

AUBURN UNIVERSITY  
REGIONAL AIRPORT

AIRPORT PERMIT

GOVERNING THE OPERATION OF  
OFF-SITE RENTAL CAR BUSINESSES

AT

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REGIONAL AIRPORT

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# AIRPORT PERMIT

## GOVERNING THE OPERATION OF OFF-SITE RENTAL CAR BUSINESSES

AT

## AUBURN UNIVERSITY REGIONAL AIRPORT

THIS AIRPORT PERMIT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between AUBURN UNIVERSITY, a public corporation and instrumentality of the State of Alabama, hereinafter referred to as "Auburn University," and \_\_\_\_\_, hereinafter referred to as "Permittee."

### WITNESSETH:

WHEREAS, Auburn University owns the Auburn University Regional Airport, hereinafter referred to as "the Airport," located in the Cities of Auburn and Opelika, State of Alabama, and, pursuant thereto owns, manages and operates a terminal building, parking area and roads running to and from the terminal building, hereinafter collectively referred to as the "Terminal Area"; and

WHEREAS, Auburn University is organized pursuant to the *Constitution of the State of Alabama*, as amended; and

WHEREAS, the *Constitution of the State of Alabama*, as amended, gives Auburn University the right, power and authority to promulgate and enforce rules and regulations to provide for the health, welfare and safety of the public and for the efficient, safe and orderly use of facilities owned and operated by Auburn University; and

WHEREAS, the *Constitution of the State of Alabama*, as amended, gives Auburn University the right, power and authority to establish, collect and alter access fees for use of facilities owned and operated by Auburn University from those deriving benefit from the facilities; and

WHEREAS, pursuant to Resolution Number \_\_\_\_\_, adopted by the Board of Trustees on June \_\_\_\_\_, 2012, Auburn University has authorized and approved the issuance of Airport Permits to off-site rental car businesses requesting authorization to access the Terminal Area in order to provide rental cars for customers to pick up and/or to pick up and drop off customers; and

WHEREAS, the Airport requires that rental car companies doing business at the Airport either have a valid on-site rental car concession agreement or a valid airport permit governing the operations of off-site rental car businesses; and

WHEREAS, the requirement to have either a signed Concession Agreement or an Airport Permit applies equally to all rental car companies accessing the Airport to provide rental cars for customers to pick up and/or to pick up and drop off customers; and

WHEREAS, Permittee owns and/or operates a car rental business off the Airport (an off-site rental car business) and has filed with Auburn University a completed application requesting issuance of an Airport Permit; and

WHEREAS, Permittee agrees to operate its off-site rental car business in accordance with the terms and conditions contained in this Airport Permit.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Auburn University and Permittee hereby agree as follows:

#### **SECTION 1. TERM.**

A. The term of this Permit shall be for a period of one (1) year, commencing on \_\_\_\_\_, and ending on \_\_\_\_\_. Notwithstanding, either party may terminate this Agreement, without cause, by giving the other party sixty (60) days' advance written notice.

B. Permittee shall be required to submit a completed application form in order to obtain an Airport Permit. Any false, misleading, inaccurate or incomplete information on the application form shall be grounds for termination of this Permit. Permittee shall be required to resubmit a current application form prior to issuance of any new Airport Permit, or in the event information on the form is no longer accurate as stated.

#### **SECTION 2. PRIVILEGES OF PERMITTEE/ACCESSING THE AIRPORT.**

A. Permittee, its employees, agents and representatives shall have nonexclusive right to utilize the roadway running to and from the Airport terminal building. Auburn University reserves the right to prescribe the route to be used by Permittee in accessing the designated parking, pick-up and drop-off zones.

B. Permittee is hereby authorized to pick-up/drop-off its customers in the area at the Airport terminal building designated by Auburn University ("the pick-up area"). Permittee is hereby permitted to park no more than two (2) rental cars at any one time at the Airport in the area designated by Auburn University ("the parking area"). Permittee shall only be permitted to use the parking area to park rental cars which have been reserved by a customer prior to arrival at the Airport. No rental car shall be parked at the Airport over twenty-four (24) hours before the customer's estimated time of arrival or left at the Airport over twenty-four (24) hours after the customer drops the car off.

C. Permittee and its drivers, employees and other personnel are expressly prohibited from soliciting business at the Airport except as expressly permitted by this Permit. Permittee

may only pick up customers at the Airport and provide rental cars at the Airport for customers that have made advance reservations to rent cars from Permittee.

D. It is further understood and agreed that nothing contained herein shall authorize Permittee to have an office or station in the terminal building, to park more than two (2) rental cars at the Airport, nor to initiate rental transactions on Auburn University property. Such activities are expressly prohibited.

E. Permittee agrees that Auburn University has the right to adopt and enforce reasonable rules and regulations regarding operations and activities at the Airport and that Permittee and its employees, agents and representatives will fully and faithfully observe and comply with all such rules and regulations as may, from time to time, be promulgated by Auburn University.

F. Permittee, its employees, agents and representatives, shall at all times comply with all laws, ordinances, statutes and regulations of the United States of America, the State of Alabama, the County of Lee, the Cities of Auburn and Opelika, and their respective agencies, departments, authorities and commissions applicable to Permittee and its operations and activities at the Airport, as now exist and as may be implemented in the future. Violations of any such law, ordinance, statute or regulation by Permittee, its employees, agents or representatives, shall be cause for immediate termination of this Permit. Auburn University is an instrumentality of the State of Alabama. Permittee shall comply with all requirements of Alabama Act Number 2011-535 – the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, as currently exists and may be amended, applicable to Permittee's operations and activities at the Airport.

G. Permittee shall not, by virtue of this Permit, be deemed to be a tenant, joint venturer, partner or agent of Auburn University, and does not have the right or authority to bind or obligate Auburn University. This Permit is nonexclusive and shall not be construed as restricting Auburn University from permitting other uses of Airport facilities nor from permitting other rental car operators from conducting similar activities at the Airport. Permittee has not been given any exclusive or possessory rights in any property of Auburn University by virtue of this Permit. This Permit merely grants to Permittee a license to enter the Terminal Area solely for the purpose of exercising the rights and privileges set forth herein.

### **SECTION 3. FACILITIES AND SERVICES TO BE PROVIDED BY AUBURN UNIVERSITY.**

A. Auburn University will designate a nonexclusive pick-up and drop-off area where Permittee may temporarily stop to pick up customers who have made arrangements in advance to rent a vehicle from Permittee and to drop off customers who have returned a rental vehicle to Permittee's off-airport location. Auburn University will also designate a vehicle parking area where Permittee may park up to two (2) rental cars for pre-reserved customers of Permittee. Permittee shall pick up and discharge customers only at locations which have been specifically designated by Auburn University. Permittee's rental car or courtesy vehicle may not remain in the designated area longer than is necessary to pick up and discharge customers and their luggage.

B. Auburn University reserves the right, from time to time and in its sole discretion, to change the location of the designated drop-off area and pick-up zone. Auburn University shall not be liable to Permittee for any loss of business or income sustained by Permittee as a result of changes in the operation, configuration or use of any Airport facilities.

C. Permittee agrees to utilize the designated parking, customer pick-up and drop-off areas for the use intended by this Permit and acknowledges that failure to honor this obligation gives Auburn University the right to immediately cancel this Permit.

D. Any on-Airport advertising proposed by Permittee shall be subject to the advance written approval of Auburn University as to manner, method, location and copy. Permittee shall not distribute flyers, advertising or promotional literature at the Airport without the advance written approval of Auburn University. Any approved advertising shall comply with the standards and policies of Auburn University as now exist and as may hereafter be developed and amended, but shall require the prior written consent of Auburn University. Permittee affirms that any approved advertising shall be truthful, accurate, not misleading, not disparaging of Permittee's competition and otherwise in good taste.

E. If advance arrangements are made with Airport personnel, rental car contracts for customers who have made advance arrangements to rent a vehicle may be left with designed Airport personnel to be signed by the customer. Auburn University accepts no responsibility or liability for failing to have the rental contracts properly signed, or having the rental contracts signed by the correct person or persons, or for not being available when the customer arrives at the terminal building. Permittee shall at all times be available by telephone to answer questions which Airport personnel may have concerning such rentals.

#### **SECTION 4. SERVICES TO BE PROVIDED BY PERMITTEE.**

A. The standards of operation as pertain to the service afforded to the public, shall be at least equal to the highest quality of service rendered by similar permittees at similar airports in the United States. At all times the public shall be given the highest consideration in matters affecting the use and operation of the Terminal Area.

B. Permittee shall furnish its automobile rental services available at the Airport on a fair, reasonable and nondiscriminatory basis to all users and patrons of the Airport. Permittee shall furnish prompt, courteous and efficient service, adequate to meet all reasonable demands for its services. Permittee shall ensure an adequate number of vehicles are available to meet the demand for its rental cars at the Airport. Rental cars should be available for delivery to the Airport within fifteen (15) minutes of the time an automobile is requested. Permittee's rental cars and courtesy vehicles shall be kept clean and in good maintenance and repair. Permittee shall offer the customary variety of vehicles for rent and such vehicles shall be no older than two (2) model years. Any reference to rental cars or automobiles in this Permit, shall be deemed to include all types of vehicles rented by Permittee.

B. Permittee shall conduct its operations at the Airport in an orderly and proper manner so as not to annoy, disturb or offend others at the Terminal Area. Permittee shall render

prompt and efficient service to patrons at the Airport and, upon objection from Auburn University, shall take all steps necessary to remove the cause of the objection.

C. While on the Airport Permittee shall operate its rental cars and any courtesy vehicles in a safe and orderly fashion and in strict accordance with all traffic laws. Any courtesy vehicle used by Permittee on the Airport must be clearly identified by appropriate signage as belonging to Permittee and shall at all times display a decal or other means of identification as may be issued by Auburn University. Courtesy vehicles shall not contain signage or advertising for any operation or activity other than the operation or activity which is granted in this Airport Permit.

D. As a condition of entering into this Permit, Permittee shall make application to Auburn University on a form prescribed by Auburn University. Permittee shall give Auburn University prompt written notice of any material change in the information contained in the application. False, misleading or incomplete information contained in the application form shall be grounds for immediate revocation of this Permit.

E. Any questions or complaints regarding the standards of service, availability or condition of vehicles, appearance of personnel or other standards of operation or issues of public safety, which are brought to the attention of Auburn University, shall be subject to review by Auburn University with due notice thereof to be given to Permittee. Auburn University may take such actions as it deems appropriate under the particular circumstances. Permittee shall thereafter take the corrective steps needed to comply with the directives of Auburn University. Violation of rules and regulations or failure by Permittee to take corrective actions shall result in termination of this Permit, as provided in Section 9 hereof.

#### **SECTION 5. FEES, CHARGES AND ACCOUNTING.**

A. In consideration of the right to operate a nontenant rental car business pursuant to this Permit, Permittee agrees to pay to Auburn University ten percent (10%) of Airport related gross revenue, as defined herein.

B. "Airport related gross revenue," "gross receipts," or "gross sales," as used herein shall mean any and all charges made by Permittee as a direct or indirect consequence of transactions originating from or relating to the Airport.

C. "Airport related gross revenues," "gross receipts," or "gross sales," shall include, but in no way be limited to, the following:

1. Time and mileage charges made for cash, credit, exchange or otherwise of every kind, name, description and nature, regardless of when, where or whether paid;

2. All monies paid or payable to Permittee for rental of automobiles supplied by Permittee to customers at the Airport and to customers of the Airport without regard to ownership of the automobile, and without regard to the manner or place at which Permittee received the order for the automobile and picked up the vehicle;



3. All monies paid or payable on any automobile exchanged at any point for an automobile originally rented by Permittee which original rental was included as Airport related gross revenue;

4. Credits given to customers for such things as deposits and purchases of gas, oil or emergency services, regardless of where such expenditures occurred;

5. Sums charged to customers by reason of their acceptance of any and all insurance coverages of any type;

6. All service charges, surcharges, intercity fees, drop charges and all other charges of every description imposed on customers for cash, credit, exchange or otherwise, whether collected or not; and

7. All sums paid or payable from individual or corporate customers, for waiver by Permittee of its right to recover from such customers for damages to automobiles rented (loss damage waiver/collision damage waiver).

D. No deductions from Airport related gross revenues shall be allowed, other than those specifically described below:

1. The amount of state taxes actually paid by Permittee as a consequence of Permittee's operation of its Airport related automobile rental business, in accordance with Section 40-12-222 of the *Alabama Code*, and the amount of City taxes actually paid by Permittee as a consequence of Permittee's operation of the automobile rental business related to the Airport, in accordance with Article VIII of Chapter 14 of the Opelika Code of Ordinances. No other taxes, regardless of nature, type, purpose or description may be deducted.

2. Any sums received from the sale of cars or other capital assets;

3. Any sums received as insurance proceeds or otherwise for damage to automobiles or other property of Permittee, or for loss, conversion or abandonment of automobiles; or any charges collected from customers for damages to Permittee's property;

4. Any sums received from customers for gas or refueling fees; and

5. Any sums received as intercity fees or drop charges on foreign vehicles for which Permittee otherwise receives no income.

E. Unless exclusion from Permittee's Airport related gross revenue is expressly allowed by the terms of Section 5.D above, all revenue, paid or payable, derived from or attributable to Permittee's Airport related operations shall be included in the definition of Airport related gross revenue. Revenue derived from sources similar, but not identical to those stated in



Section 5.C shall, unless specifically excluded by this Permit, be included in the definition of Airport related gross revenue.

F. On or before the twentieth (20<sup>th</sup>) day of the second month, and each succeeding month thereafter, for the term of this Permit, and one (1) month thereafter, Permittee shall submit to Auburn University a written statement, in a form acceptable to Auburn University and certified by an officer of Permittee, showing total Airport related gross revenue, as defined herein, for the previous month. With each monthly statement, Permittee shall remit to Auburn University payment equal to ten percent (10%) of its Airport related gross revenue, without demand, set-off or deduction.

G. Notwithstanding the provision herein contained for the payment by Permittee to Auburn University of a percentage of gross revenue as above provided, it is expressly understood and agreed that Auburn University shall not be construed nor held to be a partner, associate nor joint venturer of Permittee in the conduct of its business. Permittee shall have no right to impose tort or contractual liability upon Auburn University.

H. If Permittee makes any payment due to Auburn University after the payment is due and owing, then Permittee shall pay interest to Auburn University at the rate of one and one-half percent (1.5%) per month on the amount due.

I. Permittee agrees that it shall pay and discharge all costs and expenses, including attorneys' fees, incurred or expended by Auburn University in collection of any delinquent amounts due. Permittee understands that Auburn University may invoke the provisions of the performance bond or surety deposit referred to hereinafter, on the thirtieth (30<sup>th</sup>) day of the month on which any amounts due to Auburn University remain unpaid.

J. Without prejudice to any other remedy which otherwise might be used for collection of arrears payments or other breach of this Permit, if Auburn University is required or elects to pay any sum, or incurs any obligations or expense by reason of the failure, neglect or refusal of Permittee to perform any one of the terms, conditions or covenants contained herein, the sum so paid or the expense so incurred, together with all interest and costs (including attorneys' fees, damages and penalties) will be added to any subsequent payment due hereunder, and any such amounts shall be additional payments recoverable by Auburn University in the same manner and with like remedies as if it were originally a part of the percentage payments due on account of Airport related gross revenue.

K. In order to assure the full and faithful performance of all provisions of this Permit, Auburn University reserves the right to require Permittee to post a security deposit, performance bond or irrevocable letter of credit as a condition of continuing to access the Airport area to drop off or pick up cars or pick up customers. Any such performance bond or irrevocable letter of credit shall be acceptable in manner and form to Auburn University, but shall not exceed the sum of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00). Such amount is to be held as collateral security for all sums of money payable by Permittee under this Permit, and for the full and faithful performance of all other covenants and agreements of Permittee hereunder. The amount of any cash deposit, without interest, is to be repaid to Permittee after the termination of this

Permit, provided Permittee has made all payments and performed all covenants and agreements contained in this Permit. Upon any default by Permittee hereunder all or part of said deposit may, at Auburn University's sole option, be applied on account of such default, and thereafter Permittee shall promptly restore the resulting deficiency in said deposit. Any such cash security shall not bear interest, need not be kept separately and shall not be considered as nor applied toward the last months' gross revenue payment due hereunder. Applying such security toward remedying any default by Permittee in the provisions of this Permit shall be in addition to any other rights which Auburn University might have and in no way limits Auburn University's right to exercise other legal remedies.

L. In addition to the fee on Airport related gross revenue Permittee agrees to pay to Auburn University the following fees:

(1) An annual Permit Fee of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) to process Permittee's application and issue decals. The initial Permit Fee is due and payable with Permittee's application. In the event Permittee's application is denied, the Permit Fee will be returned to the applicant.

(2) A reserved parking space fee of TEN AND 00/100 DOLLARS (\$10.00) per space per month. No Permittee shall be allowed to rent more than two (2) reserved parking spaces at the Airport. In the event Permittee rents reserved parking spaces, Permittee shall be allowed to erect a small sign at the front of the space, stating only Permittee's company name. Any such sign shall require the advance written consent of Auburn University. In the event that Permittee does not rent a reserved parking space, then Permittee shall drop off any pre-reserved rental cars in the area designated by Auburn University and used in common with other rental car companies, tenants and customers of the Airport. Such common parking spaces are used on a space available basis.

#### **SECTION 6. INSPECTION OF BOOKS AND RECORDS.**

A. Permittee shall keep true and accurate records, accounts, books and financial data, which shall, among other things, show all sales made and services performed for cash or credit or otherwise, without regard to whether payment was received, showing all Airport related gross revenues resulting from its operations under this Permit, and also the aggregate amount of all sales made and services performed on account of Permittee's operation located at: \_\_\_\_\_.

B. Permittee agrees to maintain duplicate copies of each rental agreement and complete records of each and every rental, sale or other transaction, whether for cash or credit, separately showing Permittee's receipt of payment or extension of credit. Any deviation from this requirement shall require the prior written approval of Auburn University. Permittee agrees to retain true and accurate books and records kept in accordance with generally accepted accounting practices for at least the previous two (2) years of business operations, and to make such documents available for inspection by Auburn University within the Auburn/Opelika city limits, during reasonable business hours. Auburn University will provide reasonable advance notice prior to inspection of Permittee's books and records. Upon request,

Permittee shall advise Auburn University of the rates and charges for all services offered the public from the Airport.

C. Within ninety (90) days after the close of each calendar year or portion thereof during the term of this Permit, and within thirty (30) days of the expiration or termination of this Permit, Permittee shall furnish to Auburn University, in a form acceptable to Auburn University, a written statement showing all gross revenues derived from Permittee's business for the term. Such statement shall be accompanied by a statement from the owner or chief financial officer of Permittee certifying as to the accuracy of the presentation of the gross revenues on the basis specified in this Permit. The certified statement shall show all gross revenue derived from Permittee's business and shall be reconciled to the Airport related gross revenue as defined by this Permit, identifying each excluded category and stating the dollar amount of each.

D. Auburn University, and/or its designated representatives, reserves the right to review and audit Permittee's financial books and records at any time during normal business hours, for the purpose of verifying gross revenues hereunder. Auburn University, and/or its designated representatives, further reserve the right to review the work papers and files of the certified public accountant which were generated or relied upon in expressing the opinion required by this Permit. If, as a result of such audit, it is established by Auburn University that Permittee has understated the Airport related gross revenue by two percent (2%) or more (after the deductions and exclusions provided for herein) during the audited reporting period, the entire expense of said audit shall be paid by Permittee. Any additional payments due shall forthwith be paid by Permittee to Auburn University with interest thereon at the rate of one and one-half percent (1½%) per month from the date such additional percentage fee became due.

E. Nothing contained in this section shall preclude Auburn University from terminating this Permit in the event any inspection, review or audit of Permittee's financial books and records discloses a discrepancy between the amount of Airport related gross revenue generated by Permittee and that reported to Auburn University, or between the amount due to Auburn University under this Permit and the amount actually remitted by Permittee. Permittee agrees to pay Auburn University's reasonable attorneys' fees and all costs of court in the event it becomes necessary for Auburn University to retain counsel or legal process to collect any sums due or enforce any provision of this Permit upon default by Permittee.

#### **SECTION 7. TAXES AND PERMITS.**

A. Permittee covenants and agrees to promptly pay to the appropriate taxing authorities, all lawful taxes, assessments, excises, license fees and permit fees of whatever nature, applicable to Permittee's assets and operations, including sales and property taxes. Permittee shall be responsible for payment of any income tax which is lawfully levied on the revenues or activities resulting from its operations at the Airport. Permittee acknowledges that Auburn University has made no representations concerning the profitability of, or potential revenue from, the operations contemplated herein.

B. Permittee covenants and agrees to acquire and maintain during the term of this Permit, any and all licenses, permits and approvals required by any governmental, administrative

or regulatory agency of competent jurisdiction for the business, operations and activities allowed by this Permit. All such licenses, permits and approvals shall be obtained at Permittee's sole expense.

#### SECTION 8. SALE, ASSIGNMENT, TRANSFER AND SUBLEASE.

A. Permittee shall conduct the business approved by this Permit at the Terminal Area by, through and under the following affiliation, franchise or trade name:

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B. In the event Permittee ceases to continue to use such trade name or operate under said affiliation, for whatever reason, then Permittee shall report such change to Auburn University and Auburn University shall have the option of terminating this Permit.

C. Permittee shall not sell, convey, assign, transfer, sublease or pledge this Permit, or any part hereof or interest herein, without the prior consent and approval of Auburn University, which consent shall not be unreasonably withheld.

#### SECTION 9. DEFAULT/CANCELLATION.

A. In the event of Permittee's breach of any provision of this Permit, Auburn University shall give Permittee written notice of default. Permittee shall be deemed to be in default of this Permit if such breach is not corrected within thirty (30) days from the date of the notice of default, or ten (10) days in the case of failure to pay amounts due pursuant to this Permit. In the event Permittee breaches any provision of this Permit more than two (2) times in any twelve (12) month period, then Permittee (notwithstanding any cure of the breach) will be deemed to be in default of this Permit upon notice from Auburn University. Notwithstanding any provision to the contrary, Auburn University reserves the right to suspend Permittee's right to continue operations at Airport immediately upon notice to Permittee, in the event that Permittee's activities or omissions constitute a threat to safety, health or welfare of patrons at the Airport or otherwise interferes with operations or activities at the Airport.

B. In the event of default, Auburn University reserves the right to suspend or revoke this Permit, terminate Permittee's right to leave rental cars at the Airport or pick up customers at the Airport, and to pursue any remedy available to Auburn University in equity or at law. Upon termination of this Permit for whatever reason, Permittee agrees to immediately remove all its vehicles from the Airport, remove any decals issued by Auburn University from its vehicles and will not thereafter leave rental cars at the Airport or pick up customers at the Airport.

C. Permittee agrees to pay Auburn University's reasonable attorneys' fees and all court costs in the event it becomes necessary for Auburn University to employ an attorney or legal process to enforce any provision of this Permit upon default by Permittee. The exclusive venue for any legal action filed by either party in connection with this Permit, or Permittee's activities at the Airport, shall be in Federal Court for the Middle District of Alabama or in the state courts of Lee County, Alabama.

D. Auburn University reserves the right to exercise any of the remedies provided for by this Permit, individually or cumulatively, or may elect to assert such other remedies as are available to Auburn University in equity or at law. Auburn University's waiver of default by Permittee of any provision of this Permit shall not operate as a waiver of subsequent defaults.

#### SECTION 10. INDEMNITY AND LIABILITY INSURANCE.

A. Indemnity. Permittee shall indemnify and hold Auburn University and its Board of Trustees, officers, employees and agents harmless from and against any and all liability; including fines, suits, liens, judgments, claims, loss, cost, damage, expense and causes of action of every kind, arising out of or in any way connected with the operations, activities or omissions of Permittee, its officers, employees, customers, invitees, licensees, suppliers or anyone acting pursuant to this Permit. This indemnification specifically includes, but is not limited to, any loss, cost or damage arising from Auburn University's employees assisting Permittee with signing rental contracts. Permittee shall indemnify and hold Auburn University and its Board of Trustees, officers, employees and agents harmless from and against any and all liability for injury, disability or death to persons, or damage to or loss of property, arising out of or in any way connected with the operations, activities or omissions of Permittee, its officers, employees, customers, invitees, licensees, suppliers or anyone acting pursuant to this Permit, regardless of where the injury, death or damage occurred. This indemnity shall include the cost of defense of any suit or claim; including, but not limited to, all court costs, investigation expenses, expert fees and reasonable attorneys' fees. Permittee shall immediately notify Auburn University of any claim or suit filed as a result of operations or activities authorized by this Permit and will retain counsel reasonably acceptable to and cooperative with Auburn University. The obligations of this provision shall survive the expiration or earlier termination of this Permit.

B. Insurance. Permittee shall, at its expense, maintain in full force and effect during the term of this Permit, general liability insurance, automobile liability insurance and worker's compensation/employer's liability insurance in the amounts stated below, at Permittee's sole expense. Such insurance policies shall be endorsed by the insurance carrier to name Auburn University, its Board of Trustees, officers, employees and agents as additional insureds to the full extent of the insurance coverage, but in no event less than the required minimum coverage limits set forth below. The insurance coverages required under this Permit are minimum limits and are not intended to limit the responsibility or liability of Permittee. In the event of a loss, Permittee shall remain responsible for any liability in excess of the insurance recovery amount.

1. General liability insurance, written on an ISO Occurrence Form or equivalent, providing liability coverage for bodily injury or property damage arising out of operations or activities on the Airport, including products and completed operations, personal and advertising injury and contractual liability of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence and general aggregate, premised medical insurance of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) each person and damage to rented premises in the amount of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) per occurrence.



2. Commercial automobile liability insurance, including coverage for bodily injury and property damage arising from ownership, operation or maintenance of owned, non-owned or hired automobile in a minimum amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) combined single limit.

3. Commercial umbrella liability insurance of TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) per occurrence limit. Auburn University shall be named on the insurance policy as additional insured as its interests may appear.

4. (a) Worker's compensation insurance covering all employees of Permittee in accordance with statutory coverage requirements of the State of Alabama. (A self-insurer must provide a certificate issued by the Alabama Department of Industrial Relations stating that Permittee is qualified to pay its workers' compensation claims.)

(b) Employer's liability insurance in the minimum amounts set forth below:

(1) Bodily injury by accident - \$1,000,000.00 each accident.

(2) Bodily injury by disease - \$1,000,000.00 policy limit.

(3) Bodily injury by disease - \$1,000,000.00 each employee.

5. Auburn University, its Board of Trustees, officers, employees and agents shall be named as additional insureds on the general liability, automobile liability and umbrella policies to the extent of Auburn University's insurable interest. The insurance provided by Permittee shall contain waivers of subrogation in favor of Auburn. Permittee agrees to give all insurance companies providing coverage hereunder written notice of this waiver of subrogation.

C. Permittee's contractual liability insurance shall insure Permittee's obligation to indemnify and hold Auburn University, its Board of Trustees, officers, employees and agents harmless in accordance with the indemnification provision of this Permit. Permittee's liability insurance shall be held on an occurrence basis.

D. All insurance coverage required of Permittee shall be issued by an insurer licensed by the Insurance Commissioner to conduct business in the State of Alabama having a minimum current A.M. Best rating of "A." Each policy shall be endorsed to provide that the insurance company agrees that the policy shall not be canceled, materially changed, allowed to lapse or allowed to expire until Auburn University has received thirty (30) days' written notice, with the exception that ten (10) days' notice of cancellation applies in the event of cancellation for non-payment of premium. Insurance policies required by this Permit shall be in place upon commencement of this Permit and maintained for the duration of this Permit. Renewal certificates shall be sent to Auburn University five (5) days prior to the expiration date of any coverage.

E. In the event of a covered loss, Permittee shall be liable for payment of any deductible amount not covered by insurance required hereunder. The amount of any such deductible shall be disclosed to, and subject to the approval of, Auburn University.

F. All insurance policies obtained by Permittee shall contain cross liability coverage as provided under standard ISO "separation of insureds" condition which shall state that Permittee's insurance shall apply separately to each insured against whom a claim is made. Such requirements shall not increase the limits of the insurer's liability. The general liability insurance shall show Auburn University Regional Airport as the designated location.

G. Permittee agrees that each policy shall be endorsed to provide that the insurance company agrees that the policy shall not be canceled, materially changed, allowed to lapse or allowed to expire until Auburn University has received thirty (30) days' written notice, with the exception that ten (10) days' notice of cancellation applies in the event of cancellation for non-payment of premium. Such insurance must provide that it will be considered primary insurance with respect to any acts or omissions of Permittee or its agents, as regards any other valid or collectible insurance, self-insured retention or deductible held by Auburn University. Any other insurance or self-insured retention of Auburn University shall be considered excess insurance only.

H. Auburn University shall have the right to require Permittee to obtain additional insurance coverage and to increase the insurance limits required of Permittee, at Permittee's sole expense, if such changes are recommended or imposed by Auburn University's insurers. Notwithstanding, the insurance limits shall not be increased in excess of the cumulative increase in the Consumer Price Index for urban wage earners, calculated from the effective date of this Permit to the date of the increase and shall not be increased over that required by entities engaged in similar activities at the Airport.

I. Permittee shall provide to Auburn University such evidence of compliance with the insurance requirements contained in this Permit as Auburn University may request. At a minimum Permittee shall provide, by the effective date of this Permit, a certificate of insurance evidencing each of the coverages required above. Such certificate shall be completed to show compliance with the insurance requirements stated herein, specifically as to the additional insured and notice provisions. Auburn University reserves the right to require copies of the declaration page and the entire insurance policy, including any endorsements. Policies shall not contain exclusions that are unacceptable to Auburn University. If requested by Auburn University, all policies shall be certified by the insurance carrier as true and complete. Auburn University must be provided renewal certificates of insurance validating required coverage. In no event shall Auburn University's failure to request certified copies or certificates of insurance, relieve Permittee of the obligation to maintain such insurance. Permittee's obligation to procure and maintain the insurance required by this Permit is a separate responsibility of Permittee and independent of the duty to furnish a certified copy or certificate of insurance.

J. If Permittee or its insurance company fails to obtain or maintain the insurance required herein, or to respond to Auburn University's request for evidence of compliance with the insurance requirements contained herein within a reasonable period of time (which shall not



exceed three (3) business days) or to comply with any of the requirements contained herein. Auburn University shall have the following rights (in addition to all other remedies provided by this Permit in the event of breach by Permittee):

1. To terminate this Permit upon ten (10) days notice to Permittee; and
2. To prohibit Permittee and its officers, employees and agents from leaving rental cars at the Airport or picking up customers at the Airport.

#### **SECTION 11. REGULATIONS.**

A. Use of the Terminal Area by Permittee and the rights herein conferred upon Permittee shall be subject to such rules and regulations as are, or may hereafter be, prescribed by Auburn University through the lawful exercise of its powers. Permittee shall be given advance notice of any proposed changes or additions to such rules or regulations which affect Permittee's activities or operations at the Airport. Notwithstanding, Auburn University reserves the right to immediately implement such rules and regulations, and to modify and change such standards and procedures, which affect the health, welfare or safety of persons, or the efficient, safe and orderly operation of the Airport.

B. It is expressly understood and agreed that the rules and regulations of Auburn University are minimum rules and regulations, and wherever this Permit imposes standards, procedures or requirements which are stricter than such rules and regulations, the provisions of this Permit shall control.

#### **SECTION 12. FEDERAL, STATE AND LOCAL LAW.**

A. Permittee shall comply with all federal, state and local laws, ordinances and statutes, and all rules and regulations of Auburn University, as currently exist and as may be implemented or amended in the future, which apply to Permittee's operations and activities at the Airport or pursuant to this Permit.

#### **SECTION 13. NOTICES TO AUBURN UNIVERSITY AND PERMITTEE.**

A. Notice to Auburn University shall be deemed given if sent by certified mail, postage prepaid, addressed to: AUBURN UNIVERSITY REGIONAL AIRPORT, ATTN: EXECUTIVE DIRECTOR, 2150 MIKE HUBBARD BOULEVARD, AUBURN, ALABAMA 36830. Notice to Permittee shall be deemed given if sent by certified mail, postage prepaid and addressed to Permittee at the following address: \_\_\_\_\_, or at such other address as Permittee shall designate in writing.

B. All payments, statements, accountings and insurance documents due to Auburn University under this Permit shall be sent to Auburn University at the address shown above.

#### SECTION 14. SECURITY.

A. Permittee agrees to strictly observe all applicable security requirements of 49 CFR Part 1500, *et seq.*, the Airport Emergency Plan and the Airport Security Program, as now exist and may hereafter be amended. In the event Auburn University incurs any fines or penalties imposed by the Federal Aviation Administration, the Transportation Safety Administration, or other governmental agency, or incurs any expense in enforcing the provisions of 49 CFR Part 1500, *et seq.*, the Emergency Plan or the Airport Security Program, as a result of the acts or omissions of Permittee or Permittee's employees, customers or agents, then Permittee agrees to pay and/or reimburse Auburn University for all such costs and expenses.

B. During business hours, Permittee shall promptly notify the Airport, at (334) 844-4604, of any incident, safety concern or condition caused by or involving Permittee, its employees, agents, customers or vehicles, which might compromise the Airport Security Program or create a safety concern at the Airport or liability for Auburn University. After business hours, Permittee shall notify Auburn's Public Safety Department at (334) 501-3100 of any such issues.

#### SECTION 15. NONDISCRIMINATION.

A. Permittee, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person, on the grounds of race, color, sex, age, national origin, religion or handicap, shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination in the use of services or facilities at the Airport; (2) in the furnishing of services, no person on the grounds of race, color, sex, age, national origin, religion or handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) the Permittee shall use the Airport in compliance with all other requirements imposed by or pursuant to Title 49, *Code of Federal Regulations*, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, *Nondiscrimination in Federally-Assisted Programs of the Department of Transportation*, *Effectuation of Title VI of the Civil Rights Act of 1964*, and as said Regulations may be amended.

B. Noncompliance with the above provision constitutes a material breach of the conditions of this Permit and, in the event of such noncompliance, Auburn University shall have the right to terminate this Permit.

#### SECTION 16. FEDERAL REQUIREMENTS.

A. Permittee shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users, and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided that Permittee is allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions for volume purchasers.

B. Nothing contained in this Permit shall be deemed to grant to Permittee any exclusive right or privilege to conduct rental car activities at the Airport. Nothing contained

herein shall be deemed to grant any exclusive right or privilege to Permittee within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity at the Airport.

C. This Permit is subordinate to the provisions of any existing or future agreement between Auburn University and the United States Government relative to the development, operation or maintenance of the Airport, the execution of which is required as a condition precedent to the transfer of federal funds or property to Auburn University or the expenditure of federal funds for the improvement or development of the Airport.

D. In the event that the Federal Aviation Administration or its successors require modification or changes in this Permit, as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Permittee shall make such amendments, modifications, revisions, supplements or deletions to any of the terms, conditions or requirements of this Permit as may reasonably be required. Any expense resulting from such amendments, modifications, revisions, supplements or deletions shall be borne solely by the Permittee; or, in such event, Permittee may terminate this Permit, with thirty (30) days' advance written notice to Auburn University.

E. Auburn University reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Airport, together with the right to cause in said air space such noise or interference as may be inherent in the operation of aircraft, known now or hereafter used, for navigation or flight in said airspace, and for use of said air space for landing on, taking off from, or operations in connection with the Airport.

F. Each and every provision of state and federal law required to be included in this Agreement shall be deemed to be included herein, and this Permit shall be read, construed and enforced as though the same were included herein. If, through mistake, inadvertence or otherwise, any such provision or clause is not included herein or is incorrectly included herein, then, upon application of either party hereto, this Permit shall forthwith be amended to include or correct the same.

#### SECTION 17. CONSTRUCTION.

This Permit shall be construed in accordance with the laws of the State of Alabama. In the event any covenant or provision herein contained is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the remaining portion of this Permit shall continue in full force and effect. In the event of dispute, the provisions of this Permit shall not be construed against the party drafting this Permit.

#### SECTION 18. INTEGRATION.

This Permit, together with the documents referenced herein, constitute the entire agreement between the parties and cannot be altered or amended except in writing and signed by both parties hereto. The rights and obligations of this Permit shall extend to and bind the parties

and their successors and assigns in interest. This provision shall not be construed as granting Permittee the right to assign its interest in this Permit.

**SECTION 19. BINDING AUTHORITY.**

The undersigned hereby represent and affirm that any corporate action required to authorize entering into this Permit has been taken, and that this Permit is executed with full authority for and on behalf the parties named below.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the date first written above.

**AUBURN UNIVERSITY:**

ATTEST:

By: \_\_\_\_\_ (SEAL)

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**PERMITTEE:**

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Its: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

