specifically identify to NMSA the information that it considers to be Confidential Information. Confidential Information does not include information that is not specific to Tenant or its business, is publicly available when received by NMSA, is lawfully obtained by NMSA from a source other than Tenant, or is independently developed by NMSA without the use of Confidential Information.

NMSA will hold Confidential Information in strict confidence, will take all reasonable precautions to protect Confidential Information, will not disclose Confidential Information to any persons outside NMSA, will not make use of Confidential Information except for the sole limited purpose of evaluating Confidential Information within NMSA to determine whether to enter into a relationship with Tenant and to perform according to that relationship if it is entered into, and will promptly notify Tenant of any unauthorized disclosure or use of Confidential Information and to take all reasonable steps to remedy it.

The New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1, et seq. ("IPRA") establishes policy that favors broad disclosure of information provided to or by public agencies, which may be lawfully subject to inspection notwithstanding the existence this Agreement. Confidential Information is exempt from inspection under IPRA because it contains proprietary technical information or information related to the possible relocation or expansion of a business. If there is a public records request for Confidential Information, NMSA will maintain the confidentiality of Confidential Information and not disclose it.

Confidential Information is and remains Tenant's property. Upon a decision by NMSA or Tenant not to enter into a business relationship or a request by Tenant, NMSA shall cease using Confidential Information and return it to Tenant. Nothing herein requires NMSA or Tenant to enter into any business relationship or to refrain from entering into any relationship with any third parties, even if such relationship relates to subject matter similar or identical to that contemplated by this Agreement.

Tenant's disclosure of Confidential Information to NMSA does not constitute publication of the Confidential Information for patent or copyright purposes or a release of the Confidential Information into the public domain. NMSA will not use Tenant's disclosure of Confidential Information to NMSA to impede or challenge Tenant's application for patent, copyright, or other legal protection. The disclosure of Confidential Information does not grant any right or license to any intellectual property or make any representation or warranty, express or implied, unless specified elsewhere in the Agreement.

Because of the unique nature of the Confidential Information, there is no adequate remedy at law for NMSA's breach of its obligations under this Agreement and any such breach will cause Tenant irreparable harm. NMSA is subject to the protections and limitations of the New Mexico Tort Claims Act, (Section 41-4-1 et seq. NMSA 1978).

20. **Environmental Requirements.** The Parties conduct and operations as related to any operations involving or arising from the Parties use of the Facilities or the Land will at all times be in compliance with 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 Spaceport ("Environmental Laws"). Without limiting the



generality of this requirement, the Parties will at all times handle any material, waste, or substance that is 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 ("Hazardous Substances") in a manner consistent with aerospace industry best management practices and Environmental Laws.

Tenant will be solely responsible for the proper removal and disposal of all Hazardous Substances or any storage tank, whether above or below ground, or any pump, waste oil apparatus, or related line (collectively, "Storage Tanks") to be constructed, repaired, modified or removed on or from the Facilities, or otherwise generated by Tenant or resulting or arising from Tenant's activities or operations at the Facilities or the Land, including the ground occupied by the Common Facilities, not just the Tenant Facilities, as well as on adjacent waterways and in groundwater. Such removal and disposal will include, but not be limited to, Tenant's manifesting such Hazardous Substances under Tenant's assigned Environmental Protection Agency Identification Number and ensuring that removal of such Hazardous Substances from the Facilities or the Land is accomplished in accordance with Environmental Laws. Additionally, Tenant will be solely responsible for contamination that impacts the Facilities or the Land as a result of the storage, handling, release, removal or disposal of any substances used by Tenant or Tenant's agents, employees, licensees, invitees, contractors, officers, directors or any other persons acting by or through or on behalf of Tenant. To the extent that the NMSA (or any other tenant of NMSA) generates Hazardous Substances, if at all, the NMSA (or such other tenant of NMSA) will be solely responsible for the proper removal, disposal and/or remediation of said Hazardous Substances.

Tenant shall within thirty (30) Days after any event notify the NMSA and deliver to the NMSA copies of all documentation related to any of the following:

- Any application or other documentation by Tenant or any other Person on behalf of Tenant related to any Environmental Laws affecting or concerning the Facilities or the Land;
- Any event requiring notice under an Environmental Law has occurred, including copies of all such notices;
- Any permit, license, approval or amendment or modification of any permit, license or approval related to any operations involving or arising from the Facilities or the Land;
- Any plan or specification relating to any Storage Tanks;
- Any completed SARA forms required for Tenant's operations, and any amendments or modifications of such SARA forms.

Upon reasonable advance written notice, Tenant will provide to the NMSA any record related to any operations involving or arising from the Facilities or the Land required to be maintained pursuant to any Environmental Law.

If a release or threatened release of a Hazardous Substance or any contamination relating to or arising from Tenant's use or occupancy of the Facilities or the Land occurs, Tenant will immediately notify the NMSA in writing within twenty four (24) hours after the release or threatened release has occurred. Tenant will immediately stabilize the site of the release or threatened release in a manner consistent with best management practices and will notify the NMSA when such stabilization is complete.

Within a reasonable time frame, Tenant and NMSA, in conjunction with a licensed environmental firm, will develop a remediation action plan ("Remediation Plan") that complies with environmental law. Once the Remediation Plan has received approval from Tenant, NMSA and other entities as applicable, Tenant will execute the Remediation Plan as soon as reasonably possible and will work expeditiously to remediate the Facilities at Tenant's sole expense.

If Tenant fails to clean up, properly dispose of, remove, or repair any operation or condition that relates to a Hazardous Substance, Storage Tanks, release, threatened release, or violation of Environmental Law, or if Tenant fails timely to complete a Remediation Plan, the NMSA 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 NMSA will be at Tenant's sole cost and expense, and Tenant will indemnify, pay for or reimburse the NMSA for any and all reasonable and documented out-of-pocket costs, including administrative overhead and legal fees, that the NMSA incurs as a result of such action. Tenant hereby acknowledges that the NMSA has a right of entry to the Facilities and the Land and appoints the NMSA as its agent for the purposes described in this Section.

Tenant will not install any Storage Tanks without the prior written consent of the NMSA, which consent will not be unreasonably withheld, conditioned or delayed. Tenant will maintain any approved Storage Tank in good working order, consistent with best management practices and in accordance with Environmental Laws.

In addition to all other remedies available to the NMSA under this Agreement, Tenant will indemnify, defend and save harmless the NMSA, its officers, agents, board members, commissions, employees, successors and assigns from and against any and all environmental claims arising out of the acts or omissions of Tenant or Tenant's agents, employees, contractors, officers, directors, licensees or invitees, except to the extent arising out of the willful act or willful misconduct of the NMSA. This indemnity will survive the expiration or termination of this Agreement.

In addition to any other rights of entry or inspection contained in this Agreement, the NMSA may, upon no less than forty eight (48) hours' advance written notice to Tenant, conduct reasonable inspections, tests, samplings, split samples or other investigations pertaining to environmental matters, subject to compliance with applicable export control laws and accompaniment by a representative of Tenant. NMSA will provide to Tenant a copy of the results of any testing that occurs during an inspection.

21. **Insurance.** During the Term, Tenant shall procure and maintain all insurance coverage required by New Mexico law or the Federal Aviation Administration, including without limitation comprehensive liability policies of insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and Twenty Million Dollars (\$20,000,000.00) in the aggregate. Tenant shall also procure and maintain Automobile Liability Insurance for owned, rented or non-owned vehicles used in operations at the Spaceport and Commercial General Liability Insurance with limits of One Million and No/100s Dollars (\$1,000,000.00) per occurrence and no less than Five Million and No/100s Dollars (\$5,000,000.00) in the aggregate single limit liability for bodily injury, including death, and property damage, or the maximum liabilities set out in the New Mexico Tort Claims Act (Section 41-4-1 et seq. NMSA 1978), whichever is greater. Said policies of insurance will include coverage for Tenant's personal property, including Tenant Fitout and other Tenant Improvements on or at the Premises, as required by New Mexico law, as well as coverage for the Premises, operations and Tenant's contractual liability to the NMSA that may arise under this Agreement. Contractual liability coverage will specifically insure all indemnification provisions of this Agreement, and shall name the following as additional insured parties:

New Mexico Spaceport Authority  
901 E. University Ave Suite 965L  
Las Cruces NM 88001  
575-373-6110

State Land Office/Commissioner of Public Lands  
P.O. Box 1148

Santa Fe NM 87504-1148  
505-827-5760

Sierra County  
855 Van Patten Street  
Truth or Consequences NM 87901  
575-894-6215

Bureau of Land Management  
1800 Marquess Street  
Las Cruces NM 88005  
(575) 525-4300

Dofia Ana County  
845 N. Motel Blvd  
Las Cruces NM 88007  
(575) 647-7200

Tenant shall furnish a certificate of insurance for these policies to NMSA, Attn: Business Operations Manager, at the Notice Address contained within the Agreement, prior to the First Flight.

The insurance policies will include coverage for all use of, activities on, or operations with respect to all Facilities, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. If new or changed State or federal laws mandate an increase in insurance coverage limits, Tenant will timely comply with the required limits, and such increases will not be subject to dispute resolution.

NMSA will have no liability for any premiums charged for such coverage, and the inclusion of NMSA as an additional insured is not intended to, and will not make NMSA a partner or joint venturer with Tenant in its operations on the Spaceport. All insurance policies issued pursuant to this Section will be written as primary policies that may not be interpreted as contributing policies or as excess coverage. All Tenant property insurance policies will expressly waive all claims or rights of subrogation, if any, against the NMSA or the State.

Tenant and all of Tenant's agents, employees, contractors, officers, directors, licensees or invitees will use due care and diligence in all of its or their activities and operations at the Spaceport.

Tenant will defend, indemnify and hold harmless the NMSA and the NMSA's officers, and employees 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 NMSA 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 willful act, willful misconduct of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees arising out of the operations of Tenant under this Agreement, except to the extent arising out of the willful act, willful misconduct of the NMSA or its agents, employees, contractors, officers, board members, licensees or invitees. This indemnity will survive the expiration or termination of this Agreement. Nothing herein will be deemed to override the waiver of claims/waiver of subrogation provision set forth above.

To the extent permitted under their respective insurance policies, NMSA and Tenant waive all rights, against each other, for recovery of damages arising out of any damage to or destruction of the Premises caused by fire or other perils insured against. Neither this waiver nor any policy limits required under this Agreement shall be deemed to limit the obligation of NMSA to repair and/or replace the Premises as provided herein.

Tenant and its Representatives acknowledge and agree that at all times while on the Premises, Tenant and its Representatives will retain care, custody, and control of their property, and shall be responsible for the acts or omissions of Tenant and its employees, agents, and invitees. Any of said property left unattended at the Spaceport is done so at their own risk and liability. Except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA, Tenant waives all past, present, and future claims against the NMSA, whether known or unknown, regarding damage to Tenant's property while at or en route to or from the Spaceport. Tenant agrees that it will not, at any time in the future, bring any claim, suit, or cause of action against the NMSA or the State arising out of or in any way related to damage to Tenant's property while at or en route to or from the Spaceport, except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA.

22. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of New Mexico without regard to the conflicts of laws or choice of law provisions thereof. Tenant consents to jurisdiction and venue of the State's First Judicial District Court, Santa Fe County for any dispute under this Agreement. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State shall have in personam jurisdiction over each of them and be considered the appropriate venue for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this agreement. Each Party hereby authorizes and accepts service of process sufficient for in personam jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement.
23. **No Waiver.** The waiver of any breach of this Agreement or the failure or delay of either Party to enforce any right under this Agreement shall not constitute, or be construed as, a waiver of any other breach of this Agreement, whether of similar nature or otherwise, nor operate to bar the enforcement of any right under this Agreement.
24. **Independent Relationship.** Nothing herein contained shall be deemed to create an employment, agency, joint venture or partnership relationship between the parties hereto or any of their agents or employees, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.
25. **Entire Agreement; Amendment.** This Agreement, including the Exhibits hereto, which are incorporated herein by reference, sets forth the complete, final and exclusive agreement and supersedes and terminates any prior agreements or understandings between the Parties with respect to the subject matter hereof; provided that in the event of a conflict between this Agreement and either any of the Attachments attached hereto, this Agreement shall govern. Any amendment, waiver or modification to this Agreement is not valid and binding unless made in writing and signed by both Parties.



26. **Notice.** Each notice required or permitted to be given or sent under this Agreement shall be given in writing by certified (return receipt requested), first class mail or by courier (signature required), to the Parties at the addresses indicated below.

If to NMSA to: New Mexico Spaceport Authority  
Attention: Christine Anderson  
901 E. University Ave., Suite 365L  
Las Cruces, New Mexico 88001  
Telephone No.: (575) 373-6110  
Facsimile No.: (575) 373-6120

With a copy to: Wade Jackson, General Counsel  
New Mexico Economic Development Department  
1100 St. Francis Drive, Suite 1060  
Santa Fe NM 87505  
Telephone No.: (505) 827-0241  
Facsimile No.: (505) 827-0328

If to Tenant to: SpaceX DC Operations  
Attention: Steve Davis  
1030 15<sup>th</sup> Street NW, Suite 220E  
Washington, DC 20005  
Telephone No.: (202) 649-2715

With a copy to: Tim Hughes, General Counsel  
1030 15<sup>th</sup> Street NW, Suite 220E  
Washington, DC 20005  
Telephone No.: (202) 649-2700

Any such notice shall be deemed to have been received, in the case of certified, first class mail, three (3) days after the certified mailing date if the letter is properly addressed and postage prepaid or, in the case of courier, upon actual delivery to the proper place of address. Either Party may change its address by giving the other Party written notice pursuant to this Section.


27. **Force Majeure; Postponement.** Failure of any Party to perform its obligations under this Agreement shall not subject such Party to any liability or place it in breach of any term or condition of this Agreement if such failure is due to Force Majeure or any cause beyond the reasonable control of such nonperforming Party, including without limitation, acts of God, fire, explosion, flood, disease, drought, war, riot, sabotage, embargo, strikes or other labor trouble, interruption of or delay in the national transportation system, a national health emergency or compliance with any order or regulation of any government entity; provided however, that the Party affected shall promptly notify the other Party of the condition constituting force majeure and shall use reasonable efforts to eliminate, cure and overcome any such causes and to resume performance of its obligations with all possible speed. If a condition constituting force majeure as defined herein exists for more than ninety (90) days in the aggregate during the Term, the Parties shall meet to negotiate a mutually satisfactory solution, if practicable.
28. **Severability.** In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of at least one of the Parties. The Parties shall, in such an event, use their best efforts to replace the invalid, illegal or unenforceable provision(s)

with valid, legal and enforceable provision(s) which, insofar as practical, implements the purposes of this Agreement.

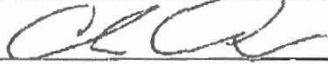
29. **Binding Nature of Agreement.** This Agreement shall be binding on all personal representatives, heirs, successors, and assigns of the Parties hereto.
30. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and altogether constitute one and the same Agreement. Electronically communicated signatures shall be considered original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

SPACE EXPLORATION TECHNOLOGIES CORP

By:   
Steven Davis  
Director  
Date: 10/7/13

NEW MEXICO SPACEPORT AUTHORITY

By:   
Christine Anderson  
Executive Director  
Date: Oct 2, 2013


By:   
Richard Holdridge  
Chairman  
Date: 4 Oct 13

Exhibit A – Premises

Area 1: 2.13 acres





Fiber corridor is 984 ft long x 4 ft wide for total acreage of 3,936 square feet (0.090 acres).

Coordinates of the fiber "ductbank" (exit point from apron):

32 deg 59 min 20.41 sec N  
106 deg 58 min 30.55 sec W

Coordinates of turning point:

32 deg 59 min 18.44 sec N  
106 deg 58 min 29.97 sec W

Coordinates of SpaceX terminus:

32 deg 59 min 14.47 sec N  
106 deg 58 min 37.79 sec W



**Area 2: 28.45 Acres**

NE: 32°56'52.0"N 106°54'32.8"W  
E-Mid: 32°56'46.0"N 106°54'32.7"W  
Center: 32°56'46.0"N 106°54'42.0"W  
S-Mid: 32°56'40.0"N 106°54'42.0"W  
SW: 32°56'39.8"N 106°54'51.4"W  
W-1/6: 32°56'49.7"N 106°54'51.6"W  
NW-Cor: 32°56'49.7"N 106°54'42.2"W  
N-Mid: 32°56'51.8"N 106°54'42.2"W

Note: The large existing pad (approximately 1 acre) located within this area will be licensed to use and not leased.  
Pad coordinates are:

NE: 32°56'49.0"N 106°54'36.3"W  
SE: 32°56'47.1"N 106°54'36.3"W  
SW: 32°56'47.0"N 106°54'38.7"W  
NW: 32°56'49.0"N 106°54'38.7"W



### Exhibit B – Tenant Facilities

Tenant Facilities are expected to include, but are not limited to, office trailers, the launch pad, the "taxiway," and additional concrete pads and foundations to support the tankage for various fluids.

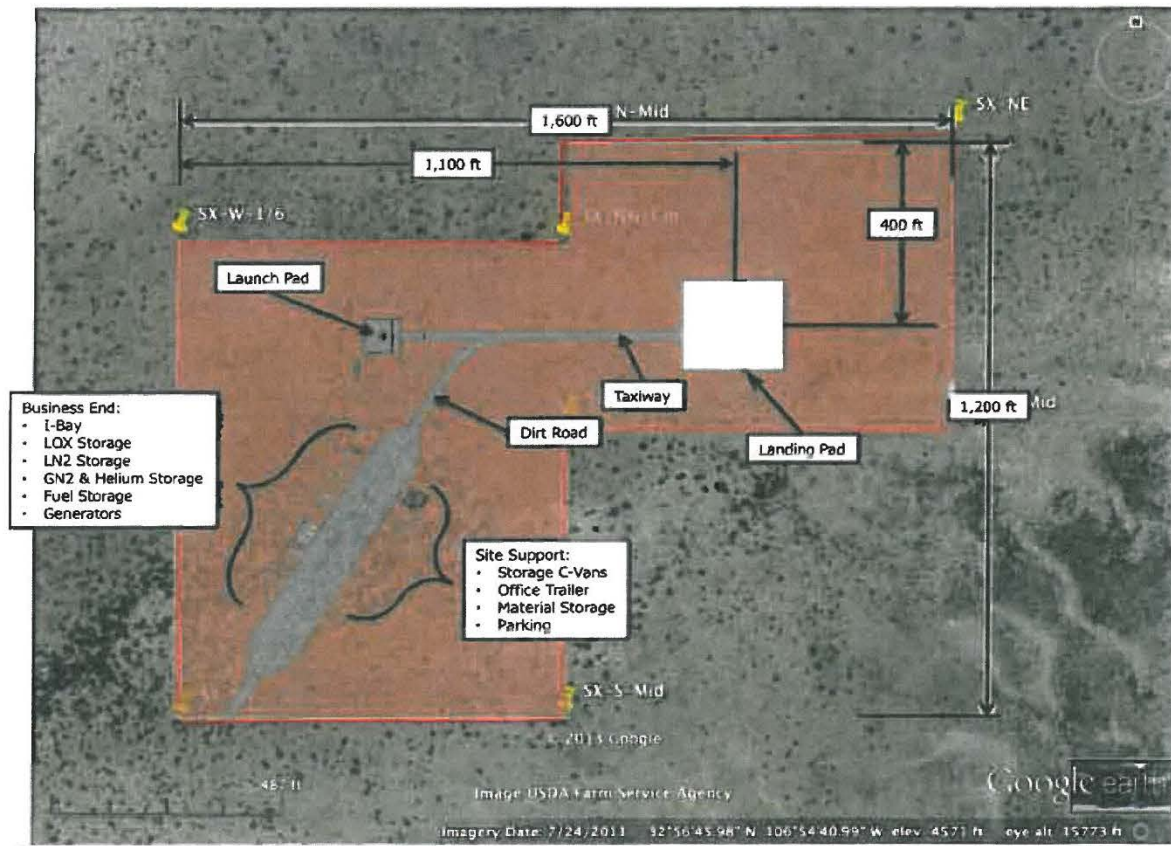


Business Proprietary and Confidential Information

The approximate coordinates of the launch pad (currently planned to be 40 ft x 40 ft) are:

NE: 32°56'48.1"N 106°54'46.0"W  
SE: 32°56'47.4"N 106°54'46.0"W  
SW: 32°56'47.4"N 106°54'46.9"W  
NW: 32°56'48.1"N 106°54'46.9"W

The launch pad will be approximately 600 ft west of the landing pad (edge-to-edge). The two pads will be connected by a "taxiway" that will be 12-15 ft wide.



Business Proprietary and Confidential Information

**Exhibit C – Common Facilities**

EXISTING FACILITIES
Runways
Partial Taxiways
Apron
Helicopter landing area
Roadways sufficient for passage to the Spaceport, the Premises and Vertical Launch Infrastructure
Site(s) and vehicle(s) for crash, fire and rescue services
Fuel storage area(s)
Water wells and associated infrastructure
Sufficient motor vehicle parking for employees
Spaceport Operations Center mission control and emergency operations center
Communications infrastructure and fiber optic network, including a wireless millimeter wave connection to fiber optic network
Vertical Launch Infrastructure, including 40000 ft 2 launch pad
PLANNED FACILITIES
Restaurant / concessions, when activated as part of the visitor experience
Multi-purpose training facilities and conference rooms, when activated as part of the visitor experience
U.S. Postal Services pickup/drop station, when activated as part of the visitor experience



**Exhibit D – User Fees**

Flight Periods up to, and including:	10	25	50	100	Greater than 100
All Inclusive User Fee	\$25,000	\$20,000	\$16,000	\$13,000	\$10,000
<b>MAX TOTAL USER FEES</b>	<b>\$250,000</b>	<b>\$550,000</b>	<b>\$950,000</b>	<b>\$1,600,000</b>	<b>-</b>

One-time, upfront fees to cover NMSA time and materials in preparing Common Facilities for Tenant use shall amount to \$1,500.

**Exhibit E – Licensed Trademarks**

**SPACEPORT AMERICA – Registration 3,879,182**

**SPACEPORT AMERICA (Logo)**

**Primary Identity** 4 color



2 Color



Grayscale



Graytone



Black and White



NEW MEXICO SPACEPORT AUTHORITY – SPACE EXPLORATION TECHNOLOGIES CORP

AMENDMENT NO. 2 TO LEASE AGREEMENT,

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE REFERENCED LEASE AGREEMENT ARE AMENDED AS FOLLOWS:

4. **Rent.** Tenant shall pay NMSA as rent (“Initial Rent”) for the Premises the sum of Three Thousand Six Hundred and Fifty One and No/100s Dollars (\$3,651.00) per month, during the Initial Term. Tenant shall pay the first month’s rent on the Effective Date, such rent to be applied to rent due to NMSA from Tenant but shall not be refundable if the Tenant does not take possession of the Premises. Initial Rent shall be paid monthly in advance on the date Tenant takes possession of the Premises or begins construction of Tenant Improvements on the Premises, whichever is earliest (also the “Initial Rent Commencement Date”) and on the first day of each month thereafter, without any deduction, offset, prior notice or demand whatsoever (except as expressly provided herein).

Upon execution of the LEASE AGREEMENT, AMENDMENT NO. 2, which shall be effective as of the date of the last signature to the LEASE AGREEMENT, AMENDMENT NO. 2, the Initial Rent shall increase to Three Thousand Nine Hundred and Eighty Six and No/100s Dollars (\$3,986.00) per month, during the Initial Term, in consideration for the addition of Area 3 and Area 4 to the Premises and for other effects of the LEASE AGREEMENT, AMENDMENT NO. 2.

*All other paragraphs of this section remain the same. Capitalized terms used in this LEASE AGREEMENT, AMENDMENT NO. 2 and not defined herein shall have the meanings ascribed to such terms in the original LEASE AGREEMENT amended hereby*

7. **Utilities.** NMSA shall provide access to the Spaceport’s main distribution facility environment for housing and connection of Tenant Improvements to the site’s fiber backbone. NMSA shall facilitate connection between the fiber backbone and Tenant-furnished fiber optic cable terminated in the Spaceport’s main distribution facility.

NMSA shall provide access to the Spaceport’s electrical distribution infrastructure to enable Tenant to install Tenant Improvements to connect permanent power to Tenant and Common Facilities on the Premises. Tenant shall install meters at each point of connection to the electrical distribution infrastructure in accordance with NMSA specifications, and Tenant shall also install junction boxes to facilitate maintenance and future expansion as reflected in Exhibit A. Meters shall be installed as reflected in Exhibit A, i.e. a meter at the Waste Water Treatment Plant and by the mission control trailers in Area 3 and Area 4, respectively. These Tenant Improvements connecting utility services to Tenant and Common Facilities are collectively designated the “Utility Corridor.”

Tenant agrees to pay all usage charges or other expenses for water, electric generators and/or associated fuel, electricity, telephone, communications infrastructure housing, janitorial and domestic trash pickup and any other utilities provided by NMSA on the Premises. Billing shall be conducted in accordance with a mutually acceptable “Service Level Agreement”.

NMSA reserves the right to connect additional infrastructure to junction boxes on the Utility Corridor for the use of NMSA or its designees. However, Tenant shall, at a minimum, have the right to exclusive use of the Utility Corridor infrastructure and services provided through the Utility Corridor during Flight Periods and during the 3 day period prior to and following a Flight Period unless Tenant otherwise grants permission for non-exclusive use during these periods. In no event shall NMSA's installation of additional infrastructure to, or use of services from, the Utility Corridor interfere with Tenant's activities. For the avoidance of doubt, should NMSA cause such interference then the abatement provisions of this section shall apply. NMSA shall at its own cost independently meter its use of utility services at the junction boxes (see Exhibit A) and shall bear all costs of its own use of utility services from the Utility Corridor. NMSA shall be responsible for any damage, repair, maintenance, or operational costs incurred by NMSA's installation of additional infrastructure to, or use of services from, the Utility Corridor in accordance with the provisions of Section 11 of this Agreement.

*All other paragraphs of this section remain the same.*

- 10. Right of Entrance.** Subject to compliance with applicable export control laws, NMSA and its agents shall have the right at any time during normal business hours and upon reasonable notice to enter the Premises and/or Tenant Facilities to provide utility services and undertake maintenance and repair as necessary in accordance with Section 7 and Section 8 hereof and provided Tenant has either arranged for an escort or affirmatively waived the right to provide an escort. NMSA and its agents shall not make any alterations or additions to the Premises or Tenant Facilities without Tenant's prior written approval, and such activity shall be conducted only during normal business hours and upon reasonable notice. In undertaking maintenance and repair work or making alterations or additions to the Premises, NMSA shall use reasonable efforts to avoid and minimize interference with Tenant's business operations. Notwithstanding the foregoing, NMSA shall have the right to use any and all means that NMSA may deem proper to enter the Premises or Tenant Facilities in an emergency that involves fire or police activity.

NMSA and its designee(s) reserve the right to enter at will for passage across Area 3 and Area 4 within the Premises (see Exhibit A) and across all underground portions of the Utility Corridor. Where the public has a present right to passage across spaceport property, such as county roads, this Agreement is subject to the public's right of passage. However, nothing in this section shall be construed to limit Tenant's rights to exclusivity during Flight Periods.

*All other paragraphs of this section remain the same.*

**Exhibit A - Premises.**

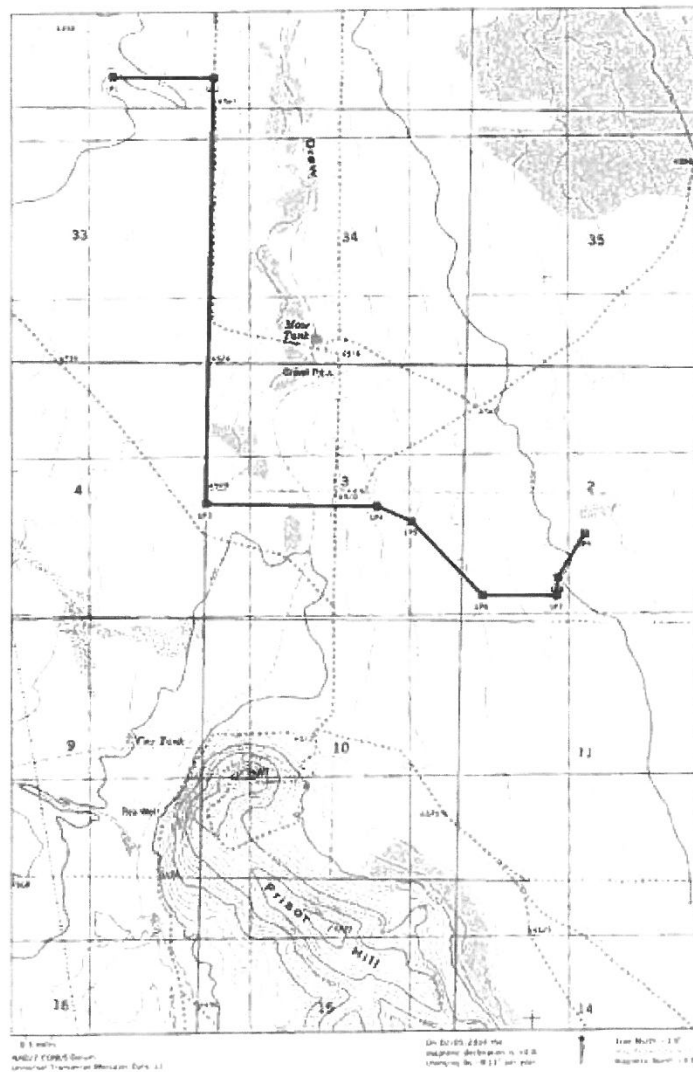
*(appended to the end of the section)*



**Area 3: 2.79 acres**

32 deg 58 min 10.67 sec	106 deg 56 min 47.04 sec – Point of Connection / Meter Location
32 deg 58 min 10.67 sec	106 deg 56 min 22.80 sec
32 deg 56 min 43.64 sec	106 deg 56 min 22.81 sec
32 deg 56 min 43.28 sec	106 deg 55 min 41.70 sec
32 deg 56 min 40.33 sec	106 deg 55 min 33.39 sec
32 deg 56 min 25.50 sec	106 deg 55 min 15.85 sec – Junction Box Location
32 deg 56 min 25.59 sec	106 deg 54 min 57.67 sec – Junction Box Location
32 deg 56 min 29.25 sec	106 deg 54 min 57.69 sec
32 deg 56 min 38.32 sec	106 deg 54 min 51.08 sec

Total distance is 20,246 ft = 3.8345 mi (6 ft wide)



**Area 4: 0.02 acres**

32 deg 59 min 13.6 sec N 106 deg 58 min 36.5 sec W – Point of Connection / Meter Location  
32 deg 59 min 15.5 sec N 106 deg 58 min 37.3 sec W

Total distance is 203 ft = 0.03845 miles (4 ft wide)



**Exhibit B - Tenant Facilities.** Tenant Facilities are expected to include, but are not limited to: office trailers; the launch pad; the "taxiway"; communications and electrical ducts, junction boxes, meters, fiber and cable; fencing; communications equipment; fuel tanks; generators; and additional concrete pads and foundations to support the tankage for various fluids.

*All other paragraphs of this section remain the same.*

*All other sections of this Agreement remain the same.*



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

**SPACE EXPLORATION TECHNOLOGIES CORP**


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

Steven Davis

Director

Date: 2/10/14\_\_\_\_\_

**NEW MEXICO SPACEPORT AUTHORITY**

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

Christine Anderson

Executive Director

Date: 2/10/14\_\_\_\_\_

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

Richard Holdridge

Chairman

Date: 2/10/14\_\_\_\_\_



**NEW MEXICO SPACEPORT AUTHORITY – SPACE EXPLORATION TECHNOLOGIES CORP**

**AMENDMENT NO. 3 TO LEASE AGREEMENT,**

Capitalized terms used in this LEASE AGREEMENT, AMENDMENT NO. 3 and not defined herein shall have the meanings ascribed to such terms in the original LEASE AGREEMENT amended hereby.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE REFERENCED LEASE AGREEMENT ARE AMENDED AS FOLLOWS:

**Exhibit A - Premises**

**Area 1: 2.13 acres**



**Business Proprietary and Confidential Information**

The coordinates of each corner of Area 1 are:

32°59'16.6"N 106°58'37.4"W  
32°59'14.4"N 106°58'37.1"W  
32°59'14.0"N 106°58'42.1"W  
32°59'16.1"N 106°58'42.0"W



Fiber corridor is 984 ft long x 4 ft wide for total acreage of 3,936 square feet (0.090 acres).

Coordinates of the fiber "ductbank" (exit point from apron):

32 deg 59 min 20.41 sec N

106 deg 58 min 30.55 sec W

Coordinates of turning point:

32 deg 59 min 18.44 sec N

106 deg 58 min 29.97 sec W

Coordinates of SpaceX terminus:

32 deg 59 min 14.47 sec N

106 deg 58 min 37.79 sec W

## Area 2: 28.45 Acres

N1: 32°56'51.3"N 106°54'34.0"W

N2: 32°56'45.0"N 106°54'34.0"W

N3: 32°56'45.0"N 106°54'42.0"W

N4: 32°56'35.9"N 106°54'48.7"W

N5: 32°56'38.6"N 106°54'53.6"W  
N6: 32°56'44.8"N 106°54'49.0"W  
N7: 32°56'51.3"N 106°54'49.2"W

Note: The large existing pad (approximately 1 acre) located within this area will be licensed to use and not leased.

Pad coordinates are:

NE: 32 56'49.0N 106 54'36.3"W  
SE: 32 56'47.1 N 106 54'36.3"W  
SW: 32 56'47.0N 106 54'38.7W  
NW: 32 56'49.0"N 106 54'38.7"W



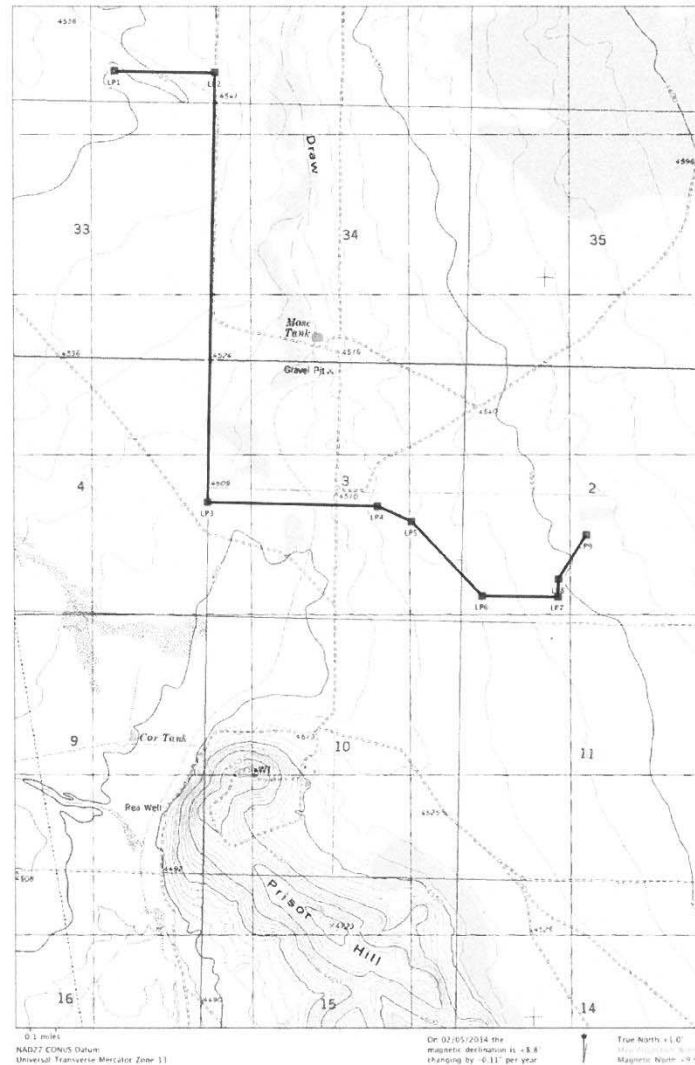
**Business Proprietary and Confidential Information**

**Area 3: 2.79 acres**

32 deg 58 min 10.67 sec 106 deg 56 min 47.04 sec – Point of Connection / Meter Location  
32 deg 58 min 10.67 sec 106 deg 56 min 22.80 sec  
32 deg 56 min 43.64 sec 106 deg 56 min 22.81 sec  
32 deg 56 min 43.28 sec 106 deg 55 min 41.70 sec

32 deg 56 min 40.33 sec 106 deg 55 min 33.39 sec  
 32 deg 56 min 25.50 sec 106 deg 55 min 15.85 sec – Junction Box Location  
 32 deg 56 min 25.59 sec 106 deg 54 min 57.67 sec – Junction Box Location  
 32 deg 56 min 29.25 sec 106 deg 54 min 57.69 sec  
 32 deg 56 min 38.32 sec 106 deg 54 min 51.08 sec

Total distance is 20,246 ft = 3.8345 mi (6 ft wide)



#### Area 4: 0.02 acres

32 deg 59 min 13.6 sec N 106 deg 58 min 36.5 sec W – Point of Connection / Meter Location  
 32 deg 59 min 15.5 sec N 106 deg 58 min 37.3 sec W

Total distance is 203 ft = 0.03845 miles (4 ft wide)





**Exhibit B - Tenant Facilities.**

Tenant Facilities are expected to include, but are not limited to: office trailers; the launch pad; the "taxiway"; communications and electrical ducts, junction boxes, meters, fiber and cable; fencing; communications equipment; fuel tanks; generators; and additional concrete pads and foundations to support the tankage for various fluids.



**Business Proprietary and Confidential Information**

The approximate coordinates of the launch pad (currently planned to be 40 ft x 40 ft) are:

NE:	32°56'48.1"N	106°54'46.0"W
SE:	32°56'47.4"N	106°54'46.0"W
SW:	32°56'47.4"N	106°54'46.9"W
NW:	32°56'48.1"N	106°54'46.9"W

The launch pad will be approximately 600 ft west of the landing pad (edge-to-edge). The two pads will be connected by a "taxiway" that will be 12-15 ft wide.



**Business Proprietary and Confidential Information**

*All other paragraphs of this section remain the same.*

*All other sections of this Agreement remain the same.*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

**SPACE EXPLORATION TECHNOLOGIES CORP**

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

Steven Davis

Director

Date: 3/2/2015\_\_\_\_\_

**NEW MEXICO SPACEPORT AUTHORITY**

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

Christine Anderson

Executive Director

Date: 3/2/2015\_\_\_\_\_

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

Richard Holdridge

Board Chair

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



## LEASE AGREEMENT

This LEASE AGREEMENT (the "Agreement") is made and entered into as of the date of the last signature below (the "Effective Date") by and between Space Exploration Technologies Corp., ("Tenant" or "SpaceX"), a privately-held Delaware corporation and the NEW MEXICO SPACEPORT AUTHORITY, an agency of the State of New Mexico (the "State") and its successors and assigns (the "NMSA"), collectively, the "Parties" and individually, a "Party".

1. **Recitals.** NMSA recognizes the value of aerospace research, vehicle development, and prototype flight testing activity to New Mexico and wishes to encourage expansion of such activity at Spaceport America (the "Spaceport"); and Tenant desires to perform a series of test flights (each a "Flight"), including a First Flight and Subsequent Flights; and Tenant wishes to lease from the NMSA and the NMSA wishes to lease to Tenant certain Premises, as defined below, for the Term and any Optional Term (as defined below), at the rental amounts, and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.
2. **Definitions.** The word "Premises" as used in this Agreement shall mean the tracts of land containing the number of acres set forth in and as more particularly described on Exhibit A attached hereto and incorporated herein (the "Land"), together with one single story modular control/office trailer for use as the Tenant Mission Control ("Tenant Facilities") of approximately 663 Gross Square feet and all other improvements to be built or installed by NMSA on the Land generally as depicted on the Tenant Facilities Survey and Floor Plans attached as Exhibit B hereto and incorporated herein (the "Tenant Facilities Documents"). Any interior design and construction of interior improvements including removable fixtures and equipment, will be constructed and installed by Tenant at its expense (such work being hereafter referred to as "Tenant's Finish Work"). Tenant's Finish Work shall be owned by Tenant.
3. **Term.** The term of this Agreement shall be a period of three (3) years commencing on the Effective Date of this Agreement ("Initial Term").

If permitted by applicable law or regulations, in the event Tenant is not in default on the date of expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) additional terms of one (1) year (each an "Optional Term") on substantially the same terms and conditions as herein set forth.

Tenant shall have the option, upon at least two (2) months written notice prior to the expiration of the Initial Term or the first Optional Term, to terminate this Agreement. Initial Term and any Optional Terms exercised shall be herein referred to collectively as the "Term". If Tenant chooses to terminate the Agreement prior to the expiration of the Term, its option to renew the Agreement for any remaining Optional Terms shall also expire. The Initial Term of this Agreement, as that term is used in this Agreement, shall include the entire time between the Effective Date of this Agreement and the final expiration or termination of this Agreement excluding any Optional Term, unless otherwise noted.

4. **Rent.** Tenant shall pay NMSA as rent ("Initial Rent") for the Premises the sum of Three Thousand Six Hundred and Fifty and No/100s Dollars (\$3,650.00) per month, during the Initial Term. Tenant shall pay the first month's rent on the Effective Date, such rent to be applied to rent due to NMSA from Tenant but shall not be refundable if the Tenant does not take possession of the Premises. Initial Rent shall be paid monthly in advance on the date Tenant takes possession of the Premises or begins Tenant's Finish Work or construction of other Tenant improvements on the Premises, whichever is earliest (also the "Initial

Rent Commencement Date") and on the first day of each month thereafter, without any deduction, offset, prior notice or demand whatsoever (except as expressly provided herein). Beginning with the first exercised Optional Term, Tenant shall pay NMSA such rental fees ("Optional Term Rent") to be calculated as the Initial Rent, subject to adjustment increase or decrease of those rates at the end of the three (3) year period of the Initial Term starting as of the Initial Rent Commencement Date based on the change in the Consumer Price Index (the "CPI", for all Urban Consumers, Selected Areas-West Region All Items, 1982-1984=100, issued by the Bureau of Labor Statistics, US Department of Labor) for the latest available three (3) year period. Thereafter, any rental fees during additional Optional Terms shall be subject to annual adjustment based on the percentage change in the CPI, determined by comparing the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year (or from the Initial Term to the first Optional Term) be greater than 3%. At least sixty (60) days before the start of any Optional Term, the NMSA will notify Tenant of the annual CPI adjustment in the Optional Term Rent. Initial Rent and Optional Term Rent shall be herein referred to collectively as the "Rent". In the event that the Agreement terminates on any day other than the last day of a month when Rent is due, the rental amount for such payment shall be pro-rated based on the number of days during such month.

Payments made by Tenant shall be applied against the earliest unpaid charge whether for Rent or other charges. In the event NMSA makes any payment for services or expenses set forth herein as Tenant's obligations, Tenant's obligation to pay or reimburse NMSA therefore shall, if so elected by NMSA, be deemed an obligation to pay "Additional Rent," in the same manner as Rent. Rent, Additional Rent, User Fees (as defined in Section 6) and any other Tenant obligation to pay or reimburse NMSA shall be deemed, for the purposes of this Agreement, a "Tenant Payable."

Tenant shall pay all such Tenant Payables in lawful money of the United States of America to NMSA at the Notice Address contained within the Agreement or to such other address as NMSA may designate in writing.

No security deposit shall be collected by NMSA in connection with this Agreement.

If Tenant remains in possession of all or any part of the Premises after the expiration or termination of the Term, with or without the express or implied consent of the NMSA, such tenancy shall be from month to month only, and not a renewal of this Agreement or an extension for any further term, at a rental rate equal to one hundred fifty percent of (150%) the Rent payable immediately prior to the expiration of the Term, and other monetary sums due under this Agreement shall be payable in the amount and at the time specified herein and such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained herein.

5. Use. Subject to the other terms and provisions of this Agreement, the NMSA hereby leases to Tenant for the Term of the Agreement, and Tenant hereby leases from the NMSA for the Term of the Agreement, the Premises. The Tenant and its representatives, employees, contractors, agents, independent producers, suppliers, licensees, sponsors, successors and assigns (collectively, "Representatives") may use the Premises twenty-four (24) hours/per day, seven (7) days/per week, twelve (12) months/per year for the operation of suborbital Flights and related activities. Usage of the Premises will include all square foot space in the Tenant Facilities and all other related improvements together with the grounds, parking areas and all other facilities comprising the Premises. Tenant's usage includes, but shall not be limited to:

- Operating a fixed launch site facility including activities associated with assembling, testing, fueling, launching, and recovering space vehicles and developmental space vehicles;
- Operating sleeping quarters for Tenant personnel;
- Operating services for guests and invitees;

- Performing mission control operations;
- Providing office space for Tenant personnel;
- Housing Tenant's operating base;
- Rehearsing, photographing, filming and otherwise recording certain scenes of Flight operations, pre-Flight activity, or post-Flight activity, including without limitation photographing the Spaceport and reproducing the Spaceport elsewhere for the purpose of photographing the same by means of film, tape, videotape or any other medium;
- As an equipment and materials storage site;
- Conducting all activities reasonably associated with the foregoing and any other uses that are compatible with the growth of commercial space activities, as long as such uses do not materially and adversely affect the operations of other tenants or users of the Spaceport.

Tenant shall, at Tenant's expense, comply promptly with all applicable federal, State, and local statutes, ordinances, rules, regulations, orders, and requirements in effect and applicable to Tenant's use of the Premises during the Term. Tenant also agrees to comply with and ensure its guests' and invitees' compliance with all requirements, directions, and recommendations of the NMSA and the NMSA's contractors, including but not limited to its range safety officer, construction manager or security manager, regarding any Flights.

In addition, Tenant shall have access, as necessary, to various portions of the Spaceport's vertical launch infrastructure ("Launch Infrastructure") and all other "Common Facilities" at the Spaceport not designated for exclusive use of the NMSA or any other tenants, as defined in Exhibit C, for the purposes of conducting Tenant's business on the Premises.

NMSA acknowledges that due to Tenant's business requirements, the NMSA will need to grant Tenant exclusive use of Launch Infrastructure at specified blocks of time to launch and retrieve spacecraft (each launch and recovery operation being referred to herein as a "Flight"). Tenant's Flights will include the following rights to be provided or arranged by NMSA: (i) evacuation of any Common Facilities or other Spaceport buildings, roadways, and runways, including those ramps, taxiways and aprons as reasonably determined by Tenant and NMSA to be necessary to ensure safety of the Flight, (ii) adequate control over the airspace above, and in the vicinity of, the Spaceport to permit the take-off and/or landing, as applicable, (iii) adequate access to and use of the fuel storage/fuel supply area and facilities, (iv) adequate access to and use of the water storage area and facilities, (v) use of the Spaceport's air traffic control system and (vi) emergency and fire rescue personnel and equipment prepared and ready to respond.

As a minimum, Tenant will be allotted two (2) blocked periods of time per week, throughout the Term for its Flights (each blocked period referred to herein as a "Flight Period"). Each Flight Period will initially be eight (8) hours but may be shortened upon mutual agreement of Tenant and the NMSA. Multiple Flights may occur during a single Flight Period without incurring additional charges. NMSA, as the manager of the Spaceport operations, will work with Tenant to coordinate these activities with all other agencies and tenants affected by Tenant's Flight Periods to provide Tenant the rights and services described above for each Flight Period.

NMSA's approval for any Flight Period and the reservation of the Launch Infrastructure (so long as Tenant has not exceeded the one (1) Flight Period per day allotment) will not be withheld by NMSA so long as NMSA, exercising its best efforts, is able to arrange the airspace clearance. NMSA will seek to provide 8 hour Flight Periods initially with the airspace controlling entity. Subsequent flight periods may be shortened upon mutual agreement of Tenant and NMSA. If the Flight Periods reserved by Tenant are not needed for any previously scheduled segment for any reason other than Force Majeure events, the acts or omissions of the NMSA, its agents, employees, contractors, officers, board members, licensees or



invitees or the airspace reservation being cancelled by one of the agencies having jurisdiction, Tenant must notify the NMSA within twenty-four (24) hours of Tenant's decision to cancel the reserved Flight Period and allow other tenants or transient customers access to the Launch Infrastructure. Tenant, in agreement and coordination with the NMSA, will provide a detailed schedule of planned Flights for submission to the FAA or other controlling entity with responsibility for the airspace over the Spaceport and surrounding area at least seven (7) days in advance of the projected Flight Period and NMSA will request the airspace reservation as soon as received. NMSA will seek to provide Tenant with confirmation of the reservation within five (5) days of the notification by the FAA or other controlling entity. If Tenant is delayed prior to any Flight Period or after any Flight Period has commenced, Tenant is required to notify the NMSA and the controlling agency for the airspace reservation as soon as is practical. Tenant acknowledges that cancellation of the reservation of the overlying airspace by the FAA or controlling agency may result in postponement of a Flight Period and that the NMSA will not be liable to Tenant for any costs, expenses or damages related to or arising from such cancellation, but the NMSA will use its best efforts to obtain the airspace reservation rights for all requested Flight Periods and will work with the FAA and any controlling agency to avoid any cancellation of any previously granted reservation. In addition, Tenant will be included on a regular basis in discussions with the controlling agencies of the overlying airspace to ensure Tenant's needs are being adequately addressed. Tenant will be entitled to reserve all time not occupied by Flight Periods on a first-come, first-served basis along with all of the other tenants of the Spaceport, using a pre-booking procedure that will be worked out by the NMSA in consultation with the Spaceport Advisory Committee (the "SAC"). Tenant and the NMSA will work cooperatively to ensure the pre-booking procedure addresses the needs of all Spaceport tenants as equitably as possible while not materially and adversely affecting Tenant's operations.

In connection with the use of the Tenant Facilities, Launch Infrastructure and the Common Facilities, Tenant will not:

- Do or permit to be done anything at or about the Spaceport that may interfere with the effectiveness or accessibility of the drainage system; sewage system; electrical system; heating, ventilation and air conditioning system ("HVAC"); fire protection system; or alarm system.
- Do or permit to be done any act in, on, or about the Spaceport that will invalidate or conflict with any insurance policies applicable to the Spaceport (including, but not limited to, the State's risk pool, liability pool, or pool of excess insurance) or the activities conducted at the Spaceport.
- Dispose of or permit any disposal of any waste material taken from or products used (whether liquid or solid) with respect to its vehicles into the sanitary sewer, storm sewer, ground or trash at the Spaceport except in accordance with Applicable Laws.
- Keep or store, during any twenty four (24) hour period, flammable liquids within the enclosed portion of the Tenant Facilities in excess of Tenant's working requirements during said twenty four (24) hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by applicable insurance underwriters and Applicable Laws.
- Do or permit to be done any act upon the Spaceport that will invalidate or conflict with the SLO Ground Lease or the Ranch Agreements with Bar Cross Ranch, Inc., and Lewis Cain Ranch, Inc.

6. **User Fee.** In full consideration of NMSA entering into this Agreement and granting to Tenant all rights granted hereunder, NMSA shall provide use of Launch Infrastructure and Common Facilities, as defined in Exhibit C, according to the fees outlined in Exhibit D (the "User Fee"), subject to revision based upon changes to the Optional Services required by Tenant and to the list of additional recipients of evacuation fees as the Parties deem necessary. User Fees will be based upon operations and maintenance expenses; capitalized repair, maintenance and equipment costs. User Fees will be charged to and payable by Tenant at the rates set forth in Exhibit D for each of the Flight Periods in the applicable year, subject to annual adjustment increase or decrease of those rates based on the change in the CPI, determined by comparing



the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year be greater than 3%. The minimum annual guarantee for Tenant's share of User Fees (the "Minimum Annual Guarantee") will equal \$15,000.00 per year, regardless of the number of Flights or Flight Periods, payable to NMSA within thirty (30) days of the end of NMSA's Fiscal Year, which runs from July 1 to June 30. Any costs incurred by NMSA pertaining to the use not specifically outlined within the Agreement shall be the responsibility of Tenant.

7. **Utilities.** NMSA shall provide as part of the Tenant Facilities sanitation facilities, telephone and broadband internet, with capacities adequate for the full use of the Premises contemplated hereunder. Other utility services such as electric generator power and trash pick up shall be itemized within the User Fee described within Exhibit D. Tenant agrees to pay all usage charges or other expenses for water, electric generator fuel, telephone, broadband internet and trash pickup and any other utilities used on the Premises. Billing shall be conducted in accordance with a mutually acceptable "Service Level Agreement".

Except to the extent caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees, invitees, or predecessors in interest, in the event of any failures or interruptions of utility services to the Tenant Facilities, including electricity, water, plumbing, sewage, communications and HVAC, that are caused by the negligence of the NMSA, its agents, employees or contractors or the failure of the NMSA, its agents, employees or contractors to properly maintain the facilities providing such services or some other infrastructure or facility necessary for delivery of such services, and which (i) materially, adversely affect Tenant's use of the Tenant Facilities and the Common Facilities, and (ii) continue for 7 or more days (or 7 or more days in any 30 day period) then the Rent will be abated in proportion to the adverse effect on Tenant's operations until the interrupted services are restored so that there is no longer any material, adverse effect on Tenant's business operations (e.g. If 50% of scheduled Flights must be cancelled and cannot be made up in the period promptly following the restoration of services, the abatement would be 50% of the Rent for the period of time the service is interrupted).

8. **Maintenance and Repair.** NMSA, at its own expense, shall keep and maintain the Premises, inclusive of all interior maintenance (excepting Tenant's Finish Work) and exterior maintenance, in good safe and attractive order and condition and repair, and shall suffer no waste with respect thereto, and NMSA shall be solely responsible for maintaining, repairing and/or replacing the entire Tenant Facilities and all improvements on the Premises, including without limitation the roof, foundation, structural walls, storefront, signage, doors, doorways, locks, windows, window casements, glazing, plumbing, pipes, electrical wiring and conduit, restrooms, HVAC, electrical and plumbing systems, lighting, snow removal, dust/sand/windblown debris removal, security cameras, and IT equipment. NMSA, at its own expense, throughout the Initial Term and any Optional Term, shall provide for the repair and maintenance of the HVAC in a manner and on a schedule that conforms to the warranty requirements and manufacturer's recommendations for such systems, and NMSA shall provide Tenant documentation showing the work done on request of Tenant on an annual basis. Any damage to the Premises however caused, except as otherwise provided in this Agreement, shall be immediately repaired, to Tenant's reasonable satisfaction, at the sole cost and expense of NMSA. Tenant is responsible for the costs of its business operations of whatever nature, to be conducted on the Premises during the Term and maintenance and repair of Tenant's Finish Work.

If Tenant fails to surrender the Premises to NMSA upon expiration or earlier termination of this Agreement (excluding Tenant's Finish Work) in good condition, ordinary wear and tear excepted, NMSA shall give Tenant written notice to do such acts as are reasonably required to place the Premises in good order and condition. If Tenant fails to commence the work within twenty (20) days of such notice and

diligently prosecute it to completion, then NMSA shall have the right (but not the obligation) to do such acts and expend such funds as are reasonably required to perform such work satisfactorily. Any amount so expended by NMSA shall be paid by Tenant within twenty (20) days after demand, with interest at the Interest Rate from the date of demand, as Additional Rent.

Tenant finishes, fixtures, alterations and modifications shall be handled in the following manner:

- (a) With the exception of the installation and maintenance of any part of Tenant's Finish Work, Tenant shall not (i) make any alterations, additions or improvements to the Premises costing over \$100,000 in the aggregate during any twelve-month period or (ii) create any openings in the roof of the Tenant Facilities, without, in each case, obtaining the prior written consent of the NMSA, which consent shall not be unreasonably withheld.
- (b) All work done at the Premises by Tenant shall be performed in accordance with applicable statutes, ordinances, rules and regulations of any governmental body or agency having jurisdiction over the Premises. NMSA shall cooperate, as requested, with Tenant in obtaining approvals and permits for such work, without cost or liability to NMSA. Any alterations or additions will be made in a good workmanlike manner without cost to NMSA, and shall be free and clear of mechanics' and materialmen's liens provided that if any such lien is filed, Tenant shall discharge the lien as soon as practicable and it may contest the claim in good faith.
- (c) All fixtures other than Tenant's Finish Work and Tenant's business and trade fixtures located in or upon the Premises, shall at the expiration or earlier termination of this Agreement, become the property of the NMSA and remain upon and be surrendered with the Premises. Personal property and business and trade fixtures, other than those affixed to the Premises so that they cannot be removed without material damage to the Premises (as determined in Tenant's sole discretion), shall remain the property of the Tenant, and may be removed by the Tenant subject to the provisions of this Agreement, at any time during the Term when Tenant is not in default as provided in Section 14 of this Agreement. Fixtures belonging to Tenant ("Tenant Fixtures") may include, without limitation, fencing, satellite dish and/or similar communications equipment, solar equipment and Tenant's exterior imaging, signs, banners, and other displays, including Tenant's fascia, monument and pole signs, if any. Tenant's fixtures will not be deemed to include the following ("Tenant Facilities Components"): the Tenant Facilities and improvements, light fixtures, floor coverings, walls, wall coverings, doors, windows, HVAC equipment, ducts, air handling equipment, thermostats, electrical wiring, circuit breakers or panels, or plumbing fixtures or pipes, utility meters, plants, landscaping materials, or irrigation equipment.

In the event any of the Tenant's Fixtures are subject to a lien or title retention instrument, then during the Initial Term or any Optional Term but not thereafter, the holder of any such lien or title retention instrument shall have the right and be able to enforce the same as stated therein and NMSA waives any rights to the contrary, except NMSA reserves the right to require Tenant to restore the Premises to the condition required by this Agreement, after removal.

9. **Right of Entrance.** Subject to compliance with applicable export control laws, NMSA and its agents shall have the right at any time during normal business hours and upon reasonable notice to enter the Premises to inspect the same and undertake maintenance and repair as necessary in accordance with Section 8 hereof and provided Tenant has either arranged for an escort or affirmatively waived the right to provide an escort. NMSA and its agents shall not make any alterations or additions to the Premises without Tenant's prior written approval, and such activity shall be conducted only during normal business hours and upon reasonable notice. In undertaking maintenance and repair work or making alterations or additions to the Premises, NMSA shall use reasonable efforts to avoid and minimize interference with Tenant's business operations. Notwithstanding the foregoing, NMSA shall have the right to use any and

all means that NMSA may deem proper to enter the Tenant Facilities in an emergency that involves fire or police activity.

10. **Damage to the Premises.** In the event of damage causing a partial or total destruction of the Tenant Facilities during the Term, NMSA shall cause the Tenant Facilities to be promptly repaired to a condition existing immediately prior to such damage, or as close thereto as applicable law will allow, with this Agreement to continue in full force and effect, and Rent shall abate hereunder. Tenant will receive a pro rata abatement of the Rent based on the proportion of its business operations that are interrupted as a result of such damage. If applicable, this abatement will be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed to the extent necessary for Tenant to recommence the interrupted operations on a commercially reasonable basis. Thereafter, Tenant Payables will be calculated without regard for the period such Rent was reduced.

In its sole discretion, Tenant may utilize any insurance proceeds available to Tenant to repair damages to the Tenant Finish Work and other property of Tenant; and NMSA's obligation of timely repair shall not be subject to or reduced or limited by receipt of any proceeds from Tenant. Insurance proceeds from NMSA's policies shall be held and disbursed by NMSA's lender or another financial institution approved by both NMSA and Tenant, as insurance trustee for the benefit of such lender (if any), NMSA and Tenant.

Notwithstanding the above provisions, if the damage to Tenant Facilities, Launch Infrastructure or other Common Facilities is caused by willful act, willful misconduct, or wanton or reckless disregard of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees, rent shall not abate hereunder and Tenant will be responsible for either: (i) reimbursing the NMSA promptly for the cost and expense incurred in such repair, rebuilding or construction; or (ii) directly incurring the cost and expense in such repair, rebuilding or construction, with such work to be approved prior to commencement by NMSA's written permission and completed to NMSA's satisfaction. In order to expedite such repair, rebuilding or construction of Facilities so damaged, Tenant will apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 20. If the insurance proceeds available for the Tenant Facilities are not sufficient to pay the entire cost of such repairs, rebuilding or construction, Tenant will be responsible for all excess costs of the reconstruction. In the event the cause of the damage or destruction is by risk that is not covered by insurance of the type required in Section 20, and the damage is caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees or invitees, then Tenant will have the responsibility to provide promptly the funds necessary to pay the cost of the repairs, rebuilding or construction.

In the event of any total or partial destruction to the Tenant Facilities during the last three (3) months of the Term, if Tenant has not exercised any right to renew this Agreement, then notwithstanding the provisions above, NMSA shall have the right, exercisable by written notice to Tenant within 30 days following the event giving rise to the casualty or damage, to elect to retain all the proceeds of its own insurance for damage to the Tenant Facilities or Premises and to terminate this Agreement.

In the event that the Tenant Facilities cannot be repaired as required herein under applicable laws, regulations, codes and restrictions, notwithstanding the availability of insurance proceeds, this Agreement shall terminate effective with the date of the damage occurrence, and NMSA and Tenant shall be entitled to retain all insurance proceeds available under their respective policies.

11. **Tenant's Assignment and Sublease.** Tenant shall have the right to assign or sublease the Premises or any part of the Premises at any time to a subsidiary or affiliate of Tenant that is majority held or controlled by Tenant, or to another qualified tenant with the prior written consent of NMSA. Tenant shall

notify NMSA immediately upon the effective date of any sublease or assignment. All rent payable under a sublease, up to the full amount of the Rent due hereunder for the sublease term, shall be payable directly to NMSA, and Tenant's obligation to pay all or the portion of the Rent payable under the sublease shall cease during the term of such sublease. Upon assignment of this Agreement, the assignee shall succeed to all the rights, interests and obligations of Tenant, as tenant under this Agreement and all references hereunder to Tenant from and after the effective date of such assignment shall be a reference to Tenant's assignee as successor tenant. From and after such assignment, SpaceX shall be released from all obligations as Tenant arising from and after the effective date of such assignment, including but not limited to the obligation to pay Rent.

12. **Superiority.** This Agreement shall be prior and superior to the lien of any mortgages, deeds of trust or any other encumbrance in any amount(s) whatsoever now or hereafter placed by NMSA or any of its agents on or against the Premises or NMSA's leasehold interest in the Premises.
13. **Quiet Enjoyment.** NMSA covenants and agrees with Tenant that upon Tenant paying all Rent and other sums due under this Agreement, performing its covenants and conditions of the Agreement, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term and any Optional Term as against any adverse claim of NMSA or any party claiming under NMSA subject, however, to the terms of the Agreement.
14. **Default, Remedies.** The occurrence of any of the following shall constitute a material default and breach of this Agreement by Tenant:
  - (a) Any failure by Tenant to pay the Rent or any other sums required to be paid hereunder, or any failure by Tenant to provide any required insurance, where any such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant; or
  - (b) A failure by Tenant to observe and perform any other provision of this Agreement to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant. However, if the nature of the default is such that the default cannot be reasonably cured within the ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period of time commence such cure and thereafter diligently prosecute the same to completion.

In the event of any such default or breach by Tenant, NMSA may at any time thereafter, to the extent permitted by law or regulation:

- (a) Obtain any insurance which Tenant has failed to obtain within the required time (in accordance with Section 20, below) at the expense of Tenant and without waiving the default until Tenant reimburses such cost;
- (b) Maintain this Agreement in full force and effect, and recover the Rent and charges as they become due and/or sue for damages due to Tenant's default hereunder, without terminating this Agreement and Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Premises.

As an agency of the State, NMSA, its board members, executives, employees, contractors, agents and other persons acting for and on behalf of NMSA, without exception, shall not be personally liable for any obligation or liability arising under this Agreement.

Without notice by Tenant, NMSA shall be in default under this Agreement if NMSA fails to perform any obligations required of NMSA in a prompt manner, but in no event later than ten (10) days after the date on which the obligation is required to be performed. However, if the nature of NMSA's obligation is such



that more than ten (10) days are required for performance, (other than maintaining the effectiveness of all insurance coverage required by NMSA under Section 20 hereof), then NMSA shall not be in default if NMSA commences performance within such ten (10) day period and thereafter diligently prosecutes same to completion. Tenant agrees that any such mortgagee or deed of trust holder shall have the right to cure such default on behalf of NMSA within a period of not more than thirty (30) days from the date on which the obligation was required to be performed.

If NMSA shall default or breach in the performance of any of its obligations under this Agreement, Tenant shall be entitled to institute any suit, action or proceeding in the exercise of any right or remedy at law or in equity which Tenant may have by reason of such default or breach, including, but not limited to pursuing damages or other remedies as may be appropriate, including the appointment of a receiver.

- 15. License.** NMSA hereby grants to Tenant ("Licensee") and its Representatives the exclusive right to film, photograph, videotape or otherwise make recordings or capture footage ("Recordings") of and at the Spaceport during the Flight operations, pre-Flight activity, or post-Flight activity, within and for the specific purposes of making a Flight highlights reel, referred to herein as the "Production".

NMSA further grants to Licensee and/or its Representatives the non-exclusive, worldwide, royalty-free and perpetual right to use the SPACEPORT AMERICA name and logo as listed in Exhibit E ("Licensed Marks"), and all other various trademarks and/or service marks depicted in any Recordings, within and for the specific purposes of the Production.

NMSA acknowledges and agrees that Licensee and its Representatives shall solely and exclusively own and control all right, title and interest in the Recordings and the Production and all elements and components thereof, including all exploitation thereof, in all media worldwide, in perpetuity. Licensee and its Representatives may exhibit, advertise, broadcast, distribute and promote the Production or any portion thereof, whether or not such uses contain audio and/or visual reproductions with or without visual alteration of the Spaceport so long as the Spaceport's other tenants are not identified, in any and all media which currently exist or which may exist in the future in the universe and in perpetuity. Licensee and its Representatives may copyright all advertisements and/or promotional materials containing representations of the Production, however, submission for review and approval by NMSA of the excerpts of the Production and any advertisement or promotional material containing Licensed Marks shall be required. Captions accompanying Recordings that identify the Spaceport's location must either refer to its location as Spaceport America, New Mexico or mention that Spaceport America is a registered trademark of the State of New Mexico.

Following Licensee's initial public distribution of the Production or any Recordings, NMSA may request, non-exclusive, worldwide, royalty-free and perpetual rights for usage of the Production and/or said Recordings from the Licensee for promotion of and use within its onsite public visitor experience, approval of such requests shall not be unreasonably withheld, conditioned or delayed.

- 16. Trademark Use; Ownership; Enforcement; Validity.** Licensee shall use the Licensed Marks at all times only relating to the Production. When using the Licensed Marks under this Agreement, Licensee undertakes to comply substantially with all pertinent laws (United States and foreign) pertaining to service marks and trademarks. This provision includes compliance with marking requirements as set forth within NMSA's brand/identity standards manual, including proper use of the ® symbol and ™ symbol with the Licensed Marks and inclusion of statements that NMSA is the owner of the Licensed Marks. Notwithstanding anything to the contrary herein, the Licensed Marks may not appear on any of Licensee's business documents, such as business cards, invoices, order forms and stationery without the prior written approval of NMSA, except that on such documents Licensee shall be permitted to state that it is an official licensee of the Licensed Marks from NMSA.

The Licensed Marks may not be joined or juxtaposed with any mark or name or logo of the Licensee or any mark or name of any third party (e.g., SpaceX) without written permission from NMSA. The Licensed Marks may be used in association with images (e.g., photographs, drawings, artwork) provided such images are: (1) owned by Licensee; or (2) licensed to Licensee by the owner of such image(s), such as set forth above; and (3) do not constitute a mark or name or logo of either the Licensee or a third party.

The Parties acknowledge NMSA's exclusive right, title and interest in and to the Licensed Marks and any registrations that have issued or may issue thereon, and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair part of such right, title and interest. In connection with the use of the Licensed Marks, Licensee shall not in any manner represent that it has any ownership in the Licensed Marks or registrations thereof, and the Parties acknowledge that all use of the Licensed Marks shall inure to the benefit of NMSA. Licensee will not at any time adopt or use or register without NMSA's prior written consent, any word or mark or symbol which is likely to be considered confusingly similar to the Licensed Marks. On expiration or termination of this Agreement in any manner, Licensee will cease and desist from all use of the Licensed Marks, and will deliver up to NMSA, or its duly authorized representatives, all materials regardless of the medium (e.g., printed, electronic) in or upon which any of the Licensed Marks appears or is incorporated.

NMSA retains the right to sue or take other action against infringers of the Licensed Marks and Licensee will reasonably cooperate with NMSA including, at the request of NMSA, joining in any suit or enforcement action and signing all necessary documents. The expenses of such actions or suits shall be paid in advance by NMSA, and any and all recoveries from any such action, suit or settlement thereof shall belong exclusively to NMSA. At its own cost and expense, Licensee may retain counsel of its own choosing. In the event that NMSA declines to sue or take other action, subject to a written understanding between the Parties, Licensee may sue or take other appropriate action.

Licensee agrees to immediately notify NMSA whenever Licensee is aware or becomes aware of an unlicensed third party infringing or possibly infringing the Licensed Marks.

In the event that Licensee questions or challenges, directly or indirectly, the validity or enforceability of the Licensed Marks or assists any other person in doing so, NMSA shall have the right to terminate this Agreement.

17. **Warranties; Disclaimers.** Licensee acknowledges, represents, and warrants that it has authority to enter into this Agreement, and that the person signing on its behalf is duly authorized to sign.

NMSA represents and warrants that it is the owner of the Licensed Marks, that it is not aware of any adverse claim to the Licensed Marks, that the undersigned has the full right and complete authority to enter into this Agreement and that the consent of no other party is necessary to grant the rights conveyed to Licensee hereunder or to use the Spaceport as described above.

EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, THE LICENSED MARKS ARE LICENSED "AS IS". NMSA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND IN THIS AGREEMENT AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THIS AGREEMENT.

Without limiting the preceding disclaimer, NMSA makes no representations or warranties, express or implied, as to the validity or scope of protection of any of the Licensed Marks, or that the Licensed Marks may be used without infringing intellectual property rights of third parties.

18. **Confidentiality.** Tenant has disclosed or will disclose to NMSA information, whether written, graphic, oral, electronic, or in any other form. Certain of that information ("Confidential Information") is proprietary technical information and/or relates to the possible relocation or expansion of a business. When Tenant submits Confidential Information or updates thereto to NMSA, Tenant shall specifically identify to NMSA the information that it considers to be Confidential Information. Confidential Information does not include information that is not specific to Tenant or its business, is publicly available when received by NMSA, is lawfully obtained by NMSA from a source other than Tenant, or is independently developed by NMSA without the use of Confidential Information.

NMSA will hold Confidential Information in strict confidence, will take all reasonable precautions to protect Confidential Information, will not disclose Confidential Information to any persons outside NMSA, will not make use of Confidential Information except for the sole limited purpose of evaluating Confidential Information within NMSA to determine whether to enter into a relationship with Tenant and to perform according to that relationship if it is entered into, and will promptly notify Tenant of any unauthorized disclosure or use of Confidential Information and to take all reasonable steps to remedy it.

The New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1, et seq. ("IPRA") establishes policy that favors broad disclosure of information provided to or by public agencies, which may be lawfully subject to inspection notwithstanding the existence of this Agreement. Confidential Information is exempt from inspection under IPRA because it contains proprietary technical information or information related to the possible relocation or expansion of a business. If there is a public records request for Confidential Information, NMSA will maintain the confidentiality of Confidential Information and not disclose it.

Confidential Information is and remains Tenant's property. Upon a decision by NMSA or Tenant not to enter into a business relationship or a request by Tenant, NMSA shall cease using Confidential Information and return it to Tenant. Nothing herein requires NMSA or Tenant to enter into any business relationship or to refrain from entering into any relationship with any third parties, even if such relationship relates to subject matter similar or identical to that contemplated by this Agreement.

Tenant's disclosure of Confidential Information to NMSA does not constitute publication of the Confidential Information for patent or copyright purposes or a release of the Confidential Information into the public domain. NMSA will not use Tenant's disclosure of Confidential Information to NMSA to impede or challenge Tenant's application for patent, copyright, or other legal protection. The disclosure of Confidential Information does not grant any right or license to any intellectual property or make any representation or warranty, express or implied, unless specified elsewhere in the Agreement.

Because of the unique nature of the Confidential Information, there is no adequate remedy at law for NMSA's breach of its obligations under this Agreement and any such breach will cause Tenant irreparable harm. NMSA is subject to the protections and limitations of the New Mexico Tort Claims Act, (Section 41-4-1 et seq. NMSA 1978).

19. **Environmental Requirements.** The Parties conduct and operations as related to any operations involving or arising from the Parties use of the Facilities or the Land will at all times be in compliance with 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 Spaceport ("Environmental Laws"). Without limiting the generality of this requirement, the Parties will at all times handle any material, waste, or substance that is 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 ("Hazardous Substances") in a manner consistent with aerospace industry best management practices and Environmental Laws.

Tenant will be solely responsible for the proper removal and disposal of all Hazardous Substances or any storage tank, whether above or below ground, or any pump, waste oil apparatus, or related line (collectively, "Storage Tanks") to be constructed, repaired, modified or removed on or from the Facilities, or otherwise generated by Tenant or resulting or arising from Tenant's activities or operations at the Facilities or the Land, including the ground occupied by the Common Facilities, not just the Tenant Facilities, as well as on adjacent waterways and in groundwater. Such removal and disposal will include, but not be limited to, Tenant's manifesting such Hazardous Substances under Tenant's assigned Environmental Protection Agency Identification Number and ensuring that removal of such Hazardous Substances from the Facilities or the Land is accomplished in accordance with Environmental Laws. Additionally, Tenant will be solely responsible for contamination that impacts the Facilities or the Land as a result of the storage, handling, release, removal or disposal of any substances used by Tenant or Tenant's agents, employees, licensees, invitees, contractors, officers, directors or any other persons acting by or through or on behalf of Tenant. To the extent that the NMSA (or any other tenant of NMSA) generates Hazardous Substances, if at all, the NMSA (or such other tenant of NMSA) will be solely responsible for the proper removal, disposal and/or remediation of said Hazardous Substances.

Tenant shall within thirty (30) Days after any event notify the NMSA and deliver to the NMSA copies of all documentation related to any of the following:

- Any application or other documentation by Tenant or any other Person on behalf of Tenant related to any Environmental Laws affecting or concerning the Facilities or the Land;
- Any event requiring notice under an Environmental Law has occurred, including copies of all such notices;
- Any permit, license, approval or amendment or modification of any permit, license or approval related to any operations involving or arising from the Facilities or the Land;
- Any plan or specification relating to any Storage Tanks;
- Any completed SARA forms required for Tenant's operations, and any amendments or modifications of such SARA forms.

Upon reasonable advance written notice, Tenant will provide to the NMSA any record related to any operations involving or arising from the Facilities or the Land required to be maintained pursuant to any Environmental Law.

If a release or threatened release of a Hazardous Substance or any contamination relating to or arising from Tenant's use or occupancy of the Facilities or the Land occurs, Tenant will immediately notify the NMSA in writing within twenty four (24) hours after the release or threatened release has occurred. Tenant will immediately stabilize the site of the release or threatened release in a manner consistent with best management practices and will notify the NMSA when such stabilization is complete.

Within a reasonable time frame, Tenant and NMSA, in conjunction with a licensed environmental firm, will develop a remediation action plan ("Remediation Plan") that complies with environmental law. Once the Remediation Plan has received approval from Tenant, NMSA and other entities as applicable, Tenant will execute the Remediation Plan as soon as reasonably possible and will work expeditiously to remediate the Facilities at Tenant's sole expense.

If Tenant fails to clean up, properly dispose of, remove, or repair any operation or condition that relates to a Hazardous Substance, Storage Tanks, release, threatened release, or violation of Environmental Law, or



if Tenant fails timely to complete a Remediation Plan, the NMSA 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 NMSA will be at Tenant's sole cost and expense, and Tenant will indemnify, pay for or reimburse the NMSA for any and all reasonable and documented out-of-pocket costs, including administrative overhead and legal fees, that the NMSA incurs as a result of such action. Tenant hereby acknowledges that the NMSA has a right of entry to the Facilities and the Land and appoints the NMSA as its agent for the purposes described in this Section.

Tenant will not install any Storage Tanks without the prior written consent of the NMSA, which consent will not be unreasonably withheld, conditioned or delayed. Tenant will maintain any approved Storage Tank in good working order, consistent with best management practices and in accordance with Environmental Laws.

In addition to all other remedies available to the NMSA under this Agreement, Tenant will indemnify, defend and save harmless the NMSA, its officers, agents, board members, commissions, employees, successors and assigns from and against any and all environmental claims arising out of the acts or omissions of Tenant or Tenant's agents, employees, contractors, officers, directors, licensees or invitees, except to the extent arising out of the willful act or willful misconduct of the NMSA. This indemnity will survive the expiration or termination of this Agreement.

In addition to any other rights of entry or inspection contained in this Agreement, the NMSA may, upon no less than forty eight (48) hours' advance written notice to Tenant, conduct reasonable inspections, tests, samplings, split samples or other investigations pertaining to environmental matters, subject to compliance with applicable export control laws and accompaniment by a representative of Tenant. NMSA will provide to Tenant a copy of the results of any testing that occurs during an inspection.

20. **Insurance.** During the Term, Tenant shall procure and maintain all insurance coverage required by New Mexico law or the Federal Aviation Administration, including without limitation comprehensive liability policies of insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and Twenty Million Dollars (\$20,000,000) in the aggregate. Tenant shall also procure and maintain Automobile Liability Insurance for owned, rented or non-owned vehicles used in operations at the Spaceport and Commercial General Liability Insurance with limits of One Million and No/100s Dollars (\$1,000,000.00) per occurrence and no less than Five Million and No/100s Dollars (\$5,000,000.00) in the aggregate single limit liability for bodily injury, including death, and property damage, or the maximum liabilities set out in the New Mexico Tort Claims Act (Section 41-4-1 et seq. NMSA 1978), whichever is greater. Said policies of insurance will include coverage for Tenant's personal property, including Tenant's Finish Work including Tenant's Fixtures and other Tenant improvements on or at the Premises, as required by New Mexico law, as well as coverage for the Premises, operations and Tenant's contractual liability to the NMSA that may arise under this Agreement. Contractual liability coverage will specifically insure all indemnification provisions of this Agreement, and shall name the following as additional insured parties:

New Mexico Spaceport Authority  
901 E. University Ave Suite 965L  
Las Cruces NM 88001  
575-373-6110

State Land Office/Commissioner of Public Lands  
P.O. Box 1148  
Santa Fe NM 87504-1148  
505-827-5760

Sierra County  
855 Van Patten Street  
Truth or Consequences NM 87901  
575-894-6215

Bureau of Land Management  
1800 Marquess Street  
Las Cruces NM 88005  
(575) 525-4300

Dofia Ana County  
845 N. Motel Blvd  
Las Cruces NM 88007  
(575) 647-7200

Tenant shall furnish a certificate of insurance for these policies to NMSA, Attn: Business Operations Manager, at the Notice Address contained within the Agreement, prior to the First Flight.

The insurance policies will include coverage for all use of, activities on, or operations with respect to all Facilities, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. If new or changed State or federal laws mandate an increase in insurance coverage limits, Tenant will timely comply with the required limits, and such increases will not be subject to dispute resolution.

NMSA will have no liability for any premiums charged for such coverage, and the inclusion of NMSA as an additional insured is not intended to, and will not make NMSA a partner or joint venturer with Tenant in its operations on the Spaceport. All insurance policies issued pursuant to this Section will be written as primary policies that may not be interpreted as contributing policies or as excess coverage. All Tenant property insurance policies will expressly waive all claims or rights of subrogation, in any, against the NMSA or the State.

Tenant and all of Tenant's agents, employees, contractors, officers, directors, licensees or invitees will use due care and diligence in all of its or their activities and operations at the Spaceport.

Tenant will defend, indemnify and hold harmless the NMSA and the NMSA's officers, and employees 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 NMSA 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 willful act, willful misconduct of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees arising out of the operations of Tenant under this Agreement, except to the extent arising out of the willful act, willful misconduct of the NMSA or its agents, employees, contractors, officers, board members, licensees or invitees. This indemnity will survive the expiration or termination of this Agreement. Nothing herein will be deemed to override the waiver of claims/waiver of subrogation provision set forth above.

To the extent permitted under their respective insurance policies, NMSA and Tenant waive all rights, against each other, for recovery of damages arising out of any damage to or destruction of the Premises

caused by fire or other perils insured against. Neither this waiver nor any policy limits required under this Agreement shall be deemed to limit the obligation of NMSA to repair and/or replace the Premises as provided herein.

Tenant and its Representatives acknowledge and agree that at all times while on the Premises, Tenant and its Representatives will retain care, custody, and control of their property, and shall be responsible for the acts or omissions of Tenant and its employees, agents, and invitees. Any of said property left unattended at the Spaceport is done so at their own risk and liability. Except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA, Tenant waives all past, present, and future claims against the NMSA, whether known or unknown, regarding damage to Tenant's property while at or en route to or from the Spaceport. Tenant agrees that it will not, at any time in the future, bring any claim, suit, or cause of action against the NMSA or the State arising out of or in any way related to damage to Tenant's property while at or en route to or from the Spaceport, except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA.

21. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of New Mexico without regard to the conflicts of laws or choice of law provisions thereof. Tenant consents to jurisdiction and venue of the State's First Judicial District Court, Santa Fe County for any dispute under this Agreement. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State shall have in personam jurisdiction over each of them and be considered the appropriate venue for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this agreement. Each Party hereby authorizes and accepts service of process sufficient for in personam jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement.
22. **No Waiver.** The waiver of any breach of this Agreement or the failure or delay of either Party to enforce any right under this Agreement shall not constitute, or be construed as, a waiver of any other breach of this Agreement, whether of similar nature or otherwise, nor operate to bar the enforcement of any right under this Agreement.
23. **Independent Relationship.** Nothing herein contained shall be deemed to create an employment, agency, joint venture or partnership relationship between the parties hereto or any of their agents or employees, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.
24. **Entire Agreement; Amendment.** This Agreement, including the Exhibits hereto, which are incorporated herein by reference, sets forth the complete, final and exclusive agreement and supersedes and terminates any prior agreements or understandings between the Parties with respect to the subject matter hereof; provided that in the event of a conflict between this Agreement and either any of the Attachments attached hereto, this Agreement shall govern. Any amendment, waiver or modification to this Agreement is valid and binding unless made in writing and signed by both Parties.

25. **Notice.** Each notice required or permitted to be given or sent under this Agreement shall be given in writing by certified (return receipt requested), first class mail or by courier (signature required), to the Parties at the addresses indicated below.

If to NMSA to: New Mexico Spaceport Authority  
Attention: Belinda Lucero  
901 E. University Ave., Suite 365L  
Las Cruces, New Mexico 88001

Telephone No.: (575) 373-6110  
Facsimile No.: (575) 373-6120

With a copy to: Wade Jackson, General Counsel  
New Mexico Economic Development Department  
1100 St. Francis Drive, Suite 1060  
Santa Fe NM 87505

Telephone No.: (505) 827-0241  
Facsimile No.: (505) 827-0328

If to Tenant to: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

Any such notice shall be deemed to have been received, in the case of certified, first class mail, three (3) days after the certified mailing date if the letter is properly addressed and postage prepaid or, in the case of courier, upon actual delivery to the proper place of address. Either Party may change its address by giving the other Party written notice pursuant to this Section.

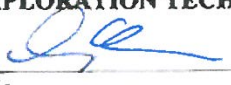
26. **Force Majeure; Postponement.** Failure of any Party to perform its obligations under this Agreement shall not subject such Party to any liability or place it in breach of any term or condition of this Agreement if such failure is due to Force Majeure or any cause beyond the reasonable control of such nonperforming Party, including without limitation, acts of God, fire, explosion, flood, disease, drought, war, riot, sabotage, embargo, strikes or other labor trouble, interruption of or delay in the national transportation system, a national health emergency or compliance with any order or regulation of any government entity; provided however, that the Party affected shall promptly notify the other Party of the condition constituting force majeure and shall use reasonable efforts to eliminate, cure and overcome any such causes and to resume performance of its obligations with all possible speed. If a condition constituting force majeure as defined herein exists for more than ninety (90) days in the aggregate during the Term, the Parties shall meet to negotiate a mutually satisfactory solution, if practicable.



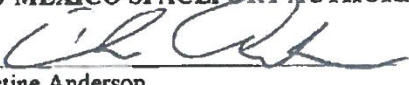
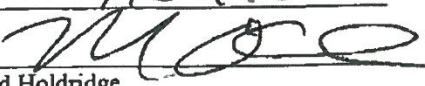
27. **Severability.** In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of at least one of the Parties. The Parties shall, in such an event, use their best efforts to replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) which, insofar as practical, implements the purposes of this Agreement.
28. **Binding Nature of Agreement.** This Agreement shall be binding on all personal representatives, heirs, successors, and assigns of the Parties hereto.
29. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and altogether constitute one and the same Agreement. Electronically communicated signatures shall be considered original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

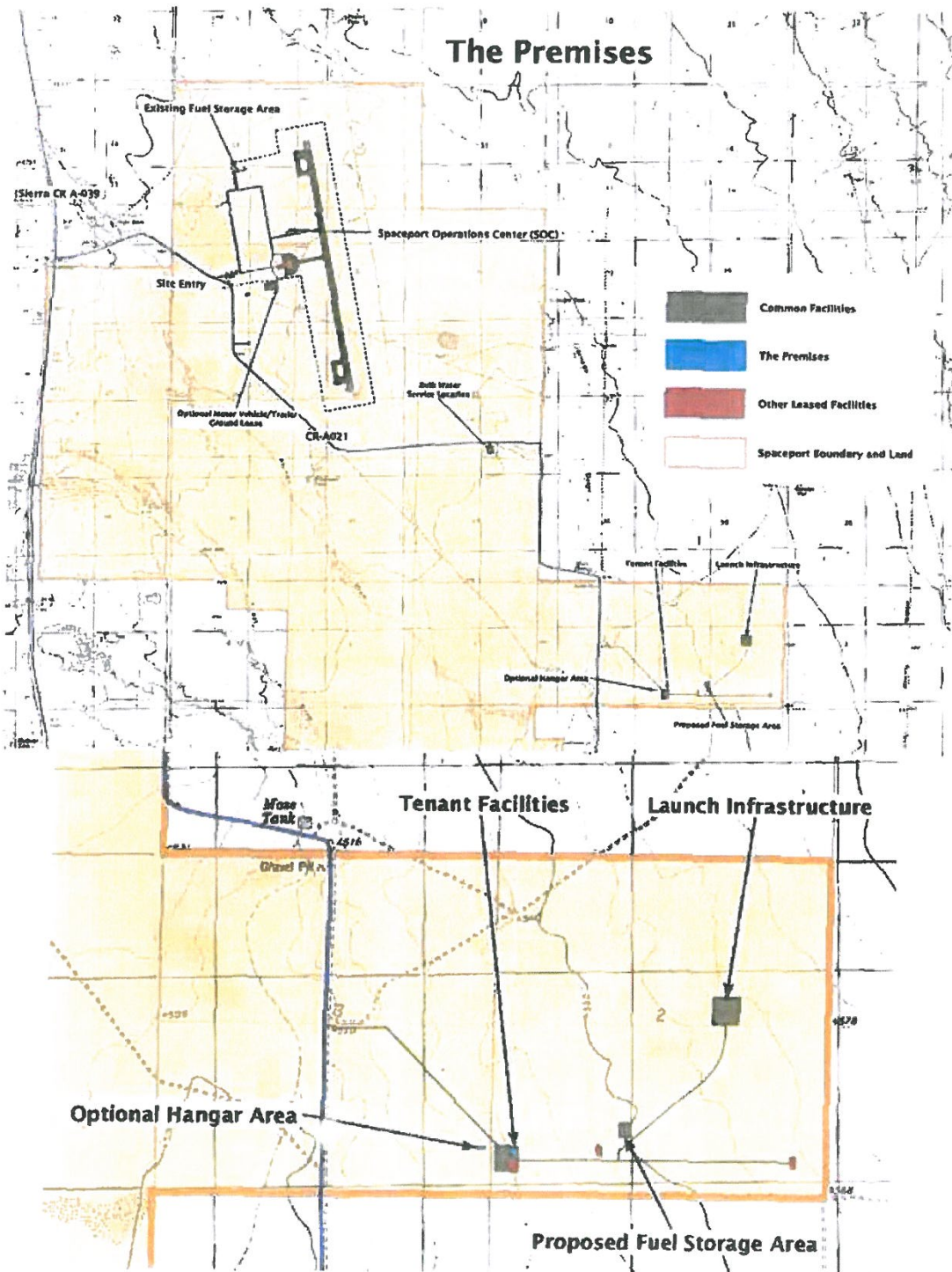
**SPACE EXPLORATION TECHNOLOGIES**

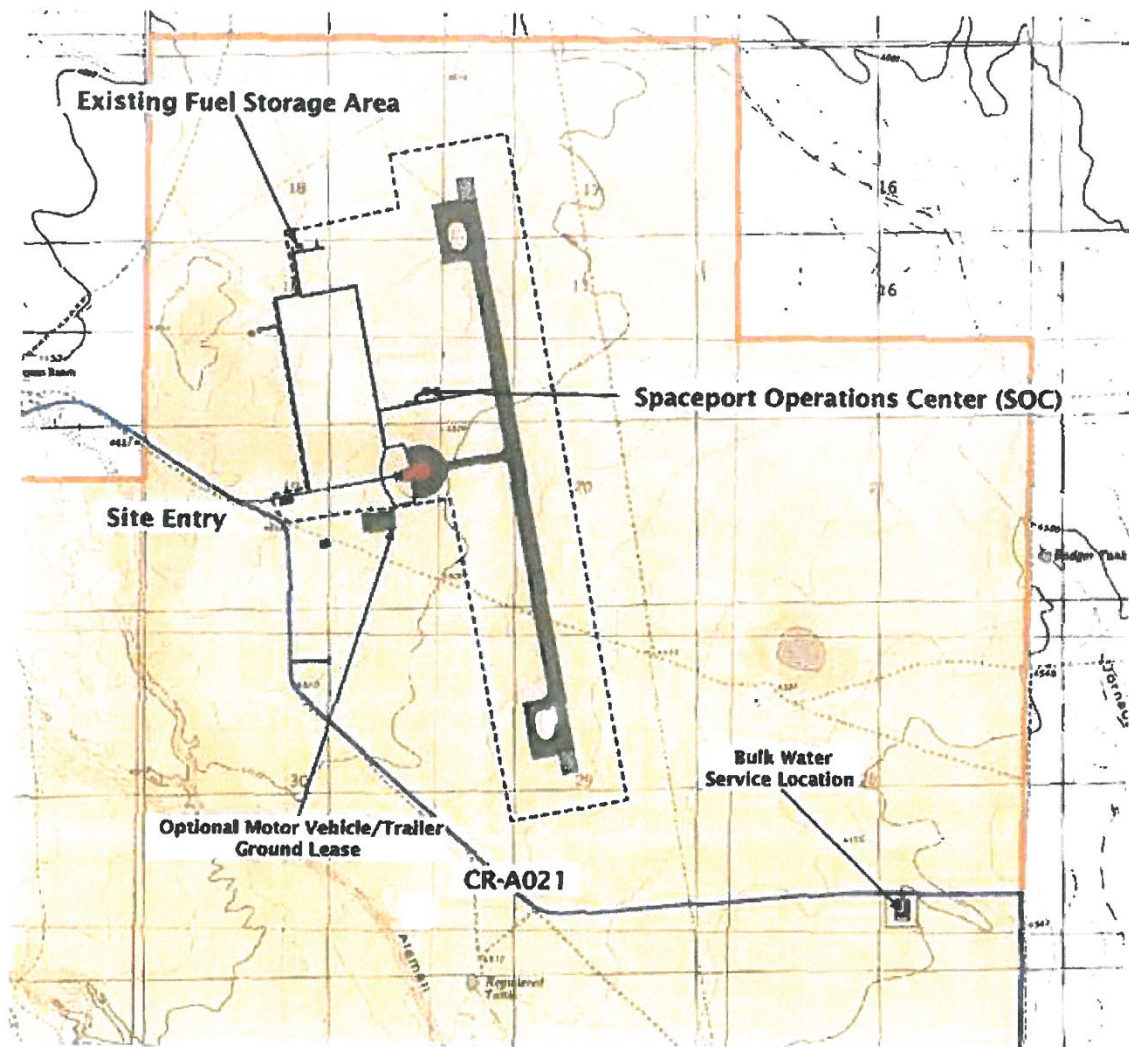
By:   
Steven Davis  
Director, Space Exploration Technologies  
Date: 4/24/13

**NEW MEXICO SPACEPORT AUTHORITY**

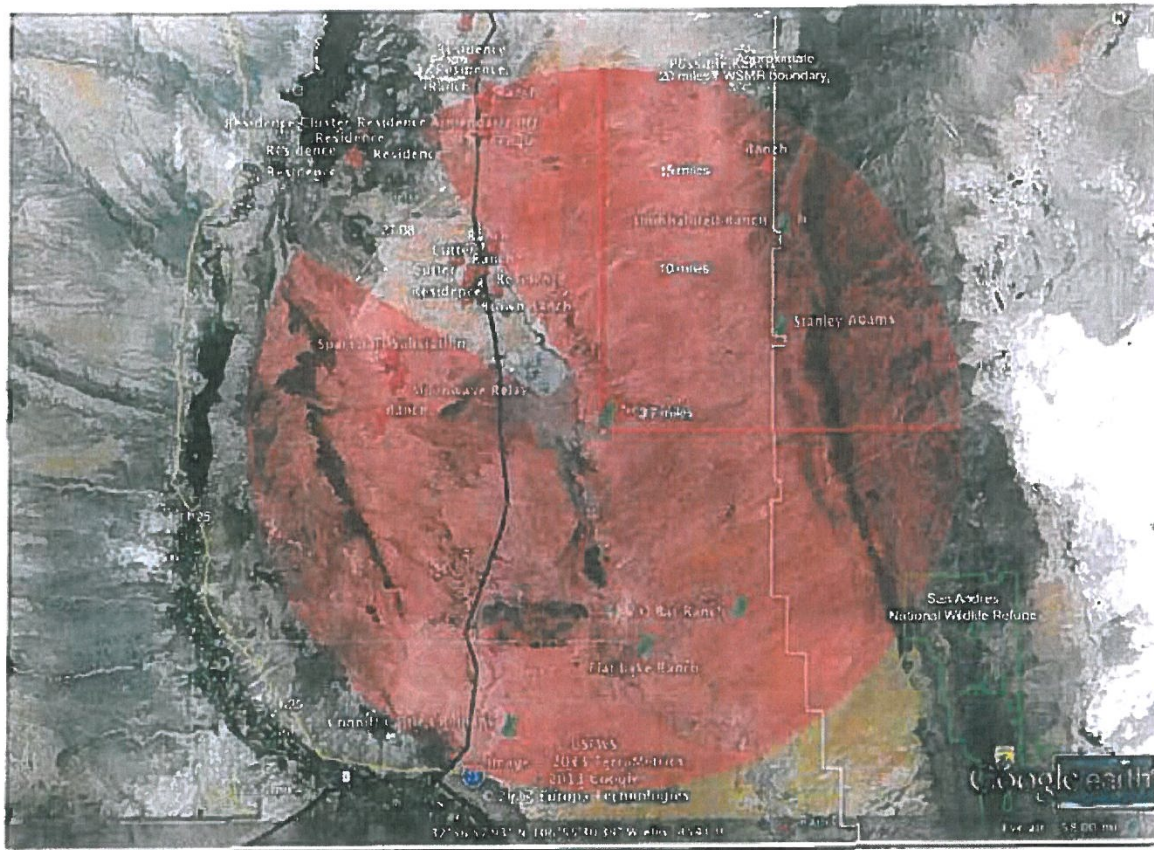
By:   
Christine Anderson  
Executive Director  
Date: 4/24/13  
By:   
Richard Holdridge  
Chairman  
Date: 4/24/13

## EXHIBIT A – PREMISES

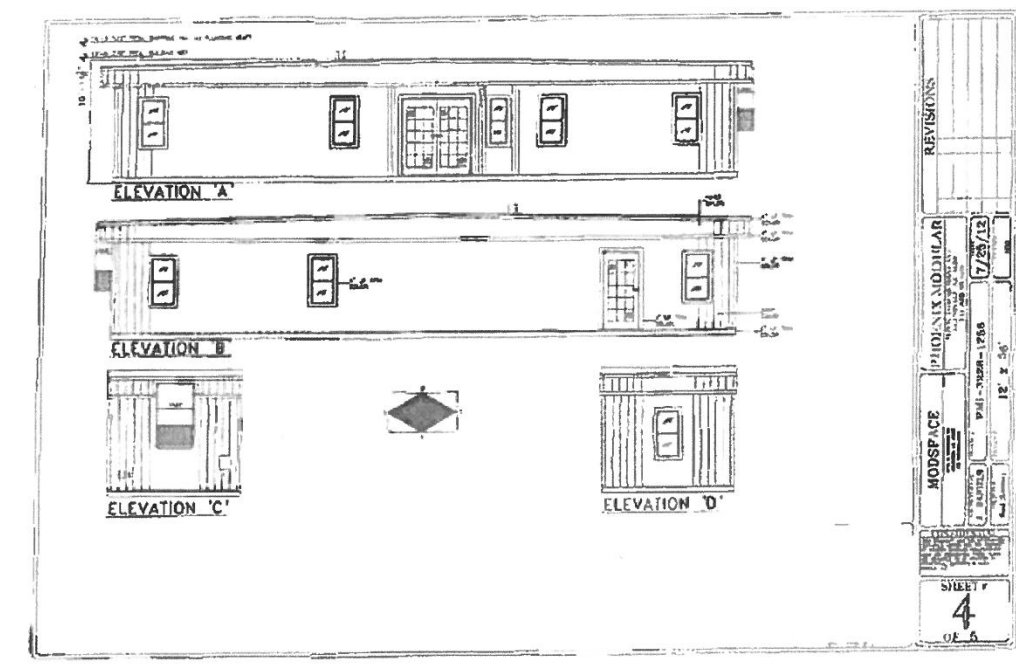












**EXHIBIT C – COMMON FACILITIES**

EXISTING FACILITIES
Runways
Partial Taxiways
Apron
Helicopter landing area
Roadways sufficient for passage to the Spaceport and Vertical Launch Infrastructure
Site(s) and vehicle(s) for crash, fire and rescue services
Fuel storage area(s)
Water wells and associated infrastructure
Sufficient motor vehicle parking for employees
Spaceport Operations Center mission control and emergency operations center
PLANNED FACILITIES
Vertical Launch Infrastructure, including 40000 ft 2 launch pad, to be completed at NMSA's expense prior to First Flight Period.
Wireless millimeter wave connection to fiber optic network, to be completed at NMSA's expense prior to First Flight Period.
Restaurant / concessions, when activated as part of the visitor experience
Multi-purpose training facilities and conference rooms, when activated as part of the visitor experience
U.S. Postal Services pickup/drop station, when activated as part of the visitor experience

**EXHIBIT D – USER FEES**

Flight Periods up to, and including:	10	25	50	100	Greater than 100
All Inclusive User Fee	\$25,000	\$20,000	\$16,000	\$13,000	\$10,000
<b>MAX TOTAL USER FEES</b>	<b>\$250,000</b>	<b>\$550,000</b>	<b>\$950,000</b>	<b>\$1,600,000</b>	<b>-</b>

**EXHIBIT E - LICENSED TRADEMARKS**

**SPACEPORT AMERICA – Registration 3,879,182**

**SPACEPORT AMERICA (Logo)**

**Primary Identity** 4 color



**2 Color**



**Grayscale**



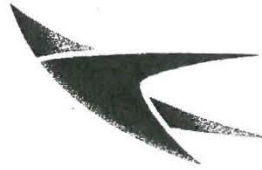
**Graytone**



**Black and White**







**SPACEPORT AMERICA®**

---

LEASE AGREEMENT  
NEW MEXICO SPACEPORT AUTHORITY  
with  
UP AEROSPACE, INC.

---

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials

## TABLE OF CONTENTS

1. RECITALS.....	1
2. DEFINITIONS.....	1
3. LEASE OF PREMISES; TERM.....	5
4. USE OF PREMISES.....	7
5. RENTALS, FEES AND CHARGES.....	11
6. UTILITIES.....	13
7. MAINTENANCE OF SPACEPORT.....	13
8. DAMAGE OF PREMISES.....	13
9. SPACEPORT SECURITY.....	14
10. ENVIRONMENTAL MATTERS.....	16
11. INSURANCE AND INDEMNIFICATION.....	20
12. TRANSFER BY ASSIGNMENT OR SUBLETTING.....	24
13. REPRESENTATIONS OF UPA.....	24
14. REPRESENTATIONS OF THE AUTHORITY.....	24
15. UPA DEFAULT.....	25
16. AUTHORITY DEFAULT.....	26
17. MINIMUM LAUNCH CADENCE.....	27
18. VIRGIN GALACTIC PREFERENCES.....	27
19. GENERAL PROVISIONS.....	27
Exhibit A – The Ground and Authority Facilities.....	32
Exhibit B – UPA Fees.....	35
Exhibit C – Spaceport Advisory Committee.....	36

## LAUNCH COMPLEX 1 LEASE

The New Mexico Spaceport Authority (the "**Authority**") and UP Aerospace, Inc. a Colorado corporation with registered address at 9249 South Broadway Blvd. Unit 200 #112, Highlands Ranch, CO ("**UPA**"), 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. UPA wishes to lease from the Authority and the Authority wishes to lease to UPA certain "**Ground**" (defined in Exhibit A), and certain UPA Facilities (defined below), in accordance with the terms and conditions of this LAUNCH COMPLEX 1 LEASE agreement (this "**Lease**"), for UPA to operate a commercial space launch complex. As a condition precedent to the effectiveness of this Lease the Authority will obtain approval from the New Mexico Commissioner of Public Lands (the "**Commissioner**") to enter into this Lease and approval for the uses and purposes contemplated by this Lease, including without limitation the installation of improvements consistent with this Lease.
- 1.3. UPA will have a seat on the Spaceport Advisory Committee ("**SAC**") 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 UPA or other Tenants, but does not include Spacecraft.

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

- 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, policies, procedures, regulations, orders, determinations and court decisions applicable to the Spaceport and this Lease.
- 2.4. Authority Facilities. Means those improvements, fixtures and property located on the Ground belonging to the Authority and leased or licensed to UPA under the terms of this Lease, including without limit two manufactured buildings, an explosives magazine storage structure, a roll-back structure, launch pad, fences, cameras, and other equipment and infrastructure.
- 2.5. 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.
- 2.6. The Commissioner. Means the New Mexico Commissioner of Public Lands of the New Mexico State Land Office.
- 2.7. 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
- 2.8. Environmental Law. All applicable federal, State, or local laws, statutes, regulations or ordinances, and any judicial or administrative order or judgment

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials



thereunder, now or hereafter in effect, pertaining to human health or safety, industrial hygiene, natural resources 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 of 1980, 41 U.S.C. §§ 9601, et seq.; the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Federal 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. §§ 5101, et seq.; the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1, et seq.; the Voluntary Remediation Act, NMSA 1978, §§ 74-4G-1, et seq.; the Water Quality Act, NMSA 1978, §§ 74-6-1, et seq.; the Ground Water Protection Act, NMSA 1978, §§ 74-6B-1, et seq.; the New Mexico Solid Waste Act, NMSA 1978, §§ 74-9-1, et seq.; and the Air Quality Control Act, NMSA 1978, §§ 72-2-1 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.

2.9. FAA. Means the United States Government Federal Aviation Administration.

2.10. 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. For example, the Fiscal Year for 2017 is the period between July 1<sup>st</sup>, 2016 and June 30<sup>th</sup>, 2017.

2.11. 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," "solid waste" or terms of similar import or regulatory effect 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.

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

- 2.13. 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.
- 2.14. 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.
- 2.15. 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. UPA O&M Expenses will be determined pursuant to Paragraph 5.3 of this Lease.
- 2.16. 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.
- 2.17. Premises. Means the Ground, Authority Facilities and UPA Facilities.
- 2.18. Representatives. Includes agents, employees, contractors, subcontractors, officers, board members, commissioners, directors, licensees, subrogees, assignees, customers, and invitees.
- 2.19. 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.
- 2.20. 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 UPA or other Tenants.
- 2.21. State. The State of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.
- 2.22. Tenant(s). Means a Person other than UPA who leases property in the Spaceport for the exclusive use of that Person.
- 2.23. UPA Facilities. Other than the Authority Facilities, all improvements, fixtures, equipment and other property constructed, acquired and installed on the

  *re*    
UPA Initials

CONFIDENTIAL

  *RH*    
NMSA Initials

Ground or in or upon the Premises including but not limited to the HSI Property and owned by HSI and its Representatives.

- 2.24. Vertical Launch Area (VLA). The portion of the Spaceport designated by the Authority for vertical launch and vertical landing operations.
- 2.25. 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.
- 2.26. VLA Common Facilities. Means the Facilities in the VLA that are not designated for the exclusive use of the Authority, UPA, or a Tenant.
- 2.27. WSMR. Means the U.S. Army White Sands Missile Range.
- 2.28. ZAB. Means the Albuquerque Air Route Traffic Control Center.

### 3. LEASE OF PREMISES; TERM.

- 3.1. Lease of Premises. In consideration of the payments as provided in Paragraph 5.6 and for other good and valuable consideration, the Authority leases the Premises to UPA and UPA leases the Premises from the Authority for the Term, subject to the terms and conditions of this Lease.
- 3.2. Initial Term. The "Initial Term" of this Lease shall be ten (10) years beginning on the Term Commencement Date, unless terminated earlier as set forth in this Lease.
- 3.3. Term Commencement Date. The Term Commencement Date(commencement date) shall begin the date of the last signature of this agreement.
- 3.4. Renewal Terms. UPA and the Authority shall each have the option, upon at least three (3) months written notice prior to the expiration of the Initial Term, to terminate this Agreement. The Initial Term exercised shall be herein referred to collectively as the "Term".
- 3.5. Surrender of Premises. Upon the expiration or earlier termination of this Lease, or upon any reentry by Authority as a result of an UPA Event of Default, UPA will peaceably quit and surrender possession of the Premises in broom clean, good condition, reasonable wear and tear excepted, and will remove all of UPA's Property (defined below) and the Authority will have the right to take possession of the Premises and any and all Authority Facilities on the Premises shall be the property of the Authority. 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

5

  
UPA Initials

CONFIDENTIAL

  
NMSA Initials

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 UPA and retained by the Authority as its property or be disposed of by the Authority, in which case UPA 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.

3.6. UPA 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 UPA 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 UPA and located in the Premises (the "**UPA Property**") will be and will remain the property of UPA and may be removed by UPA at any time during the Term of this Lease; provided that UPA will repair or pay the cost of repairing any and all damage to the Premises resulting from the installation and/or removal of UPA Property.

3.6.1. Existing UPA Property includes:

- 3.6.1.1. One storage shed and contents within Launch Complex 1.
- 3.6.1.2. One Launch Rail within Launch Complex 1.
- 3.6.1.3. One generator and propane tank within UPA Mission Control.
- 3.6.1.4. The contents of: (i) two manufactured buildings, (ii) Explosives Magazine storage structure, and (iii) roll back structure.

3.6.2. All capitalized terms in this Paragraph 3.6 not already defined, or not defined herein, are defined below.

3.7. 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**"). UPA 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

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials



immediately terminate this Lease upon written notice to UPA. 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 UPA. UPA may use the VLA Common Facilities and Premises for all purposes reasonably necessary for operation of UPA's SpaceLoft XL and SpaceLoft XL Heavy launch vehicles, and any vehicle capable of being launch from the existing UPA launch rail.

4.2. Spaceport Mission Support. The Authority will support UPA's Missions with:

4.2.1. Coordination of the Mission with WSMR, ZAB, FAA, and other required entities.

4.2.2. Safety review and approval of each UPA Mission flight data package, including planned trajectories and operational procedures.

4.2.3. One lavatory in Spectator Area (defined below) 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. Emergency response standby of one wildlands/brush truck or Class A pumper engine and one ambulance with personnel during Missions.

4.2.7. Wireless Internet and network access to launch site.

4.2.8. 24/7 Spaceport perimeter security.

4.2.9. Access to the Land for the purpose of recovering spacecraft.

4.3. Mission and Activity Scheduling. UPA 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 UPA requests with other Spaceport Tenants, users, WSMR, and with other entities and will attempt to accommodate UPA'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 UPA. UPA will provide the Authority with a schedule of all key events for each Mission; the manifest and number of payloads; and other information that may be necessary to calculate and assess UPA User Fees at the Spaceport.

UPA Initials

CONFIDENTIAL

NMSA Initials

- 4.3.1. Formal requests for a specific date and time period for a Mission must be submitted to the Authority no fewer than forty-eight (48) 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, UPA 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 to such activity, 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 UPA and Tenants, including but not limited to 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 UPA 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 UPA during UPA Missions on a non-exclusive basis for staging up to seventy-five (75) UPA Representatives. UPA and its Representatives may park no more than thirty (30) vehicles in the Spectator Area. Overflow parking, as space permits,


JZ  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials

may be available at the Spaceport 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 UPA Missions. UPA 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 for each UPA Representative. UPA 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. UPA must not make permanent modifications to the VLA Common Facilities without prior approval of the Authority.

- 4.5. "Gateway to Space" Event Services. UPA 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 UP Aerospace events. For the avoidance of doubt this discount is non-transferable and only applies to events conducted by UPA directly related to the marketing of UP Aerospace.
- 4.6. Branding and Marketing. To the extent permitted by law, UPA and the Authority will cooperate to maximize positive publicity regarding the Spaceport, for example, through co-branding. UPA may film, photograph, videotape, or otherwise make recordings or capture footage ("**Recordings**") of the Premises and the VLA Common Facilities for the sole commercial purpose of promoting the UP Aerospace brand with credit to "SPACEPORT AMERICA®, New Mexico, USA, Earth" wherever reasonably practicable. Upon request, UPA will grant rights for usage of said Recordings to the Authority. For the avoidance of doubt, UPA may make Recordings for any non-commercial purpose as well.
- 4.7. Signage. All UPA 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 UPA 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 Premises. UPA agrees to participate in the Authority's visitor experience programs through mutually agreeable means that enable visitors to observe exterior areas of the Premises consistent with the safety and security of both UPA and the visitors. At the request of the Authority, UPA agrees to reasonably accommodate requests for visitors to enter the Premises under escort. The Authority will coordinate the visitation with UPA to identify areas that if accessed would result in disruption of UPA work schedules, would

  
UPA Initials

CONFIDENTIAL

  
NMSA Initials

compromise confidential UPA activities, or would pose a risk under UPA'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, UPA 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; 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. UPA 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.

T  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials




- 4.10.8. Materially and adversely affect the operations of other Tenants or users at the Spaceport, other than through competition.
- 4.10.9. Other than interior alterations that do not have any material effect on the Ground or UPA Facilities structures or systems, which may be made without the approval of the Authority, UPA will make no alterations or construction in the UPA Facilities or Ground without the prior written approval of the Authority.
- 4.11. Evacuations. UPA must evacuate the Premises of all persons and readily portable items of UPA 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 UPA. The necessity, scope, and duration of any such evacuation will be determined by the Authority.
- 4.12. Experimental Activities. UPA 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. FAA or other applicable governmental approval has been obtained, if any is required; and,
- 4.12.2. UPA 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, taxiways, or other launch infrastructure 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, UPA agrees to pay to the Authority certain rents, fees and charges as set forth below.
- 5.2. Ground Rent. The "Rent" for the Initial Term, in the amount of seven hundred fifty dollars (\$750.00 USD) per quarter shall be due and payable on a quarterly basis beginning on the commencement date as identified in par. 3.3. Rent shall increase on an annual basis at a rate of five (5%) per annum. For reference purposes please refer to the below table:

Months 1-3: \$750.00.

11

  
UPA Initials

CONFIDENTIAL

  
NMSA Initials

Months 4-6: \$750.00

Months 7-9: \$750.00

Months 10-12: \$750.00

Months 13-15: \$787.50

Months 16-18: \$787.50

Subsequent quarters shall follow the payment terms as described herein.

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

5.4. WSMR Fees. UPA must reimburse the Authority for any costs from WSMR, including without limit, airspace coordination, radars, telemetry, tracking, US Army Air recovery services, and flight safety analysis.

5.5. Payment Provisions.


5.5.1. Rent. Ground Rent will be due and payable in equal quarterly installments the first day of each quarter in arrears without invoice from the Authority.

5.5.2. UPA User Fees. UPA User Fees will be due thirty (30) days after each Mission, use of 9NM9, or use of storage facilities.

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

5.6. 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, UPA must pay a late payment fee to the Authority of one and one quarter percent (1.25%) on those amounts due and unpaid.

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

  
UPA Initials

CONFIDENTIAL

  
NMSA Initials

5.8. Promotional Payloads. If there is payload availability, UPA and the Authority may engage in a co-branding activity whereby a payload is later used to support STEM activities at Spaceport America.

**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. UPA will be solely responsible for all aspects of any electrical generator or energy storage equipment within UPA Mission Control, 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. UPA shall keep any UPA Facilities within each fenced area within the Vertical Launch Area well-kept and in good working order.

7.2. The Authority shall annually clear plant growth from each fence line extending to 15 ft. beyond.

7.3. The Authority shall maintain the basic road to the Premises so as to enable year-round operational access.

7.4. The Authority shall perform weekly visual walk-around inspections of the Explosives Magazine from outside the fence line and report any observed signs of tampering in an email to UPA.

7.5. The Authority will manage pest control in an environmentally responsible way utilizing rat traps as well as encouraging a presence of several raptor species to halt/limit the use of poisonous substances.


7.6. Other maintenance services are available for purchase from the Authority by separate service level agreement.

**8. DAMAGE OF PREMISES.**

8.1. Restoration. If for any reason any of the Premises are damaged or destroyed then UPA must, at a minimum, restore the Authority Facilities and Ground, including without limitation removal of damaged UPA Property, to the condition immediately prior to the initial occurrence of such damage or destruction in the

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

reasonable judgment of the Authority or to a condition agreed upon by the Authority.

8.2. UPA will bear the full risk of loss from any and all causes for all of the UPA Property. 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.

8.3. CONDEMNATION AND EMINENT DOMAIN. If during the Term of this Lease the whole or a portion of the UPA 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. UPA will make all required payments apportioned to the date of such termination and will promptly vacate the UPA Facilities affected.

#### **9. SPACEPORT SECURITY.**

9.1. Under the "**Spaceport Security Program**," the Authority will provide security for the UPA Facilities and equipment associated with Spaceport operations up to the perimeter of, but not within the Premises. The Spaceport Security Program will provide for security that complies with all applicable rules, regulations, ordinances, statutes, laws and orders of any federal, state, or local government entity regarding security for the Spaceport and in keeping with security programs of other spaceports and Airfields of comparable size and scope of operations. The Spaceport Security Program will provide as a minimum:

- 9.1.1. Twenty four (24)-hour manned security for a seven (7) day per week operation,
- 9.1.2. Control of gates, doors and perimeter fencing,
- 9.1.3. Control of access to restricted areas and to UPA Facilities,
- 9.1.4. Cooperation with state and local law enforcement and emergency services,
- 9.1.5. Monitoring of all vehicular movements within the Airfield perimeter,
- 9.1.6. Escort procedures for guests, vendors and contract workers,
- 9.1.7. Challenge procedures for unauthorized entry to secured areas,
- 9.1.8. Monitoring of designated areas by electronic surveillance,


R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials



- 9.1.9. Action plans for emergency responses,
- 9.1.10. Initial orientation and security training and familiarization of all procedures, regulations and responsibilities of all Authority and UPA employees,
- 9.1.11. Refresher training for all employees in case of security breaches or apparent lapses in security measures centered around specific instances, and
- 9.1.12. As needed training updates to procedures and regulations that may be implemented due to changing statutes or regulations that would affect the Spaceport.
- 9.2. UPA and all Tenants must submit their own security plan for their operations and leased area that reflects the basic understanding of controlling federal agency regulations and the Spaceport Security Program. UPA may adapt or modify the Spaceport Security Program to apply to the UPA Facilities as long as the UPA security program is not in conflict with the Spaceport Security Program. The UPA Security Program must be submitted to the Authority for approval on an annual basis.
- 9.3. UPA and all Tenants will cooperate to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Spaceport:
- 9.3.1. All access points will be secured at all times.
- 9.3.2. Persons not properly displaying Spaceport identification will be challenged.
- 9.3.3. Personnel will remain within authorized areas.
- 9.3.4. All badged personnel must attend Spaceport security training, all badged personnel must comply with Spaceport security rules and regulations outlined in the training, and, because security requirements and access control procedures change, all badged personnel are made aware of, and comply with, all reasonable changes to Spaceport security rules and regulations.
- 9.3.5. Visitors must be properly escorted by UPA at all times.

  
UPA Initials

CONFIDENTIAL

  
NMSA Initials

9.3.6. UPA must participate in the Spaceport's orientation and security program and comply with all applicable security or safety policies and procedures including, but not limited to, the wearing of Spaceport ID badges.

9.3.7. UPA must immediately notify applicable law-enforcement or security officers, or both, of any suspicious activity observed in the Spaceport.

9.3.8. Any unresolved questions concerning Spaceport security will be directed to the Authority.

9.4. UPA further agrees to reimburse the Authority for any and all penalties or fines levied against the Authority by the FAA, US Departments of State or Commerce, or other state or federal government body due to UPA's failure to abide by the security measures described in this Lease, provided however, UPA will have the right, to the extent allowed pursuant to Applicable Law, to defend against such enforcement action.

9.5. The Authority will periodically evaluate the procedures set forth in this Paragraph 9, and make revisions as required to comply with Applicable Law. Failure of UPA or UPA's personnel to fully comply with the procedures set forth in this Paragraph 9 or as later revised will be sufficient grounds for the Authority to immediately take any necessary corrective measures, including, but not limited to, measures that limit or delay UPA's access to the Spaceport or the Premises, until security acceptable to the Authority is restored.


9.6. Throughout the Term of the Lease the Authority and UPA will cooperate in investigations of violations of State and local laws, ordinances, and rules and regulations, of any federal, State and/or local government entity regarding Spaceport security. The Authority and UPA will provide necessary assistance to, and cooperate with, the other in case of any emergency. Each will, upon request, provide the other with relevant information that will enable both to provide efficient and effective management in response to any Spaceport emergency.

9.7. Entry in Event of Emergency. If circumstances occur or threaten to occur on the Premises, which the Authority reasonably concludes could pose an imminent threat to the security or safety of persons or property, the Authority may immediately enter the Premises to respond to such threat.

#### **10. ENVIRONMENTAL MATTERS.**

10.1. Environmental Definitions. The following terms have the following meanings in this Paragraph 10.

16

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

- 10.2. **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.
- 10.3. **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 UPA, UPA'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.
- 10.4. **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.
- 10.5. **Contamination.** The Release or uncontained presence of Hazardous Substances resulting from UPA 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.
- 10.6. **Environmental Compliance.** UPA's conduct and operations as related to any operations involving or arising from UPA'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, UPA will at all times handle Hazardous Substances in a manner consistent with Best Management Practices and Environmental Laws. Upon request UPA will provide to the Authority any record related to any operations required to be maintained pursuant to any Environmental Law and UPA will provide to the Authority a list of and information on the Hazardous Substances used, or planned for use, by UPA.

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

- 10.7. UPA will be solely responsible for the proper removal and disposal of all Hazardous Substances arising from UPA's activities at the Premises or the Land in accordance with Environmental Laws. Additionally, UPA 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 UPA or its Representatives.
- 10.8. No later than five (5) days after receipt UPA must provide the Authority with a copy of any notice of violation, summons, order, complaint or any correspondence alleging, threatening or relating to noncompliance with any Environmental Law pertaining to UPA operations on the Premises or the Land.
- 10.9. Site Contamination. If a Release or threatened Release of a Hazardous Substance or any Contamination arising from UPA activities occurs, UPA 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 or if notification of governmental agencies/bodies is required under Environmental Laws.
- 10.9.1. UPA 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.
- 10.9.2. If the Release requires reporting under Environmental Law, then UPA will timely make the required notification and notify the Authority that it has done so. In this event, UPA and the Authority, in conjunction with a licensed environmental firm, will develop a remediation action plan ("Remediation Plan") that complies with Environmental Law.
- 10.9.3. Once the Remediation Plan has received approval from UPA, the Authority, and any governmental agency/body or court that is required to approve the Remediation Plan, UPA will execute the Remediation Plan as soon as reasonably possible and will work expeditiously to accomplish remediation at UPA's sole expense. Upon completion, the Authority may request that UPA provide a Phase II environmental site assessment to be completed at UPA's expense and in accordance with ASTM-E1903-11, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, or other assessment specified by the Authority (the "Post-Remediation ESA").
- 10.9.4. If UPA fails to clean up, properly dispose of, remove, repair, or remediate any operation or condition that relates to a Hazardous Substance,

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials




Release, threatened Release, or violation of Environmental Law, or if UPA 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 UPA's sole cost and expense, and UPA will, pursuant to Paragraph 10.11 and subject to Paragraph 11.11, indemnify, defend and hold harmless the Authority, and 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.

- 10.9.5. If a Release or threatened Release occurs in an area used jointly between UPA and one or more other Tenants, UPA and such Tenants will be liable jointly and severally for carrying out the obligations and making all payments required by Paragraph 10.9.
- 10.10. Storage Tanks. UPA will not install any storage tanks without the prior written consent of the Authority, which consent will not be unreasonably withheld, conditioned or delayed. UPA 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 UPA storage tanks.
- 10.11. Environmental Indemnification. In addition to all other remedies available to the Authority, UPA will, subject to Paragraph 11.11, 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 UPA or its Representatives any other Person acting by or through or on behalf of UPA, 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.
- 10.12. Environmental Audit. On one or more occasions, the Authority may conduct an audit to assess UPA's compliance with Environmental Laws (a "**Compliance Audit**"). The Authority will provide UPA 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 UPA's non-compliance with any Environmental Law, the provisions of this Lease relating to Paragraph 10.9. Site Contamination will apply.
- 10.13. 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 UPA, enter the Premises to conduct reasonable inspections, tests, samplings, split samples or other investigations pertaining to

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

environmental matters. The Authority will provide to UPA a copy of the results of any testing that occurs during an inspection.

10.14. End of Occupancy. The Authority may request the preparation of a Phase II environmental site assessment to be completed at UPA's expense and in accordance with ASTM-E1903-11, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, an update to any existing Phase II environmental site assessment or other assessment specified by the Authority during the final months of the Term ("**Exit ESA**"). If the Exit ESA reveals UPA's non-compliance with any Environmental Law, the provisions of this Lease relating to Paragraph 10.9. Site Contamination will apply.

10.15. No Assumption of Liability. UPA and the Authority acknowledge that the provisions of this Paragraph 10 may not insulate either party from direct liability assessed by governmental agencies/bodies for environmental investigation and remediation costs. UPA 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 UPA of any Environmental Laws, and UPA's obligations and liability under this Paragraph 10, will survive the expiration or termination of this Lease.

#### 11. INSURANCE AND INDEMNIFICATION.

11.1. UPA will procure and maintain at its own cost during the Term such insurance as is required in this Lease. On request, UPA will provide to the Authority copies of any or all policies of insurance required in this Paragraph 11. UPA will not violate the terms or prohibitions of required insurance policies. UPA will promptly notify the Authority of any claim or loss exceeding the amount of the deductible under such insurance policies.

11.2. The required amounts of insurance provided in this Paragraph 11 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 UPA. 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 UPA.

11.3. Commercial General Liability Including Premises Liability, Contractual Liability and Products/Completed Operations. UPA will procure and maintain comprehensive general liability policies of insurance, including premises liability, contractual liability, and products/completed operations, of no less than one million dollars (\$1,000,000.00) combined single limit per occurrence and in the

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

aggregate as respects products. UPA 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. UPA will also procure and maintain insurance to cover liabilities arising out of UPA's space launch operations of no less than one million dollars (\$1,000,000.00) 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 UPA'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 UPA that the Authority believes the coverage limits need to be increased to give effect to the changing risk management environment, changes to UPA'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 UPA 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).

- 11.4. Workers' Compensation and Employer's Liability Insurance as Required by New Mexico Law. UPA will comply with applicable provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. UPA 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. UPA hereby covenants and agrees that the Authority and its Representatives will not be liable or responsible for any claims or actions occasioned by UPA's failure to comply with the provisions of this Paragraph 11.4 and that the Indemnification provision of this Lease will apply to this Paragraph 11.4. It is expressly agreed that the employees of UPA are not the Authority's employees or agents for any purpose.



- 11.5. 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 11.
- 11.6. Contents Insurance. UPA will be solely responsible for obtaining insurance policies that provide coverage for losses involving the UPA Facilities. The Authority will not be required to provide such insurance coverage or be responsible for payment for such insurance.
- 11.7. Builders Risk Insurance. During any period of construction or reconstruction UPA will carry a policy of builders risk Insurance in an amount sufficient to insure the value of the work.
- 11.8. 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 UPA, 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 11.8. 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 UPA in its operations on the Land. All insurance policies issued pursuant to this Paragraph 11 will be written as primary policies that may not be interpreted as contributing policies or as excess coverage. All UPA property insurance policies will expressly waive all claims or rights of subrogation, if any, against the Authority, the Commissioner, or the State.
- 11.9. The Authority's Right to Remedy Breach by UPA. If UPA fails to provide insurance as required in this Lease, the Authority will have the right, but not the obligation, to prohibit any UPA space launches or related activities until such insurance is in place.
- 11.10. Indemnification. UPA and its Representatives will use due care and diligence in all activities and operations at the Land. UPA 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

  
UPA Initials

CONFIDENTIAL

  
NMSA Initials



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 UPA or its Representatives arising out of the operations of UPA 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 11.8.

- 11.11. No Violation of Public Policies Involving Indemnity. 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.
- 11.12. 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 UPA or its Representatives, UPA 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 UPA pursuant to the above; (ii) any interest accruing up to the date of payment by UPA; (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 UPA 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.
- 11.13. 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 UPA or its Representatives. The Authority, the State, and the Commissioner will not be liable for UPA'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 UPA Facilities or UPA's intended uses. NO WARRANTY

  *U*    
UPA Initials

CONFIDENTIAL

  *RH*    
NMSA Initials

OR REPRESENTATION, EXPRESS OR IMPLIED, IS MADE BY AUTHORITY WITH RESPECT TO THE SUITABILITY OF THE LAND FOR UPA'S INTENDED USE THEREOF.

- 11.14. 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.

**12. TRANSFER BY ASSIGNMENT OR SUBLETTING.**

- 12.1. UPA 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.
- 12.2. If UPA 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 15 of this Lease.
- 12.3. Notwithstanding anything to the contrary set forth above, UPA 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 UPA owns, (ii) to the entity that owns UPA, (iii) to any entity with which UPA is merged or which acquires all or substantially all of the stock or assets of UPA.
- 12.4. UPA 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.

**13. REPRESENTATIONS OF UPA.**

- 13.1. UPA represents and warrants to the Authority as follows:
- 13.1.1. UPA is a Corporation duly organized, validly existing and in good standing under the laws of State and has all requisite power and authority to execute, deliver and perform the obligations under this Lease.
- 13.1.2. This Lease has been duly executed and delivered by UPA and constitutes a legal, valid and binding obligation of UPA, enforceable against UPA in accordance with its terms.

**14. REPRESENTATIONS OF THE AUTHORITY.**

- 14.1. The Authority hereby states to UPA as follows:

24

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials

14.1.1. 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 of the Authority under this Lease.

14.1.2. 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.

14.1.3. This Lease has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority.

**15. UPA DEFAULT.**

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

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

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

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

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

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

15.1.6. 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 the Authority.

15.1.7. Any authorization, approval, filing, registration or other governmental, judicial or public body or authority necessary to enable UPA 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 UPA'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 UPA, as the case may be, to perform such obligations, or it becomes unlawful for UPA to perform such obligations; or,

15.1.8. Occurrence of a Bankruptcy Event with respect to UPA.

  
\_\_\_\_\_  
UPA Initials


CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

- 15.2. Termination by the Authority. If UPA fails to cure any UPA 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 UPA written Notice of Termination, provided that UPA will have no cure period and the Authority may terminate immediately upon an UPA Bankruptcy Event. Termination of this Lease will take effect immediately upon UPA's receipt of the Notice of Termination, unless stated otherwise in the Notice of Termination. If, however, UPA has cured the deficiencies identified in the Authority's notice to cure prior to UPA's receipt of the Authority's Notice of Termination, then such Notice of Termination will be of no force or effect.

**16. AUTHORITY DEFAULT.**

- 16.1. Default by Authority, Notice and Cure Periods. Each of the following events will be an "Authority Event of Default" for purposes of this Lease:
- 16.1.1. Any representation made by the Authority in this Lease proves to have been false or misleading in any material respect when made;
- 16.1.2. 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;
- 16.1.3. 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 UPA.
- 16.2. The Authority's termination of this Lease pursuant to Paragraph 3.7 of this Lease will not be an Authority Event of Default.
- 16.3. Right of Termination by UPA. 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, UPA will have the right to terminate this Lease by sending the Authority a Notice of Termination. If, however, the Authority has

  
UPA Initials

CONFIDENTIAL

  
NMSA Initials



cured the Event of Default before receipt of the Notice of Termination, then such Notice of Termination will be of no force and effect.

**17. MINIMUM LAUNCH CADENCE.**

- 17.1. If UPA does not conduct at least one (1) Mission over every twenty-four (24) month period starting October 1<sup>st</sup>, 2016, then either Party may elect to terminate this Lease by sending written notice to the other, effective on receipt. Upon receipt of termination notice from Landlord to Tenant, Tenant may pay the equivalent of one (1) launch fee to continue the Lease. Amendment or extension of the Term will not alter the twenty-four month period unless such amendment explicitly states so in writing.

**18. VIRGIN GALACTIC PREFERENCES.**

- 18.1. UPA 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. For the avoidance of doubt, this does not constitute pre-emption capability for Virgin Galactic. Once an UPA mission is scheduled it can not be rescheduled to accommodate another Authority tenant.

**19. GENERAL PROVISIONS.**

- 19.1. Compliance with Law. UPA 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.
- 19.2. Non-Discrimination. In the use and occupation of the Spaceport, UPA 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.
- 19.3. 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:

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials

19.3.1. Authority:

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

19.3.2. UPA:

UP Aerospace Inc.  
9249 South Broadway Blvd.  
Unit 200 #112  
Highlands Ranch, CO 80129 USA

19.4. Amendment or Waiver. This Lease may not be amended without the prior written consent of UPA 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.

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

19.6. 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.

19.7. Consent to Jurisdiction and Venue. The Authority and UPA 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 UPA. The Authority and UPA 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.

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials

- 19.8. Waiver of Jury Trial. The Authority and UPA 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.
- 19.9. Entire Agreement. This Lease contains the entire understanding and agreement of the Authority and UPA. 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.
- 19.10. No Third Party Beneficiaries. This Lease is made and entered into for the sole protection and benefit of the Authority and UPA and their respective permitted successors and assigns. No other Person will have any right of action based upon any provision of this Lease.
- 19.11. 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.
- 19.12. 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.
- 19.13. 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 UPA.
- 19.14. 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 UPA, 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 UPA 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

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

continue in full force and effect with respect to any existing or subsequent breach of this Lease.

- 19.15. Further Assurances. The Authority and UPA will, from time to time, take all actions and sign any documents as necessary to further carry out the purposes of this Lease.
- 19.16. Time of the Essence. Time is of the essence in the performance of this Lease.
- 19.17. 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 UPA.
- 19.18. 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.
- 19.19. Recordation. Neither the Authority nor UPA will record this Lease in any real property records office.
- 19.20. Brokerage Disclosures. The Authority and UPA 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.
- 19.21. True Lease. UPA and the Authority recognize and agree that this Lease is a true Lease and not a financing arrangement for the UPA Facilities.
- 19.22. Consequential Damages. Neither party will be liable to the other for any consequential, special or indirect damages, including loss of profits.
- 19.23. 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]

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials



UP AEROSPACE, INC.

By Serry Larson

Name [Signature]

Title President

Date 11-22-16

NEW MEXICO SPACEPORT AUTHORITY

By [Signature]

Name Dr. Rick Holdridge

Title Chair, Board of Directors

Date 11/28/2016

31

[Signature]  
UPA Initials

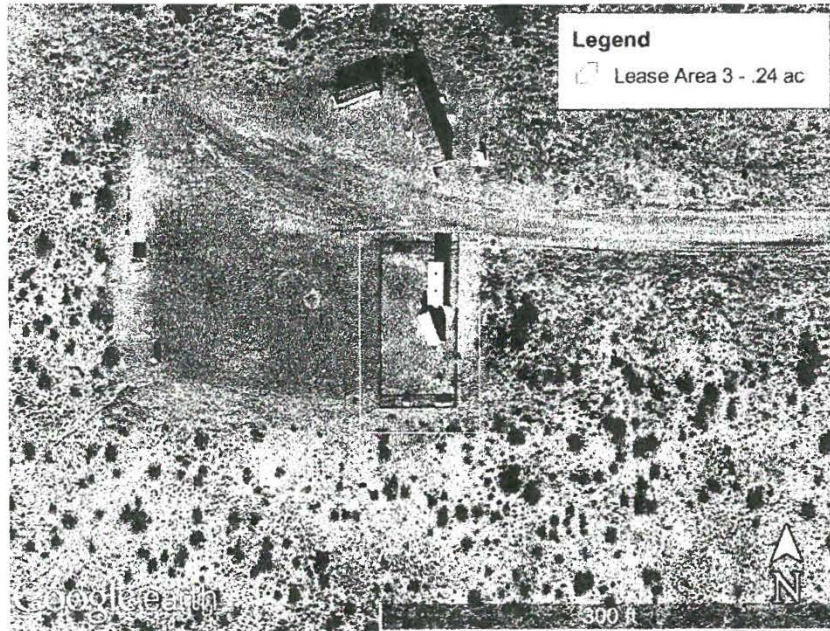
CONFIDENTIAL

[Signature]  
NMSA Initials

Exhibit A – The Ground and Authority Facilities

UP Mission Control:

0.24 acre exclusive use area (Legal description R1W T16S S2 SW 1/4 of the SW 1/4)



Approximate coordinates of each corner:

NW: 32°56'24.7"N, 106°55'10.8"W      NE: 32°56'24.7"N, 106°55'9.9"W

SW: 32°56'23.4"N, 106°55'10.8"W      SE: 32°56'23.4"N, 106°55'9.9"W

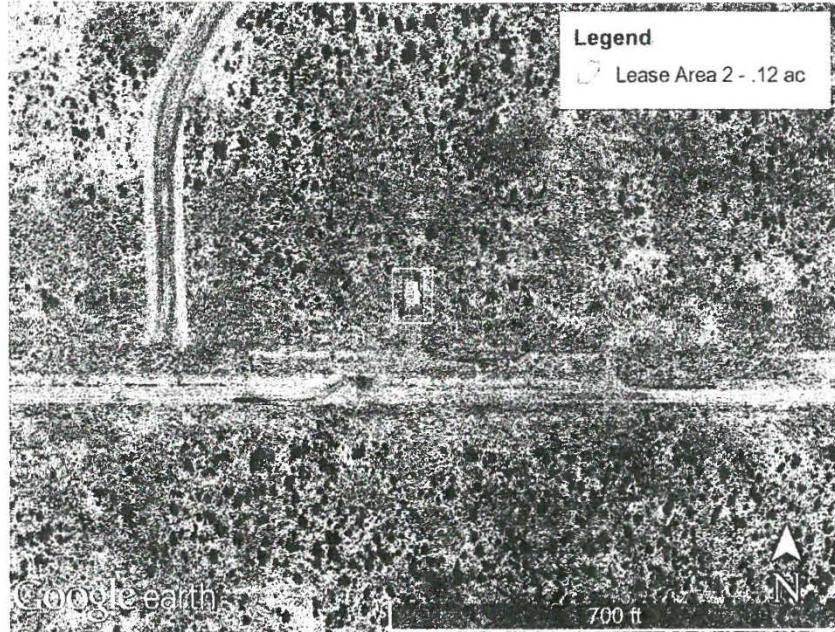
RL  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials


**Explosives Magazine:**

0.12 acre exclusive use area (Legal description R1W T16S S2 SE 1/4 of the SW 1/4)



Approximate coordinates of each corner:

NW: 32°56'26.7"N, 106°54'52.9"W	NE: 32°56'26.7"N, 106°54'52.1"W
SW: 32°56'25.8"N, 106°54'52.9"W	SE: 32°56'25.8"N, 106°54'52.1"W

  
\_\_\_\_\_  
UPA Initials

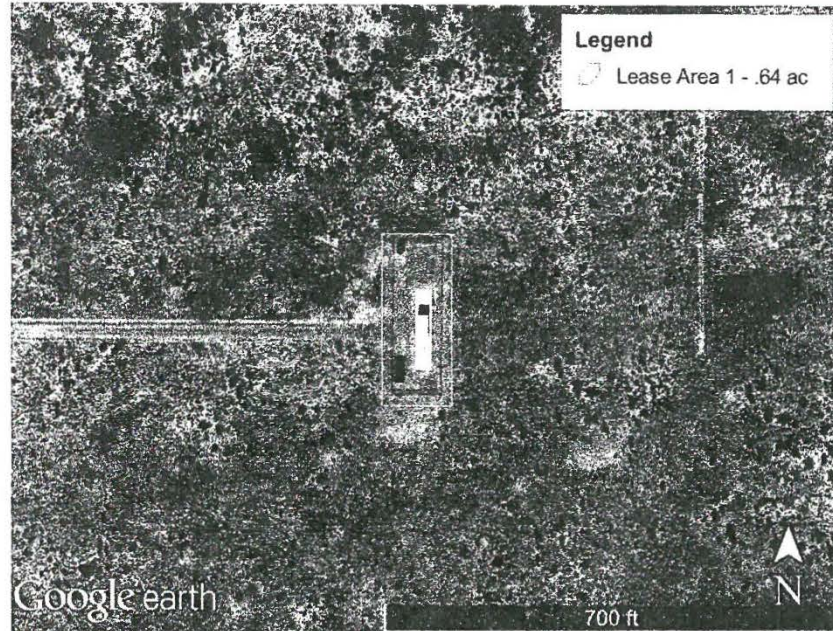
CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials



**Launch Complex 1:**

0.64 acre exclusive use area (Legal description R1W T16S S2 SE 1/4 of the SE 1/4)



Approximate coordinates of each corner:

NW: 32°56'26.7"N, 106°54'24.4"W      NE: 32°56'26.7"N, 106°54'23.2"W

SW: 32°56'24.1"N, 106°54'24.4"W      SE: 32°56'24.1"N, 106°54'23.2"W

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials



Exhibit B – UPA Fees


UPA must pay UPA User Fees according to the rates in the tables below. The Authority determines UPA User Fee rates on an annual basis and delivers updates to UPA User Fee rates, if any, by August 31st 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 C.

**UPA Suborbital Missions:**

UPA User Fee per Mission	\$7,000
--------------------------	---------

**Conventional, manned aviation operations at 9NM9:**

UPA User Fee for one aircraft landing and takeoff cycle during nonexclusive use of the 9NM9 Airfield	\$1,500 per cycle
--	-------------------

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

Exhibit C – Spaceport Advisory Committee

19.1. The Spaceport Advisory Committee ("**SAC**") is composed of the Authority and other Tenants that operate Aircraft or Spacecraft at the Spaceport.

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

19.2. 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.

19.3. 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.

19.3.1. Authority FY2 Budget Brief. By June 1<sup>st</sup> of each FY1 the Authority will submit to the SAC a copy of the Authority's State-approved FY2 operating Budget.

19.3.2. UPA Reports. UPA will provide the SAC and the Authority with the following information by June 1<sup>st</sup> of each FY1: (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. ("**UPA 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


  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

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.

- 19.3.3. Preliminary Operating Budget. By August 31st of each FY3 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 UPA from bringing an action to contend that any allocation of costs for the items identified in (i), (iv) and (vi) above is inequitable.
- 19.4. The Authority will timely furnish all Tenants and the SAC with a copy of the final approved Budget.
- 19.5. 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.
- 19.6. 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.

  
\_\_\_\_\_  
UPA Initials

CONFIDENTIAL

  
\_\_\_\_\_  
NMSA Initials

- 19.7. Notice of Experimental Activities. In addition to the requirements in Paragraph 4.12, UPA 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. UPA may deliver such notice to the Authority for forwarding to the SAC.

R  
UPA Initials

CONFIDENTIAL

RH  
NMSA Initials





New Mexico Spaceport Authority

September 13, 2018

Heath Haussamen  
Editor and publisher  
[NMPolitics.net](http://NMPolitics.net)

Re: Response to Letter of Attorney General, July 26, 2018

Dear Mr. Haussamen:

We have taken time to review the opinion letter provided by the Attorney General's office (AG) in response to your complaint alleging violations of the Inspection of Public Records Act (IPRA) and the Open Meetings Act (OMA). As you know the AG was unable to determine that we failed to provide all records responsive to your public records request or that we violated OMA by failing to prepare draft meeting minutes.

However, we take seriously the AG's remarks concerning specific allegations of wrongdoing. These are:

1. charging a fee for providing copies of the documents under NMSA 14-2-9(C)(2));
2. not producing records of blocked twitter accounts under NMSA 14-2-8(B), which does not require us to create a public record; and
3. producing leases redacted of terms covering "security, the lessees' use of the leased premises, rental amounts, user fees ... and insurance coverage." Of all the information redacted, the AG opined that only rent, user fees and insurance might not be covered by the trade secret statute.

While we disagree with the analysis, it is in the best interest of the taxpayers and the spaceport to put our disagreements behind us and comply with the recommendations in the AG's opinion letter. Accordingly, enclosed is a flash drive with copies of leases unredacted of the information discussed by the AG's office, as well as a screen shot of the status of blocked twitter feed for the spaceport account. Finally, as you know, we have already refunded your \$295 charge for copies of the documents produced to you last year.

Please contact us if you have any questions or comments.

A handwritten signature in blue ink, appearing to read "Zach DeGregorio".

Zach DeGregorio  
Records Custodian