

(TRANSLATION)(for Reference Only)

**Qualified Project Etc. for Sendai Airport Operation**

**Basic Agreement (the “Agreement”) (Draft)<sup>1</sup>**

The original of this document shall be prepared in Japanese language, and this is only English translation of that. This document shall serve only as a reference and shall be interpreted in accordance with the Japanese document.

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<sup>1</sup> The State may add or change the contents provided in the Agreement (Draft) based on matters agreed concerning the Project through competitive dialogue held with the Preferred Negotiation Right Holder in the course of the bidding procedures.

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The Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism and the Tokyo Regional Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism (hereinafter collectively referred to as the “State”) and [ ], [ ] shall execute this basic agreement (the “Agreement”) as follows.

#### Article 1 (Definitions)

In the Agreement, the following terms shall have the following meanings.

- (1) “Operating Right” means the Right to Operate Public Facility etc. defined in Article 2, paragraph (7) of the PFI Act scheduled to be established in favor of the SPC with respect to the Airport on November [ ], 2015 pursuant to Article 6.
- (2) “SPC” means [kabushiki kaisha]<sup>2</sup> to be incorporated for the purpose of performing the Project.
- (3) “Companies Act” means the Companies Act (Act No. 86 of 2005).
- (4) “Cargo Building Facility Operator” means Sendai Air Cargo Terminal Co., Ltd.
- (5) “Project Period” collectively means the Airport Operating Business Period and the Building Facility Business Period stipulated in the Project Agreement.
- (6) “Project Agreement” means the Agreement to Implement the Right to Operate Public Facility etc. with respect to the Qualified Project Etc. for Sendai Airport Operation (the “Project Agreement”) to be executed between the State and the SPC concerning the implementation of the Project.
- (7) “Representative Company” means [ ] indicated as the representative company in the Proposal Documents among the Preferred Negotiation Right Holder’s Members.
- (8) “Proposal Documents” means the first screening documents submitted on December [day], 2014 and the second screening documents submitted on May [day], 2015 by the Preferred Negotiation Right Holder, and the full set of other Proposal Documents relating to the Project (including a response to the items for confirmation with respect to the first screening documents and second screening documents, response to the hearing conducted on [month] [day], 2015, and other responses from the Preferred Negotiation Right Holders towards matters for confirmation inquired by the State to the Preferred Negotiation Right Holder’s Members with respect to the full set of other Proposal Documents (including written responses (including those submitted to

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<sup>2</sup> If the State consents, the SPC may be in a form other than a *kabushiki kaisha* in accordance with the proposal from the Preferred Negotiation Right Holder.

- the State) and oral responses)).
- (9) “Building Facility Operator” collectively means the Passenger Building Facility Operator and Cargo Building Facility Operator.
  - (10) “Building Facility Operator Share Acquisition Option Agreement” means the acquisition option agreement for the issued and outstanding shares of the Building Facility Operator executed by the Miyagi Prefecture respectively with each Building Facility Operator Shareholder (excluding Miyagi Prefecture).
  - (11) “Building Facility Operator Shareholders” mean all the shareholders of the Building Facility Operator.
  - (12) “Application Guidelines” means the Application Guidelines for the Qualified Project Etc. for Sendai Airport Operation published by the State on June 27, 2014.
  - (13) “Application Guidelines etc.” means the Application Guidelines and its attachments and supplementary materials (excluding compilation of referential materials) (if any corrections were made thereto, those reflecting such corrections), questions and responses, and documents issued by the State (excluding the Basic Agreement (draft), Project Agreement (draft) and Required Standards Document (draft)) published on the home page of the Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism or by other appropriate methods.
  - (14) “Non-Voting Shares” means the shares issued by the SPC of a kind which have no voting rights to vote on any items for resolution at the shareholders meeting of the SPC (Article 108, paragraph (1), item (iii) of the Companies Act).
  - (15) “Non-Voting Shareholders” means the shareholders of Non-Voting Shares.
  - (16) “Voting Shares” means the shares issued by the SPC which are common shares with voting rights to vote on all items for resolution at the shareholders meeting of the SPC.
  - (17) “Voting Shareholder” means the shareholder of the Voting Shares.
  - (18) “Airport” means the Sendai Airport specified in Article 4, paragraph (1), item (vi) of the Airport Act (Act No. 80 of 1956) and Article 1, paragraph (2) of the Enforcement Order of the Airport Act (Cabinet Order No. 232 of 1956).
  - (19) “Project” collectively means each business stipulated in the Project Agreement to be implemented at the Airport in accordance with the Required Standards Document pursuant to the Project Agreement as the Qualified Project for National Airport Operation.
  - (20) “PFI Act” means the Act on Promotion of Private Finance Initiative (Act No.

117 of 1999).

- (21) “Preferred Negotiation Right Holder” means [ ] who was selected through the Preferred Negotiation Right Holder selection process pursuant to the Application Guidelines etc.
- (22) “Preferred Negotiation Right Holder’s Member” means [ ], [ ] who are the Voting Shareholders and are the entities who comprise the Preferred Negotiation Right Holder<sup>3</sup>.
- (23) “Required Standards Document” means the Required Standards Document for the Qualified Project Etc. for Sendai Airport Operation (if additions or changes are made to the Required Standards Document, then these additions or changes shall be included).
- (24) “Passenger Building Facility Operator” means Sendai Airport Building Co., Ltd.

#### Article 2 (Purposes)

1. The purposes of the Agreement are to confirm that the Preferred Negotiation Right Holder’s Member was selected through the procedures stipulated in the Application Guidelines etc. as the one who implements the Project through the SPC; that the Preferred Negotiation Right Holder shall, in order to implement the Project, ensure that the SPC will be incorporated pursuant to Article 4 to execute the Project Agreement with the State pursuant to Article 7; and to stipulate the duties to be assumed by the State and the Preferred Negotiation Right Holder’s Member and necessary miscellaneous procedures.

#### Article 3 (Basic Matters Agreed)

1. The State and the Preferred Negotiation Right Holder’s Member shall confirm that the Preferred Negotiation Right Holder was selected as the one who shall incorporate the SPC in accordance with the procedures stipulated in the Application Guidelines etc. and have SPC implement the Project.

2. The Preferred Negotiation Right Holder’s Member shall confirm that it made its proposals in the Proposal Documents in compliance with the terms stated in the Application Guidelines etc.

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<sup>3</sup> Such entity(entities) is subject to change in accordance with the composition of the Preferred Negotiation Right Holder actually selected.

Article 4 (Incorporation of the SPC)

1. The Preferred Negotiation Right Holder's Member shall promptly incorporate the SPC that satisfies each of the below criteria after execution of the Agreement, and shall promptly submit to the State the commercial register, certified copy of the articles of incorporation and seal certificate of the representative seal of the SPC after completion of the registration procedures of the SPC.

- (1) The SPC is a [kabushiki kaisha duly, effectively, and legitimately incorporated and existing under the Companies Act];
- (2) [The total amount of capital and capital reserve of the SPC is JPY●or more as of the date of its incorporation and as of the Airport Operating Business Commencement Date (as defined below)]<sup>4</sup>;
- (3) The articles of incorporation of the SPC contain a provision that the kind of shares that may be issued by the SPC shall only be Non-Voting Shares and Voting Shares;
- (4) The articles of incorporation of the SPC contain either a provision that the SPC shall have a board of directors, a board of company auditors and accounting auditors provided in Article 326, paragraph (2) of the Companies Act, or that it shall have committees provided in Article 2, item (xii) of the Companies Act;
- (5) The SPC is not in breach of Article 5, paragraph 2, item (5);
- (6) The objectives indicated in the SPC's articles of incorporation are only limited to performing the Project; and
- (7) The SPC does not fall under any of (a), (b), (d) and (g) of Article 29, paragraph (1), item (i) of the PFI Act.

2. The Preferred Negotiation Right Holder's Member shall, after completion of registration of incorporation of the SPC, promptly ensure that the SPC notifies the State of its directors at the time of incorporation, company auditors at the time of incorporation and accounting auditor at the time of incorporation.

Article 5 (The Shareholders of the SPC)

1. [Upon incorporation of the SPC pursuant to paragraph 1 of the preceding article, all Preferred Negotiation Right Holder's Members shall contribute the amount indicated as the amount of contribution to be made by the Preferred Negotiation Right Holder's Members in Exhibit 1 , and each shall receive allotment of Voting Shares in accordance

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<sup>4</sup> To be indicated in accordance with the proposal from the Preferred Negotiation Right Holder.

with the amount contributed.]<sup>5</sup>

2. The Preferred Negotiation Right Holder's Member shall covenant the below matters [as of the time of incorporation of the SPC]<sup>6</sup> and shall submit a covenant document in the form indicated in Exhibit 2 [simultaneously with the incorporation of the SPC].

(1) The Voting Shareholder shall obtain prior written approval from the State if it intends to assign, pledge or otherwise establish security rights on (hereinafter collectively referred to as "to dispose") the Voting Shares (including securities, if any, that were issued which could be converted or exchanged with the Voting Shares or represent rights to receive Voting shares; hereinafter the same in this article) to a third party other than other Voting Shareholder and to whom such was authorized in advance, if any, to be the party to whom the Voting Shares may be disposed to such as by contract etc. executed with the State. [The same shall apply when one who holds the shares of Voting Shareholders [indirectly through its subsidiary etc.] intends to dispose the shares of [Voting Shareholder/subsidiary etc.]]<sup>7</sup> Non-Voting Shareholders may freely dispose Non-Voting Shares (including securities, if any, that were issued which could be converted or exchanged with Non-Voting Shares or represent rights to receive Non-Voting shares; hereinafter the same in this article) but only in accordance with the provisions of the Companies Act.

(2) If a Voting Shareholder intends to dispose its Voting Shares by obtaining approval from the State in accordance with the provisions of the preceding item, it shall ensure that the party involved in the disposal submits to the State in advance a covenant document with the same content as the covenant document indicated in Exhibit 2.

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<sup>5</sup> If the State agrees, a different structure of contribution could be adopted in accordance with the method of contribution proposed by the Preferred Negotiation Right Holder (including for the Representative Company or Preferred Negotiation Right Holder's Member to indirectly hold the SPC shares through the company etc. to be incorporated after execution of the Agreement). The applicant intending this indirect shareholding by the Representative Company or a Preferred Negotiation Right Holder's Member shall indicate this in its Proposal Documents.

<sup>6</sup> This is subject to change depending on the method of contribution etc. proposed by the Preferred Negotiation Right Holder.

<sup>7</sup> If a scheme is to be adopted such as where the shares of the SPC are indirectly held by a proposal from the Preferred Negotiation Right Holder with respect to Article 5, paragraph 1, the scope of limiting the disposal shall be revised accordingly.

- (3) If the SPC intends to issue new Voting Shares, the Voting Shareholders shall exercise its voting rights at the shareholders meeting to approve the issuance after obtaining prior written approval from the State. However, if the SPC intends to issue new Non-Voting Shares, the Voting Shareholders may freely exercise their voting rights at the shareholders meeting to approve the issuance of Non-Voting Shares.
- (4) A Voting Shareholder may not dispose its Voting Shares to an entity who does not satisfy any of the following criteria.
  - (i) An entity to which the provisions of Article 70 and Article 71 of the Cabinet Order concerning the Budget, Auditing and Accounting (Order No. 165 of 1947) does not apply;
  - (ii) An entity to which grounds for the disqualification of a private business operator to implement a qualified project stipulated in Article 9 of the PFI Act does not apply; and
  - (iii) An entity to whom a filing is not being made for commencement of reorganization procedures pursuant to the Corporate Reorganization Act (Act No. 154 of 2002) or an entity to whom a filing is not being made for commencement of rehabilitation procedures pursuant to the Civil Rehabilitation Act (Act No. 225 of 1999).
- (5) A Voting Shareholder shall not dispose its shares in a manner, or otherwise engage in any acts, that would cause the SPC to become a subsidiary or an affiliate (as defined in Article 2, paragraph (3), item (xxi) of the Ordinance for Enforcement of the Companies Act) of: an operator of air transport services as defined in Article 2, paragraph (18) of the Civil Aeronautics Act (Act No. 231 of 1952)), or its parent company (as defined in Article 2, item (iv) of the Companies Act) or their subsidiaries (as defined in Article 2, item (iii) of the Companies Act) (hereinafter collectively referred to as the “Air Carriers”), or their affiliates (including their subsidiaries) of the Air Carriers.
- (6) If the Voting Shareholders execute a shareholders agreement (meaning all the agreements concerning the contribution ratio or voting rights ratio of the Voting Shareholders in the SPC or operation of the SPC to be executed between 2 or



more Voting Shareholders or Non-Voting Shareholders), they shall submit a copy of this agreement to the State. The same shall apply when the agreement is changed, and they shall notify the State if the agreement is terminated or expired.

3. The State shall, in general, approve the disposal of shares after consultation with the relevant government institutions if a Voting Shareholder requests the State to issue prior approval in item (1) of the preceding paragraph concerning the disposal of the Voting Shares and the shareholder proves that: (i) the party to the disposal of Voting Shares satisfies the criteria stipulated in item (4) of the preceding paragraph; (ii) the SPC would satisfy the criteria stipulated in item (5) of the preceding paragraph after the disposal; and (iii) with respect to the disposing party and the party to the disposal of the Voting Shares, (a) the party to the disposal satisfies certain qualification criteria that conforms with the participation qualification at the time of application, and (b) the disposal would not hinder the SPC from continuing business.

#### Article 6 (Establishment of the Operating Right)

1. The State and the Preferred Negotiation Right Holder's Member shall make their best effort to promptly establish the Operating Right for the Project in favor of the SPC after incorporation of the SPC stipulated in Article 4 in accordance with the terms indicated in the Application Guidelines etc. and the Proposal Documents and to enable the Project Agreement to be executed, as stipulated in the following article, on the same date that the Operating Right is established.

2. The Airport Operating Business (as defined in the Project Agreement) pursuant to the Operating Right in the preceding paragraph shall commence on condition precedent that the SPC satisfies the preconditions to be separately provided in the Project Agreement.

3. The expenses to prepare the application for registration of the Operating Right stipulated in paragraph 1 and other expenses etc. necessary to register the Operating Right shall be borne by the Preferred Negotiation Right Holder's Member or the SPC.

4. Although the SPC acquires the issued and outstanding shares of the Passenger Building Facility Operator provided in the Building Facility Operator Share Acquisition Option Agreement or acquires the right to close the transaction for the transfer of the

issued and outstanding shares of the Cargo Building Facility Operator before execution of the Project Agreement, as stipulated in the following article, the Preferred Negotiation Right Holder's Member shall not allow the SPC to exercise those rights before execution of the Project Agreement.

Article 7 (Execution of the Project Agreement)

1. The State and the Preferred Negotiation Right Holder's Member shall make their best efforts to enable the Project Agreement to be executed between the State and the SPC in accordance with the terms indicated in the Application Guidelines etc. and the Proposal Documents. In this regard, the State shall not, in general, accept revisions to the Project Agreement (draft) which were revised through the procedures stipulated in the Application Guidelines etc.

2. The Preferred Negotiation Right Holder's Member shall promptly provide the State with materials and all other documentation and information reasonably requested from the State as necessary or appropriate in order to clarify the details of the Proposal Documents ("Materials") upon request from the State.

3. In the process of clarifying the details of the Proposal Documents pursuant to the preceding paragraph, if the State decides that the Materials contain contents that do not conform with the terms indicated in the Application Guidelines etc., the Preferred Negotiation Right Holder's Member shall correct the Proposal Documents and Materials so that they conform with the terms indicated in the Application Guidelines etc. at its own responsibility and expense.

4. The State shall stipulate the Required Standards pursuant to the Proposal Documents concerning "Business and Operation concerning Coexistence with the Region and Business and Operation concerning Promotion of Use of Airport" in accordance with the stipulations of the Application Guidelines etc.

5. The Preferred Negotiation Right Holder's Member may commence preparations at its own expense and responsibility that are necessary for the Project, regardless of whether it does so before or after the incorporation of the SPC or before the Project Agreement is executed, and the State shall cooperate with these preparations to the extent necessary and possible. The Preferred Negotiation Right Holder's Member shall, upon incorporation of the SPC, succeed to the SPC the preparations that it

commenced before incorporating the SPC.

6. The State may decide not to execute the Project Agreement if any of the following events occur (the event stipulated in item (6) shall be the time the event is discovered) to the Preferred Negotiation Right Holder's Member before the Project Agreement is executed.

- (1) With respect to the Project, if the Preferred Negotiation Right Holder's Member violated the provisions of Article 3 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947, hereinafter the "Anti-Monopoly Act"), or if a trade association to which the Preferred Negotiation Right Holder's Member is a member violated the provisions of Article 8, paragraph 1, item (i) or item (ii) of the same act and the Japan Fair Trade Commission ordered the Preferred Negotiation Right Holder's Member to pay a surcharge ("Surcharge Payment Order") pursuant to the provisions of Article 7-2, paragraph (1) of the Anti-Monopoly Act (including when this is mutatis mutandis applied in Article 8-3 of the Anti-Monopoly Act) or notified the Preferred Negotiation Right Holder's Member, pursuant to the provisions of Article 7-2, paragraph (18) or paragraph (21) of the same act, that it would not order them to pay the surcharge;
- (2) With respect to the Project, if the cease and desist order ("Cease and Desist Order") issued pursuant to the provisions of Article 7 or Article 8-2 of the Anti-Monopoly Act states that the Preferred Negotiation Right Holder's Member violated the provisions of Article 3 of the Anti-Monopoly Act, or that the trade association to which the Preferred Negotiation Right Holder's Member is a member engaged in business activities that constituted a violation of the provisions of Article 8, paragraph (1), item (i) or item (ii) of the same act;
- (3) When the Surcharge Payment Order and the Cease and Desist Order indicates the period that the Preferred Negotiation Right Holder's Member, or the trade association to which the Preferred Negotiation Right Holder's Member is a member, engaged in a violation of Article 3 or Article 8, paragraph (1), item (i) or item (ii) of the Anti-Monopoly Act and the type of transaction in which the violation occurred, and with respect to the Project, the procedures to select the

holder of the Operating Right were conducted during the period (if the Japan Fair Trade Commission ordered the Preferred Negotiation Right Holder's Member to pay a surcharge and this order is final and binding, the period for implementing the violation which is the basis for calculating the surcharge for the Surcharge Payment Order shall be excluded) and the Project falls under the type of transaction;

- (4) With respect to the Project, when the Preferred Negotiation Right Holder's Member (including officers or employees if it is an entity) is prosecuted for alleged offenses subject to punishment provided in Article 96-6 or Article 198 of the Penal Code (Act No. 45 of 1907) or Article 89, paragraph (1) or Article 95, paragraph (1) of the Anti-Monopoly Act;
- (5) When the Preferred Negotiation Right Holder's Member grounds for disqualification of a private business operator to implement a qualified project stipulated in Article 9 of the PFI Act applies; or
- (6) When the Preferred Negotiation Right Holder's Member was selected as the Preferred Negotiation Right Holder in the selection process pursuant to the Application Guidelines etc. through false or other dishonest methods.

7. The State and the Preferred Negotiation Right Holder's Member shall continue to mutually cooperate to perform the Agreement after the Project Agreement is executed.

Article 8 (Obligation to Cooperate in Obtaining Financing)

The Preferred Negotiation Right Holder's Member shall invest in the SPC, solicit investors for the SPC, and enable the SPC to borrow and obtain other financial backing for the SPC.

Article 9 (Non-establishment of the Project Agreement)

1. If the Project Agreement is not executed for reasons attributable to the Preferred Negotiation Right Holder's Member, the following procedures shall be assumed to take place.

- (1) The expenses already paid by the State and the Preferred Negotiation Right Holder's Member for the preparation of the Project shall be jointly and severally borne entirely by all the Preferred Negotiation Right Holder's

Members.

- (2) The State may claim a penalty of JPY100,000,000 from the Preferred Negotiation Right Holder's Member. In this case, all the Preferred Negotiation Right Holder's Members shall jointly and severally pay this penalty.
- (3) The provisions of the preceding item shall not prevent the State from claiming compensation for damages against the Preferred Negotiation Right Holder's Member in excess of JPY100,000,000 if the State incurs actual damages in excess of this penalty.

2. If the Project Agreement is not executed for reasons attributable to the State, the allocation of expenses already paid by the State and the Preferred Negotiation Right Holder's Member for the preparation of the Project shall be decided through consultation between the State and the Preferred Negotiation Right Holder's Member.

3. If the Project Agreement is not executed for reasons that are attributable to the State or the Preferred Negotiation Right Holder's Member, the expenses already paid by the State and the Preferred Negotiation Right Holder's Member for the preparation of the Project and other damages or increased expenses shall be borne by each party and the parties shall mutually confirm that there exists no claims or obligations between each other.

#### Article 10 (Confidential Obligations)

The State and the Preferred Negotiation Right Holder's Member shall confirm that each shall not disclose to a third party or use for any purpose besides the Agreement the matters concerning the Agreement unless it obtains consent from the other party. However, this shall not apply if disclosure is ordered by the court or competent government authority, when the Preferred Negotiation Right Holder's Member discloses matters as necessary for obtaining financing for the Project, or when the State discloses matters pursuant to the Act on Access to Information Held by Administrative Organs (Act No. 42 of 1999) etc.

#### Article 11 (Effective Term of the Agreement)

1. Unless otherwise agreed in the Agreement, the effective term of the Agreement

shall commence from the date of its execution until the Airport Operating Business Commencement Date (as defined in the Project Agreement). However, if the Project Agreement is not executed, the effective term of the Agreement shall expire on the date the State determines that there are no prospects for execution of the Project Agreement and notifies the Representative Company of this. Notwithstanding expiration of the effective term of the Agreement, the effect of the provisions of the following paragraph, the preceding two articles and Article 13 shall survive.

2. If a Voting Shareholder requests prior approval of the State to dispose Voting Shares after expiration of the Agreement, the State shall, in general, approve the disposal after consultation with the relevant government institutions if all the terms indicated in Article 5, paragraph 3 are satisfied.

Article 12 (Consultation)

The State and the Preferred Negotiation Right Holder's Member shall consult each other as necessary to decide on any matters that are not provided in the Agreement or if any queries concerning the Agreement arise.

Article 13 (Governing Law and Jurisdiction)

The Agreement shall be governed by, and construed in accordance with, the laws of Japan. The Tokyo District Court shall have the exclusive jurisdiction for the first instance for all disputes arising in connection with the Agreement.

IN WITNESS WHEREOF, this Agreement shall be prepared in [ ] originals, signed and sealed by the State, the Representative Company and each Preferred Negotiation Right Holder's Member, and each party shall retain one original. With respect to the State, the Director General of the Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism shall sign and seal the Agreement representing the Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism and the Tokyo Regional Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism.

August [dd], 2015

State:

Address: 1-3 Kasumigaseki 2 chome, Chiyoda-ku, Tokyo  
Director General of the Civil Aviation Bureau [*name*]

Representative Company:

Address:  
President and Representative Director

Preferred Negotiation Right Holder's Member:

Address:  
President and Representative Director

**Exhibit 1 List of contributions to be made by the Preferred Negotiation Right Holder's Members at the time of incorporation of the SPC**



**Exhibit 2 Form of Shareholder's Covenant Document**

## Shareholder's Covenant Document

[MM/DD/YYYY]

To: The Director General of the Civil Aviation Bureau  
of the Ministry of Land, Infrastructure, Transport and Tourism  
[Mr. /Ms. Name of Director]

Address:

Name:

Representative Director

[ ] (the "Company") shall, as of the date written above, covenant, and represent and warrant to the State on the below matters. Unless otherwise expressly defined, the terms used in this covenant document ("this Covenant Document") shall have the meaning defined in the [Basic Agreement executed between the State and [ ], [ ]/Agreement to Implement the Right to Operate Public Facility etc. with respect to the Qualified Project Etc. for Sendai Airport Operation executed between the State and the [ ] (the "SPC")]<sup>8</sup>.

1. The SPC is a [kabushiki kaisha under the Companies Act] duly, effectively, and legitimately incorporated on [mm/dd/yy] and existing as of the date above written.
2. The Company shall obtain prior written approval from the State if the Company intends to assign, pledge or otherwise establish security rights on (hereinafter collectively referred to as "to dispose") the Voting Shares (including securities, if any, that were issued which could be converted or exchanged with the Voting Shares or represent rights to receive Voting Shares; hereinafter the same in the Covenant Document) to a third party other than other Voting Shareholder and to whom such was

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<sup>8</sup> Either of these agreements which is effective as of the time of submission of this Covenant Document shall be referred.

authorized in advance, if any, to be the party to whom the Voting Shares may be disposed to such as by a contract etc. executed with the State.<sup>9</sup> If the Voting Shares were disposed in breach of these obligations, the Company shall pay a penalty equivalent to the price of disposal of the Voting Shares.

3. If the Company intends to dispose its Voting Shares by obtaining approval from the State in accordance with the provisions of the preceding item, it shall ensure the party to the disposal submits to the State in advance a covenant document with the same content as the Covenant Document.

4. If the SPC intends to issue new Voting Shares, the Company shall exercise its voting rights at the shareholders meeting to approve the issuance after obtaining prior written approval from the State.

5. The Company shall not dispose the Voting Shares to an entity who does not satisfy any of the following criteria.

- (i) An entity to which the provisions of Article 70 and Article 71 of the Cabinet Order concerning the Budget, Auditing and Accounting (Order No. 165 of 1947) does not apply;
- (ii) An entity to which grounds for disqualification of a private business operator to implement a qualified project stipulated in Article 9 of the PFI Act does not apply; and
- (iii) An entity to whom a filing is not being made for commencement of reorganization procedures pursuant to the Corporate Reorganization Act (Act No. 154 of 2002) or an entity to whom a filing is not being made for commencement of rehabilitation procedures pursuant to the Civil Rehabilitation Act (Act No. 225 of 1999).

6. The SPC is not a subsidiary (as defined in Article 2, item (iii) of the Companies Act) or an affiliate (as defined in Article 2, paragraph (3), item (xxi) of the Ordinance for Enforcement of the Companies Act) of an operator of air transport services as defined in Article 2, paragraph (18) of the Civil Aeronautics Act (Act No. 231 of 1952)), or its parent company (as defined in Article 2, item (iv) of the Companies Act) or their

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<sup>9</sup> If a scheme is to be adopted such as where the shares of the SPC shall be indirectly held pursuant to a proposal by the Preferred Negotiation Right Holder with respect to Article 5, paragraph 1, the scope limiting the disposal shall be revised accordingly.

subsidiaries (hereinafter collectively referred to as the “Air Carriers”), or their affiliates (including their subsidiaries) of the Air Carriers.

7. The Company shall not dispose the shares or engage in any other acts that would cause the SPC to breach the criteria in the preceding item.

8. If the Company executes or amends after executing a shareholders agreement (meaning all the agreements concerning the contribution ratio or voting rights ratio of the Voting Shareholders in the SPC or operation of the SPC to be executed between 2 or more Voting Shareholders or Non-Voting Shareholders), it shall submit a copy of the agreement to the State and it shall notify the State if the agreement is terminated or expired.

9. The Company shall not disclose any matters concerning this Covenant Document to a third party without obtaining consent from the State, unless the disclosure is ordered by the court or when disclosure is necessary for obtaining financing for the Project, or use information for any purpose besides this Covenant Document.

10. This Covenant Document shall be governed by, and construed in accordance with, the laws of Japan. The Tokyo District Court shall have the exclusive jurisdiction for the first instance concerning all litigation arising in connection with this Covenant Document.