Attachment C: Creditworthiness Compliance Instructions

Note to Department Staff: The following instructions should be provided to Responsible Parties in conjunction with the execution of new Agreements.

Note to Responsible Parties: The most recent version of the Creditworthiness Compliance Instructions ("Instructions") is posted on the Authority's "Do Business with RDU" Page (https://www.rdu.com/do-business-with-rdu/). Responsible Parties are encouraged to review the on-line version of the Instructions carefully and periodically for any updates that may occur during the term of their Agreement.

1.0 PURPOSE

The purpose of these Instructions is to describe how Responsible Parties demonstrate their ability to fulfill Agreement obligations, thereby reducing potential risk loss to the Authority.

2.0 DEFINITIONS

The following definitions apply to these Instructions:

A. Agreement – a contract, lease, or permit governing the use of and/or the provision of services to and upon any Airport property and/or facilities by a Responsible Party.

B. Agreement Owner – the Authority employee responsible for the Agreement.

C. Authority – the Raleigh-Durham Airport Authority.

D. Airport – the Raleigh-Durham International Airport.

E. Annual Report – annual financial report of Responsible Party provided independently by a Certified Public Accounting Firm.

F. Department Staff – employees within the Authority assigned responsibilities within these Instructions.

G. Impact – reduction of Airport air carrier enplanements.

H. Passenger Air Carrier Tenant – a commercial passenger operator that uses Airport property and/or facilities to support scheduled or charter operations.

I. Prospective Service Provider – an individual or entity requesting to provide services to the Authority or one of its Tenants or Prospective Tenants.

J. Prospective Tenant – an individual or entity requesting use of Airport property and/or facilities pursuant to an Agreement.

K. Related Security Instrument – letter of credit or surety bond amendments, riders, and continuation certificates.

L. Responsible Party – a Prospective Service Provider, Prospective Tenant, Service Provider, or Tenant.

M. Seasonal – a cargo or Passenger Air Carrier Tenant's operation lasting six months or less, in total, during any fiscal year.

N. Service Provider – an individual or entity that provides services to the Authority or one of its Tenants as governed by an Agreement.

O. Standards – information and documentation required by the Authority from Prospective Tenants, Prospective Service Providers, Service Providers, or Tenants, evidencing financial capacity to fulfill the obligations of an Agreement, including company background and contact information, credit references, financial information, and such other information, documentation, and approvals as the Authority may deem necessary.

P. Tenant – an individual or entity using Airport property and/or facilities pursuant to an Agreement.

3.0 DOCUMENTATION REQUIREMENTS

A. Responsible Parties will be required to provide information and documentation required by the Authority to demonstrate their ability to fulfill Agreement obligations and reduce potential risk loss to the Authority. Department Staff will review the information and documentation provided by the Responsible Parties and determine whether the information and documentation comply with the Authority's Standards. If a Responsible Party does not comply with the Authority's Standards either Agreement provisions will apply, or Department staff will proceed with one or more of the risk mitigation actions described within Section 5.0 below, at the sole discretion of the CEO.

B. Responsible Parties will provide the following upon Authority request:

1. Company background and contact information:

a. Company information

b. Company address

c. Company website

d. Type of company

e. State of incorporation

f. Evidence of authorization to transact business within the State of North Carolina if entity is formed elsewhere

g. Taxpayer ID number

h. Duns number issued by Dun & Bradstreet

i. Copy of Annual Report

C. Credit References: Responsible Parties will provide names, addresses and telephone numbers of at least three (3) credit references from the categories listed in 1) through 5) below, including at least one (1) banking reference. Additionally, the Responsible Parties must provide a statement declaring whether it has ever declared bankruptcy, filed a petition in any bankruptcy court, or filed for protection from creditors in bankruptcy court.

1. Banking (required)

2. Legal

3. Property leasing

4. Trade

5. Business relationship

D. Financial Information: Responsible Parties must demonstrate the financial capacity to meet the obligations of the Agreement, and may be required, at the Authority's sole discretion, to provide some or all of the following:

1. At least two (2) years of CPA-prepared or reviewed financial statements

2. Two (2) most recent completed IRS tax returns

4.0 SECURITY DEPOSIT

A. Responsible Parties will provide a security deposit to the Agreement Owner, prior to the start of operations and/or occupancy of leased space. Responsible Parties shall deposit with the Authority, and continuously maintain throughout the term of their Agreement, a security deposit that complies with their Agreement and the Authority's requirements (see *Attachment A*).

B. Responsible Parties may execute more than one (1) type of Agreement with the Authority. Each Responsible Party will verify with the Agreement Owner whether the Authority may require a security deposit for each Agreement or may require one (1) deposit requirement for all Agreements with that Responsible Party.

4.1 Amount of Security Deposit

A. Unless otherwise specified in the Agreement, the amount of security deposit to be provided is as described in Attachment B. The security deposit amount will be recalculated at least annually by Department Staff.

1. Security deposits may also be recalculated when:

   a. An increase or decrease in leasehold space occurs;

   b. A rate changes;

   c. A new Agreement or Agreement amendment is written;

   d. A Responsible Party has operated for at least six (6) months under an estimated initial security deposit due to unavailability of historical data; or

   e. As determined by Department Staff.

B. The Agreement Owner will provide a thirty (30) calendar day notice to any Responsible Party when modification of the security deposit amount is required.

C. Passenger Air Carriers that plan to operate on a Seasonal basis will be required to provide a security deposit in an amount equal to 30% of the total estimated rents, fees and charges to be paid to the Authority by the carrier during the entire period of operation during the Authority's fiscal year. The security will remain in effect during the entire period of operation during the fiscal year.

For example, if a carrier plans to operate for three (3) months early in the fiscal year, and for an additional three (3) months later in the fiscal year, the Responsible Party will need to provide security in an amount that encompasses the entire six (6) month period, and the security will remain in effect between and during each Seasonal operation.

D. In the event of an Impact on enplanements that result in a significant reduction in air carrier operations, at the sole discretion of the CEO, the Authority may elect to not recalculate security deposits. Responsible Parties will then be required to provide Related Security Instruments that evidence and support security deposit amounts may be maintained at the same level until the next recalculation occurs or the reduction in enplanements is less than 50% compared to the previous year, whichever event occurs first.

E. A Responsible Party may be required to provide a higher security deposit due to special circumstances, including those listed below:

1. A Responsible Party does not comply with the Standards requirements established by the Authority.
2. A Responsible Party has a history of late payments, non-sufficient funds fees, interest fees, and various delinquent reporting fees.
3. A Responsible Party operates in a corporate structure that requires risk mitigation (e.g.- the Responsible Party operates a limited liability company without corporate assets, etc.).

4.2 Acceptance of Security Deposit

A. For new Agreements effective on or after January 15, 2021, a Responsible Party must provide a letter of credit (LOC) as security deposit, although an exception may be made to accept a cash deposit in certain circumstances (see Section 4.2.D below).

1. Responsible Parties that have submitted a surety bond as their security deposit instrument prior to January 15, 2021, are required to replace the existing surety bond with an LOC either upon execution of an Amendment to an existing Agreement or execution of any new Agreement. Responsible Parties will be provided with thirty (30) calendar days' advance notice of the date the replacement LOC must be received by the Authority.

B. The Responsible Party will discuss with Agreement Owners whether the Authority will accept digital copies of security documents in lieu of hard copies of security instruments, conditional upon the surety company providing written confirmation stating the digital copy of the security instrument will not have any impact on the ability of the Authority to make a draw down claim.

1. If digital copies are not accepted as Original documents per the surety's policies, an Original hard copy must be provided to the Authority.

C. If applicable, the Responsible Party will discuss with Agreement Owners if a surety requires an authorized signature in order to effect the Authority's validation or dismissal of the security instrument.

1. If a digital authorized signature is not acceptable per the surety's policies, confirmation from the surety will be required if a digital scan of the "wet" signature will be acceptable to return to the surety via e-mail or facsimile, or if delivery of the hard copy of the "wet" signature must be couriered to the surety for their records.

D. Cash Deposit

1. If the security deposit requirement is less than $20,000, the Responsible Party may submit a cash deposit in lieu of a LOC. If the security deposit requirement is more than $20,000 and the Responsible Party wants to provide the security deposit in cash, the Responsible Party must request in writing that the Authority's CEO accept a cash deposit.

4.3 Use of the Security Deposit

A. The Authority may, but is not obligated to, draw upon and apply a security deposit to:

1. Pay any rent not paid on the due date;

2. Pay any outstanding invoices/fees on the account; and/or

3. Remedy any other violation if authorized by the Agreement.

Typically, the Authority will apply the security deposit against outstanding balances that reach sixty (60) days past due. In addition, the Authority may draw upon a security deposit upon notice of non-renewal of the security instrument by the surety.

4.4 Return of Security Deposit

A. If a Responsible Party has fully performed all its obligations under its Agreement(s), and no issues exist regarding Responsible Party's full compliance with the Agreement(s), the Responsible Party shall request that the Authority release the security deposit, or any balance remaining thereof, within ninety (90) calendar days from the expiration date or termination of the Agreement(s), and/or as may be further stipulated in the Agreement(s).

   Under no circumstances will the security deposit be returned until Department Staff have received satisfactory responses to all outstanding issues and the Responsible Party has met all outstanding obligations.

B. If any question exists concerning the Responsible Party's full compliance with its Agreement(s), or if there is any obligation under the Agreement(s) to be performed after the expiration date or earlier termination of the Agreement(s), the Responsible Party should be aware that the Authority shall be entitled to require that the security deposit remain in full force and effect until Department Staff is fully satisfied that there has been no violation of the Agreement(s), and all obligations due from Responsible Party under the Agreement(s) have been fully performed, even if such period of time to make such a determination to Department Staff's satisfaction exceeds ninety (90) calendar days.

C. The Responsible Party should be aware that Department Staff will determine whether a security deposit should be returned to a Responsible Party under one of these methods:

   1. If the Responsible Party's security deposit is in the form of cash, a credit in the amount of the security deposit will be placed on the Responsible Party's account. If the amount of the credit to be placed on the Responsible Party's account cannot be exhausted during the remaining term of the Responsible Party's Agreement(s), the Responsible Party shall request Authority approval to allow the amount of the security deposit to be returned to the Responsible Party in the form of a check or ACH.

      a. If a new security deposit collateral amount requirement is greater than $20,000 and the Authority initially accepted a cash deposit, the cash deposit will be returned to the Responsible Party only after the Authority has received an acceptable LOC as a replacement.

   2. If the security deposit is in the form of an LOC, the LOC will be returned to the Responsible Party or the surety once Department Staff approvals are obtained.

5.0 RISK MITIGATION

A. Responsible Parties should be aware that the Authority may, in its sole discretion, elect to take risk mitigating actions including, but not limited to, those listed below if the information and documentation provided by a Responsible Party does not comply with the Authority's Standards, or if the Responsible Party's account has a history of delinquent payments.

1. Require Responsible Party to provide an amount of security deposit greater than that normally required.

2. Require Responsible Party to pay rents, fees and charges owed in advance as determined at the discretion of the Authority.

3. Limit or reduce Responsible Party's business opportunities and/or authorization to lease property and/or facilities.

4. Terminate the business relationship and any Agreements with the Responsible Party.

B. Each Responsible Party should be aware that the Authority may conduct a compliance review of the Authority's Standards on an annual or more frequent basis to determine whether mitigating actions should continue.

6.0 RECORDS MANAGEMENT

The Senior Director of Properties and Airline Affairs is the custodian of records related to these Instructions. The named custodian(s) will comply with the Records Management Policy as adopted by the Authority, as may be amended from time to time.

7.0 REVIEW

The Senior Director of Properties and Airline Affairs is responsible for reviewing these Instructions annually or more often as warranted.

8.0 EXCEPTIONS

Exceptions to these Instructions may be made at the President and CEO's discretion.

9.0 ATTACHMENTS

A. Security Instrument Language Requirements

B. Amount of Security Deposit

Attachment A to Instructions: Security Instrument Language Requirements

SECURITY INSTRUMENT LANGUAGE REQUIREMENTS	
Party Issued To/Obligee	Raleigh-Durham Airport Authority
Party Issued on Behalf of/Principal	Name of Responsible Party
Type of Security Instrument	Letter of Credit and security instruments that modify an original Letter of Credit (continuation certificates, amendments, etc.)
Security Instrument Number	Unique identifying number
Agreement(s) the Security Instrument Secures	Name each Agreement secured by the Security Instrument: e.g., Raleigh-Durham Airport Authority Operating Agreement; Terminal 2 Concession Agreement, etc.
Effective Date & Expiration Date	Coverage start and end dates
Cancellation Notice Period	Concessions: Minimum of 30 fiscal-days' notice of cancellation Other Tenants: Minimum of 90 fiscal-days' notice of cancellation
Renewal Terms	Automatic renewal throughout term of Agreement
Continuation Certificates	Required annually for all bonds
Amount	Dollar amount of coverage; In the case of multiple agreements with the same Responsible Party: If a separate security requirement is calculated for each Agreement, and the security instrument is issued for the total requirement amount, each Agreement and its' security requirement amount must be itemized on the security instrument.
Authentication	Raised Seal or Security Paper is required for all instruments. Originals must be provided unless a digital copy is confirmed by surety to act as an Original Instrument
Surety	Surety is a financial institution with a U.S. presence acceptable to the Authority
Draw Down	• Authority ability to immediately draw against security upon non-payment of invoiced amounts as well as other rents, fees and charges • Authorization for Authority to communicate draw down requests via courier, fax and/or e-mail

Attachment B to Instructions: Amount of Security Deposit

Type of Agreement	Initial Calculation Includes
Airfield Service Provider Caterers (On and Off Airport) Commercial Air Carrier (other than Seasonal) Corporate Hangar DAS Agreements Fixed Base Operator and SASO's Fuel Throughput Ground Lease North Cargo, South Cargo Office & Storage Overflow Lots Rental Car Concessions Taxi Transportation Network Company Terminal Concessions including: • Food & Beverage • Passenger Services • Retail • Service Provider (Logistics, Beverage Sponsorship, Gate Delivery) • Temporary Concessions Vehicle Sharing Provider	90 calendar days of the following, as applicable: • Fuel Throughput Fees • Greater of Minimum Annual Guarantee or Percentage Rent • Landing Fees • Trip Fees • Fixed Rents • Maintenance & Operations Fees • Miscellaneous Fees (badging, fingerprinting, parking, telecommunications, etc.)
Terminal Concessions under an Operating Agreement including: • Food & Beverage • Passenger Services • Retail • Service Provider (Logistics, Beverage Sponsorship, Gate Delivery) • Temporary Concessions	90 calendar days of the following: Projected Management Fee Initial Calculation based on Lease Agreement or Operator Agreement terms • Initial year – Amount of the first 3 months of the budgeted Authority Management Fee • Subsequent years, 3 months average Authority Management Fees from the previous 12 months as calculated from the Annual Report due to the Authority 90 days after the end of the Contract Year.
Seasonal or Short Term (less than one year)	30% of anticipated rents, fees, charges
RDU Direct Sales Advertising Agreements	No security deposit required

Ground Transportation Operators Lot Permits Seasonal or Short Term (less than 6 months) Telecommunications Utilities Agreements	

Where provisions in existing Agreements or Permits are in conflict with the contents of Attachment A, the provisions in those Agreements or permits will prevail.

All security deposits will be recalculated according to Section 4.5.1 of the Creditworthiness Policy.

An initial security deposit for a Tenant Responsible Party without historical fees and charges will be calculated based on estimated fees and charges using the Responsible Party's proforma and/or solicitation package. Any negotiated waivers or credits will not be included in the calculation of security deposit amount(s).