

(TRANSLATION)(for Reference Only)

**Qualified Project Etc. for Kobe Airport Operation  
Basic Agreement (draft)<sup>1</sup>**

The original of this document shall be prepared in the Japanese language, and this is only an English translation of it. 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> Kobe City may add or change the terms provided in this Basic Agreement (draft) based on matters concerning the Project agreed through competitive dialogues to be held in the course of the bidding procedures.

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Kobe City (“Kobe City”) and [name of entity] and [name of entity] (hereinafter collectively, the “Preferred Negotiation Right Holder’s Members”) execute this basic agreement (the “Agreement”) concerning the Qualified Project Etc. for Kobe Airport Operation 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, to be established in favor of the SPC with respect to the Airport Facility on [MM/DD/YYYY], pursuant to Article 8.
- (2) “SPC” means [a stock company (*kabushiki kaisha*)]<sup>2</sup> to be incorporated for the purpose of carrying out the Project.
- (3) “Companies Act” means the Companies Act (Act No. 86 of 2005).
- (4) “Airport Facility” means collectively the facilities to be necessary for implementing the Project with respect to the Airport, that are the basic airport facilities etc., airport air navigation facilities, airport function facilities and incidental business facilities located on or near the Airport Site (excluding the embankments, approach light bridge and roads in the Airport but including any facilities which become part of the Airport Facility subject to the Operating Right as amended in accordance with the Project Agreement). As of the Project Commencement Date, the Airport Facility means collectively the above facilities that are indicated in the facilities list.
- (5) “Airport Site” means the land held by Kobe City which is a part of the land of the Airport for which public notice was given pursuant to Article 46 of the Civil Aeronautics Act (Act No. 231 of 1952).
- (6) “Contract Deposit” means the money that the SPC must pay to Kobe City pursuant to Article 6.
- (7) “Air Carrier” means 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).
- (8) “Kobe Airport Terminal” means Kobe Airport Terminal Co., Ltd.
- (9) “Project Commencement Date” means the date on which the SPC commences the

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

Project upon satisfying the conditions precedent for commencement of the Project stipulated in the Project Agreement (excluding those fulfilment of which are waived in accordance with the Project Agreement).

- (10) “Project Period” means the period from the Project Commencement Date until the Project Expiration Date.
- (11) “Project Expiration Date” means March 31, 2060 or another date amended pursuant to the provisions of the Project Agreement.
- (12) “Project Agreement” means the Qualified Project Etc. for Kobe Airport Operation Agreement to Implement Right to Operate Public Facility Etc. to be executed between Kobe City and the SPC concerning the implementation of the Project, pursuant to Article 9.
- (13) “Representative Company” means [name of entity] indicated as the representative company in the Proposal Documents among the Preferred Negotiation Right Holder’s Members.
- (14) “Proposal Documents” means the proposal screening documents submitted on [MM/DD/YYYY] by the Preferred Negotiation Right Holder, and the full set of other proposal documents relating to the implementation of the Project (including a response to the items for confirmation with respect to the proposal screening documents, other written responses from the Preferred Negotiation Right Holder to matters for confirmation that Kobe City inquired about to the Preferred Negotiation Right Holder with respect to the full set of the proposal documents and other documents submitted to Kobe City).
- (15) “Building Facility Sale and Purchase Agreement” means the sale and purchase agreement to be executed between Kobe City and Kobe Airport Terminal in accordance with Article 7, under which the ownership held by Kobe Airport Terminal as of the date of execution of the agreement for the passenger building facility (including the lounge building for groups), cargo building facility and parking facility at the Airport shall be transferred from Kobe Airport Terminal to Kobe City.
- (16) “PFI Act” means the Act on Promotion of Private Finance Initiative (Act No. 117 of 1999).
- (17) “Application Guidelines” means the Application Guidelines for the Qualified Project Etc. for Kobe Airport Operation published by Kobe City on October 11, 2016.
- (18) “Application Guidelines etc.” means collectively the Application Guidelines and its attachments (excluding the Basic Agreement (draft), Project Agreement (draft)

and other draft agreements, the Required Standards Document (draft), and compilation of referential materials) and supplementary materials, responses to questions presented by Kobe City by public announcement, publication on its website or other means, and other documents presented by Kobe City relating thereto (if any amendments were made thereto, those reflecting such amendments).

- (19) “Voting Shares” means the shares issued by the SPC which are common shares with voting rights to vote on all items of resolutions at a shareholders meeting of the SPC.
- (20) “Voting Shareholders” means the shareholders of the Voting Shares.
- (21) “Airport” means the Kobe Airport specified in Article 5, paragraph (1) of the Airport Act (Act No. 80 of 1956) and Article 1, paragraph (3) of the Order for Enforcement of Airport Act (Cabinet Order No. 232 of 1956).
- (22) “Project” means collectively each business activity stipulated in the Project Agreement as a business activity to be implemented in accordance with the Required Standards Document at the Airport pursuant to the Project Agreement as the Qualified Project Etc. for Kobe Airport Operation.
- (23) “Preferred Negotiation Right Holder” means [name of entity], which was selected by Kobe City through the procedures for selecting the Preferred Negotiation Right Holder which incorporates the SPC and has the SPC implement the Project.
- (24) “Required Standards Document” means the Required Standards Document for the Qualified Project Etc. for Kobe Airport Operation. (If additions or changes are made to the Required Standards Document, then such additions or changes shall be included.)

## Article 2 (Purposes)

The purposes of the Agreement are to confirm that the Preferred Negotiation Right Holder’s Members were selected through the procedures stipulated in the Application Guidelines etc. as the entities which incorporate the SPC and have the SPC implement the Project; to have the SPC, which will be incorporated by the Preferred Negotiation Right Holder’s Members in order to implement the Project, execute the Project Agreement with Kobe City; and to stipulate the duties to be assumed by Kobe City and the Preferred Negotiation Right Holder’s Members and necessary miscellaneous procedures in order to smoothly commence the Project.

Article 3 (Basic matters agreed)

1. Kobe City and the Preferred Negotiation Right Holder's Members acknowledge that the Preferred Negotiation Right Holder was selected through the procedures stipulated in the Application Guidelines etc. as the entity which incorporates the SPC and has the SPC implement the Project.
2. The Preferred Negotiation Right Holder's Members acknowledge that they made their proposals to Kobe City in the Proposal Documents in compliance with the terms stated in the Application Guidelines etc.
3. The Representative Company shall, on behalf of the Preferred Negotiation Right Holder's Members, exercise their rights, indicate their intentions and receive any notice sent to them pursuant to the Agreement. With respect to the obligations, notice or other acts to be performed or given by Kobe City to the Preferred Negotiation Right Holder's Members pursuant to the Agreement, when Kobe City does so to the Representative Company, it is deemed that Kobe City does so to all Preferred Negotiation Right Holder's Members.

Article 4 (Incorporation of the SPC)

1. The Preferred Negotiation Right Holder's Members shall promptly incorporate the SPC that satisfies each of the following requirements after execution of the Agreement, and shall promptly submit to Kobe City: (i) a certified true copy of the articles of incorporation, (ii) an original certified copy of the commercial register, and (iii) an original certificate of the representative seal, of the SPC after completion of the registration procedures of the SPC.<sup>3</sup>
  - (1) The SPC is a stock company (*kabushiki kaisha*) duly and effectively incorporated and existing under the Companies Act;
  - (2) [The total amount of capital and capital reserve of the SPC is JPY [●] billion as of the time of its incorporation]<sup>4</sup>;
  - (3) The articles of incorporation of the SPC contain a provision that the kind of

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<sup>3</sup> This provision stipulates the matters expected assuming that the SPC is a stock company, but if the Preferred Negotiation Right Holder separately proposes on the corporate form, composition of shareholders (including whether shares without voting rights are issued) and other matters and Kobe City agrees on these proposals, the representations and warranties will be revised accordingly.

<sup>4</sup> The representations and warranties concerning the amount and method of capital contribution to the SPC will be revised in accordance with the proposals from the Preferred Negotiation Right Holder.

shares that may be issued by the SPC shall only be Voting Shares;

- (4) The articles of incorporation of the SPC contain 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<sup>5</sup>;
- (5) The articles of incorporation of the SPC contain a provision that a fiscal year of the SPC is the period of one year beginning on April 1 of each calendar year and ending on March 31 of the following year (for the fiscal year including the date of incorporation of the SPC, the period is from the date of its incorporation until March 31 immediately following the date of its incorporation.);
- (6) The SPC is not in breach of Article 5, paragraph 2, item (5);
- (7) The objectives indicated in the articles of incorporation of the SPC are limited to carrying out the Project;
- (8) The SPC does not fall under any of (a) through (g) of Article 29, paragraph (1), item (i) of the PFI Act; and
- (9) In addition to the requirements under the preceding items, the SPC satisfies the matters proposed as SPC's covenants in the Proposal Documents.

2. The Preferred Negotiation Right Holder's Members shall, after completion of registration of incorporation of the SPC, ensure that the SPC promptly notifies Kobe City of [its directors at the time of incorporation, who are audit and supervisory committee members at the time of incorporation, and other directors at the time of incorporation as well as accounting auditors at the time of incorporation].

#### Article 5 (The shareholders of the SPC)

1. [All Preferred Negotiation Right Holder's Members shall respectively contribute the amount indicated as the amount of contribution to be made by each of the Preferred Negotiation Right Holder's Members in **Exhibit 1**, on the date of incorporation of the SPC and the Project Commencement Date, and each shall respectively receive allotment of Voting Shares in accordance with the amount contributed. The capital contribution and the allotment of Voting Shares pursuant to this paragraph do not constitute a breach of any item in the following paragraph.]<sup>6</sup>

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<sup>5</sup> The organs of the SPC shall be subject to amendment in accordance with the proposal made by the Preferred Negotiation Right Holder (including incorporating the SPC as a company with the audit and supervisory committee or a company with the nominating committee etc. as stipulated in the Companies Act).

<sup>6</sup> If Kobe City agrees, a different structure of contribution can 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 Members to indirectly hold the

2. The Preferred Negotiation Right Holder's Members shall covenant the following matters [as of the time of incorporation of the SPC]<sup>7</sup> and shall each submit a shareholder's covenant document in the form indicated in **Exhibit 2** [simultaneously with the incorporation of the SPC].

- (1) If a Voting Shareholder intends to assign (or entrust), pledge or establish other security rights on, or otherwise dispose of (including through a trust wherein the Voting Shareholder itself is a trustee; hereinafter collectively "to dispose of"; hereinafter the same shall apply in this article) 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 the Voting Shares; hereinafter the same shall apply in this article) to a third party, the Voting Shareholder shall obtain prior written approval from Kobe City.
- (2) If the SPC needs to pass a resolution at the shareholders' meeting to intend to issue new Voting Shares, the Voting Shareholders shall exercise their voting rights at the shareholders' meeting to approve the issuance after obtaining prior written approval from Kobe City. (However, the SPC may issue and allot new Voting Shares to the Voting Shareholders on a pro rata basis based on the ratio of capital contribution without prior written approval of Kobe City.)
- (3) If a Voting Shareholder intends to dispose of its Voting Shares or have the SPC allot the Voting Shares, to a third party with approval of Kobe City pursuant to item (1) or (2), such Voting Shareholder shall ensure that the third party submits to Kobe City in advance a shareholder's covenant document with a content equivalent to that of the shareholder's covenant indicated in **Exhibit 2**.
- (4) A Voting Shareholder may not dispose of its Voting Shares or have the SPC issue new Voting Shares and allot them, to any person who does not satisfy any of the following requirements:
  - (i) A person who does not fall under any of Article 167-4 of the Order for Enforcement of the Local Autonomy Act (Cabinet Order No. 16 of 1947), Article 3 of the Contract Rules of Kobe City (Rule No. 16 of 2014) or any item of Article 5 of the Guidelines on Elimination of Organized Crime

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SPC shares through a company etc. to be incorporated after execution of the Agreement or capital contribution by any entity in a corporate form other than a stock company). The applicant intending such indirect shareholding by the Representative Company or Preferred Negotiation Right Holder's Members, capital contribution by any entity in a corporate form other than a stock company or another structure of contribution shall indicate it in the Proposal Documents.

<sup>7</sup> This is subject to change depending on the method of capital contribution and other related matters proposed by the Preferred Negotiation Right Holder.



Groups from Contracts etc. of Kobe City (Mayor Decision of 2010);

- (ii) A person who does not fall under the grounds for disqualification of a private business operator to implement a qualified project stipulated in Article 9 of the PFI Act; or
  - (iii) A person against whom a petition for the commencement of reorganization proceedings under the Corporate Reorganization Act (Act No. 154 of 2002) or rehabilitation proceedings under the Civil Rehabilitation Act (Act No. 225 of 1999) has not been filed.
- (5) A Voting Shareholder shall not dispose of the Voting Shares, have the SPC issue new Voting Shares or otherwise engage in any act, in a manner that would cause the SPC to become a subsidiary or affiliate of the Air Carrier or its affiliate (as defined in Article 2, paragraph (3), item (xx) of the Ordinance for Enforcement of the Companies Act (Ordinance of the Ministry of Justice No. 12 of 2006); including their subsidiaries).
- (6) If a Voting Shareholder executes a shareholders agreement (meaning all the agreements concerning the contribution ratio or voting rights ratio of each of the Voting Shareholders in the SPC or operation of the SPC to be executed between two or more Voting Shareholders), the agreement shall not contain any provisions inconsistent with the qualification criteria that conform with the participation qualification applicable to participation applicants and applicants at the time of the bidding or any provisions inconsistent with the matters proposed in the Proposal Documents. If a Voting Shareholder executes a shareholders agreement, promptly upon execution of the agreement (or if any shareholders agreement has been already executed, promptly upon execution of the Agreement) the Voting Shareholder shall submit a copy of the agreement to Kobe City. The same shall apply when the agreement is changed, and the Voting Shareholder shall notify Kobe City if the agreement is cancelled or terminated.
3. Kobe City shall, in general, approve the disposal of the Voting Shares or issuance of new Voting Shares if a Voting Shareholder requests Kobe City to issue prior approval for such disposal or issuance under item (1) or item (2) of the preceding paragraph, and the Voting Shareholder proves that: (i) the disposal of the Voting Shares or allotment of new Voting Shares is not in breach of item (4) of the preceding paragraph; (ii) the SPC would not be in breach of item (5) of the preceding paragraph after the disposal or issuance; and (iii) the disposing party and the third party to the disposal of the Voting Shares or allotment of new Voting Shares (a) satisfies certain qualification criteria that conform with the participation qualification applicable to participation applicants and

applicants at the time of the bidding, and (b) would uphold the SPC's business implementation policy and business plan proposed in the Proposal Documents and maintain SPC's ability to carry out the business after the disposal or issuance and thereby would not hinder the SPC from continuing business.

4. Notwithstanding each item of paragraph 2, Kobe City shall not unreasonably refuse to give its approval if the SPC borrows funds necessary for the implementation of the Project from a financial institution etc. and establishes security rights on the Voting Shares for the purposes of such borrowing. However, as a condition to such approval, a copy of the agreement for borrowing and establishing security rights shall be submitted to Kobe City and an agreement concerning the enforcement of the security rights has been executed between Kobe City and the financial institution etc. pursuant to the Project Agreement with such content as reasonably satisfactory to Kobe City.

#### Article 6 (Contract Deposit)

1. Promptly after execution of the Agreement, the Preferred Negotiation Right Holder's Members shall, jointly and severally, deposit JPY 300,000,000 as the Contract Deposit by transferring the amount into the bank account designated by Kobe City. Bank charges incurred for the deposit shall be borne by the Preferred Negotiation Right Holder's Members.

2. If the Contract Deposit stipulated in the preceding paragraph has been paid and has not been confiscated or returned as of the time of execution of the Project Agreement, the Contract Deposit shall be deemed as the payment by the SPC of the contract deposit under the Project Agreement. In this case, Kobe City shall not be required to return the Contract Deposit to the Preferred Negotiation Right Holder's Members.

#### Article 7 (Building Facility Sale and Purchase Agreement)

1. Kobe City shall complete both of the matters stipulated in the following items prior to execution of the Project Agreement.

- (1) Kobe City shall execute a provisional agreement for the Building Facility Sale and Purchase Agreement with Kobe Airport Terminal; and
- (2) Both Kobe City and Kobe Airport Terminal shall complete the approval procedures necessary to make the Building Facility Sale and Purchase Agreement effective as a definitive agreement, such as passing a resolution at the assembly or obtaining an organizational decision.

2. The transfer of ownership of the building facilities under the Building Facility Sale and Purchase Agreement shall come into effect on the Project Commencement Date (or another date separately agreed between Kobe City and Kobe Airport Terminal); provided that all of the conditions precedent stipulated in the agreement are fulfilled.

Article 8 (Establishment of the Operating Right)

1. After the incorporation of the SPC under Article 4 and without delay, Kobe City and the Preferred Negotiation Right Holder's Members shall respectively complete the necessary approval procedures within Kobe City and SPC such as passing a resolution at the assembly or obtaining an organizational decision and thereafter establish the Operating Right for the Project in favor of the SPC in accordance with the terms indicated in the Application Guidelines etc. and the Proposal Documents.

2. The Qualified Project Etc. for Kobe Airport Operation based on the Operating Right stipulated in the preceding paragraph shall commence upon fulfilment by the SPC of the conditions precedent to the commencement of the Project, which will be separately stipulated in the Project Agreement. By commencing the Project, the rights and responsibilities in relation to the operation etc. of the Airport Facility as of the time of this commencement shall pass from Kobe City to the SPC.

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 Members or the SPC.

Article 9 (Execution of the Project Agreement)

1. Promptly after the establishment of the Operating Right stipulated in the preceding article, Kobe City and the Preferred Negotiation Right Holder's Members shall make their best efforts to enable the Project Agreement to be executed between Kobe City and the SPC in accordance with the terms indicated in the Application Guidelines etc. and the Proposal Documents. In this regard, Kobe City will not 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 Members shall promptly provide Kobe City with materials and all other documentation and information reasonably requested

from Kobe City as necessary or appropriate in order to clarify the details of the Proposal Documents (“Materials”) upon request from Kobe City.

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

4. Kobe City and the Preferred Negotiation Right Holder’s Members shall, pursuant to the Application Guidelines etc., stipulate the items, methods, frequency, timing and other relevant matters of self-monitoring to be conducted by the SPC, based on the Proposal Documents prior to execution of the Project Agreement.

5. The Preferred Negotiation Right Holder’s Members may, at their own expense and responsibility, commence preparations that are necessary for the Project, regardless of whether they do so before or after the incorporation of the SPC or before the Project Agreement is executed, and Kobe City shall cooperate with these preparations to the extent necessary and possible. If Kobe City commences preparations that are necessary for the Project before the Project Agreement is executed, the Preferred Negotiation Right Holder’s Members shall cooperate with these preparations at their own expense and responsibility. The Preferred Negotiation Right Holder’s Members shall, upon incorporation of the SPC, hand over to the SPC the preparations that they commenced before incorporating the SPC.

6. Kobe City and the Preferred Negotiation Right Holder’s Members shall, prior to execution of the Project Agreement, complete all procedures within Kobe City and the SPC, respectively, which are required by laws and regulations to make the Project Agreement effective.

7. Kobe City may decide not to execute the Project Agreement if any of the following events occurs (for the event stipulated in item (7), if the event is discovered) to any of the Preferred Negotiation Right Holder’s Members before the Project Agreement is executed:

(1) With respect to the Project, if a Preferred Negotiation Right Holder’s Member

violated 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 a Preferred Negotiation Right Holder’s Member is a member violated Article 8, item (i) or item (ii) of the Anti-Monopoly Act and the Japan Fair Trade Commission ordered the Preferred Negotiation Right Holder’s Member to pay a surcharge (“Surcharge Payment Order”) pursuant to 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 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 a cease and desist order (“Cease and Desist Order”) issued pursuant to Article 7 or Article 8-2 of the Anti-Monopoly Act states that a Preferred Negotiation Right Holder’s Member violated Article 3 of the Anti-Monopoly Act, or that a trade association to which a Preferred Negotiation Right Holder’s Member belongs engaged in business activities that constituted a violation of Article 8, item (i) or item (ii) of the same act;
- (3) If a Surcharge Payment Order or a Cease and Desist Order indicates: (a) the period during which a Preferred Negotiation Right Holder’s Member or a trade association to which a Preferred Negotiation Right Holder’s Member belongs is alleged to have acted in violation of Article 3 or Article 8, item (i) or item (ii) of the Anti-Monopoly Act; and (b) the type of transaction with respect to which such violation is alleged to have occurred, and the procedures to select the Preferred Negotiation Right Holder were conducted during such period and the Project falls under the type of transaction specified in such order (provided that, if the Japan Fair Trade Commission orders the Preferred Negotiation Right Holder’s Member to pay a surcharge in respect of the relevant violation and this order becomes final and binding, the period of the violation which is the basis for calculating the surcharge for the Surcharge Payment Order shall be excluded);
- (4) With respect to the Project, if a Preferred Negotiation Right Holder’s Member (including its officers or employees if it is a judicial person) is prosecuted for alleged offenses subject to punishment under 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), item (i) of the Anti-Monopoly Act;
- (5) If a Preferred Negotiation Right Holder’s Member falls under any of the grounds for disqualification of a private business operator to implement a qualified project

stipulated in Article 9 of the PFI Act;

- (6) If a Preferred Negotiation Right Holder's Member falls under any of the items of Article 5 of the Guidelines on Elimination of Organized Crime Groups from Contracts etc. of Kobe City (Mayor Decision of 2010); or
- (7) If a Preferred Negotiation Right Holder's Member was selected as the Preferred Negotiation Right Holder in the selection procedures pursuant to the Application Guidelines etc. in a false or other dishonest manner.

Article 10 (Obligation to cooperate in obtaining financing)

The Preferred Negotiation Right Holder's Members shall invest in the SPC, solicit investors for the SPC, and have the SPC borrow and obtain other financial backing for the SPC, as stipulated in the Proposal Documents.

Article 11 (Non-establishment of the Project Agreement)

1. If the Agreement terminates pursuant to the proviso to Article 13, paragraph 1, the parties hereto shall act as follows:

- (1) Kobe City may confiscate the Contract Deposit deposited pursuant to Article 6 as liquidated damages. In this case, the obligation of Kobe City to return the Contract Deposit shall be extinguished.
- (2) If the amount of actual damage incurred by Kobe City exceeds the amount of such liquidated damages, the provision of the preceding item shall not prevent Kobe City from claiming the excess amount from the Preferred Negotiation Right Holder's Members.

2. Notwithstanding the preceding paragraph, if the Agreement terminates pursuant to the proviso to Article 13, paragraph 1 and the Project Agreement is not executed for any reason attributable to Kobe City, the parties hereto shall act as follows:

- (1) Kobe City shall return the Contract Deposit deposited pursuant to Article 6 (without interest thereon) to the Preferred Negotiation Right Holder's Members; and
- (2) In addition to receipt of the return of the Contract Deposit under the preceding item, the Preferred Negotiation Right Holder's Members may claim damages incurred by them from Kobe City.

3. Notwithstanding paragraph 1, Kobe City and the Preferred Negotiation Right Holder's Members acknowledge that if the Agreement terminates pursuant to the

proviso to Article 13, paragraph 1 and the Project Agreement is not executed for any reason not attributable to either Kobe City or the Preferred Negotiation Right Holder's Members (including, but not limited to, failure of passing necessary resolution at the Kobe City Assembly to make the Building Facility Sale and Purchase Agreement effective as a definitive agreement and necessary resolution to establish the Operating Right), each party shall bear their expenses for the preparations for the Project, other damage or additional expenses incurred, if any, respectively and no debtor-creditor relationship shall arise between them. In this case, Kobe City shall return the Contract Deposit deposited with it pursuant to Article 6 to the Preferred Negotiation Right Holder's Members (without interest thereon).

Article 12 (Confidential obligations)

1. Kobe City and the Preferred Negotiation Right Holder's Members acknowledge that each shall not disclose the matters concerning the Agreement to a third party or use the matters for any purpose other than those stipulated herein unless it obtains consent from the other party.

2. Notwithstanding the preceding paragraph, Kobe City and the Preferred Negotiation Right Holder's Members may disclose the information concerning the Agreement only under the following circumstances. However, if Kobe City instructs on the method for disclosure, such instructions shall be complied with.

- (1) Disclosing information to a third party when that information is scheduled to be disclosed to the relevant third party;
- (2) Disclosing information to: (i) Kobe City's personnel or the Preferred Negotiation Right Holder's Members' employees and professionals such as lawyers, certified public accountants, and certified public tax accountants of Kobe City or the Preferred Negotiation Right Holder's Members; or (ii) the companies and their respective employees agreed in advance with Kobe City as falling under a parent company, subsidiary, affiliate or other associated companies of the Preferred Negotiation Right Holder's Members, and their professionals such as lawyers, certified public accountants, and certified public tax accountants who need to know the information where such disclosure is made on the condition that they assume the same confidential obligations assumed by the Preferred Negotiation Right Holder's Members;
- (3) Disclosing information to a particular third party who already knows the information without breaching the provisions of this article;

- (4) Disclosing to a third party information that is already in the public domain; and
- (5) Disclosing information which disclosure is required under laws and regulations or by order of a court or competent government authority.

#### Article 13 (Effective term of the Agreement)

1. Unless otherwise agreed, the effective term of the Agreement shall commence from the date of its execution until the Project Commencement Date. However, if the Project Agreement is not executed within six months from the execution of the Agreement or Kobe City decides not to execute the Project Agreement pursuant to Article 9, paragraph 7, the effective term of the Agreement shall terminate with notice given by Kobe City to the Representative Company. Notwithstanding termination of the effective term hereof, the effect of the provisions of the following paragraph, the preceding two articles and Article 15 shall survive.

2. If a Voting Shareholder requests prior approval of Kobe City for the disposal of the Voting Shares or issuance of new Voting Shares after the Project Commencement Date, pursuant to Article 5, paragraph 2, item (1) or item (2), Kobe City shall, in general, approve the disposal or issuance if all the terms stipulated in Article 5, paragraph 3 are satisfied. Kobe City shall not refuse to give its approval for the establishment of security rights on the Voting Shares pursuant to Article 5, paragraph 4 without reasonable reasons if all of the conditions stipulated in the proviso to the same paragraph are satisfied.

#### Article 14 (Consultation)

Kobe City and the Preferred Negotiation Right Holder's Members 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 15 (Governing law, jurisdiction and languages)

1. The Agreement shall be construed in accordance with the laws of Japan. The Kobe District Court shall have the exclusive jurisdiction in the first instance for all disputes arising in connection with the Agreement.

2. The original of the Agreement shall be in the Japanese language, and any English translation, if prepared, shall serve only as a reference. The Agreement shall be construed in accordance with the Japanese version.





IN WITNESS WHEREOF, the Agreement shall be prepared in [ ] originals, signed and sealed by Kobe City, the Representative Company and each of the Preferred Negotiation Right Holder's Members, and each party shall retain one original.

[The rest of the page is intentionally left blank.]

[MM/DD/YYYY]

Kobe City

Address:

Mayor of Kobe City:

[MM/DD/YYYY]

Representative Company: [       ]

Address: [       ]

President and Representative Director: [       ]

[MM/DD/YYYY]

Preferred Negotiation Right Holder's Member: [       ]

Address: [       ]

President and Representative Director: [       ]

**Exhibit 1 List of Capital Contribution by the Preferred Negotiation Right Holder' Members as of incorporation of the SPC and the Project Commencement Date<sup>8</sup>**

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<sup>8</sup> If any securities that can be converted or exchanged with the Voting Shares or represent rights to receive the Voting Shares are issued at the time of incorporation of the SPC or as of the Project Commencement Date, please indicate their details.

## Exhibit 2 Form of Shareholder's Covenant

### Shareholder's Covenant

[MM/DD/YYYY]

To: Mr./Ms. [            ]  
Mayor of Kobe City

Address:

Representative Director [    ]

[name of entity] (the "Company") covenants or represents and warrants to Kobe City ("Kobe City") on the following matters as of the date written above. Unless otherwise expressly defined, the terms used in this Shareholder's Covenant (this "Covenant") shall have the meanings defined in the [Qualified Project Etc. for Kobe Airport Operation Basic Agreement between Kobe City and [name of entity] and [name of entity] (the "Basic Agreement")/Qualified Project Etc. for Kobe Airport Operation Agreement Concerning the Implementation of the Right to Operate Public Facility Etc. (the "Project Agreement") to be executed between Kobe City and [name of entity]].<sup>9</sup>

1. The SPC<sup>10</sup> is a stock company (*kabushiki kaisha*) under the Companies Act (Act No. 86 of 2005), duly incorporated on [MM/DD/YYYY], and validly existing as of the date above written.

2. If the Company, as a shareholder of the SPC, intends to assign (or entrust), pledge or establish other security rights on, or otherwise dispose of (including through a trust wherein the Company itself is a trustee; hereinafter collectively referred to as "to dispose of"; hereinafter the same shall apply in this Covenant) 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 the Voting Shares; hereinafter the

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<sup>9</sup> Either the Basic Agreement or Project Agreement effective at the time of submission of this Covenant shall be referred to.

<sup>10</sup> If this Covenant is submitted after the Project Agreement is executed, the "SPC" will be replaced with the "Operating Right Holder."

same shall apply in this Covenant) to a third party, the Company will obtain prior written approval of Kobe City pursuant to Article 5 of the Basic Agreement (including when this is mutatis mutandis applied in Article 13, paragraph 2 thereof; hereinafter the same shall apply).

3. If the SPC intends to issue new Voting Shares (excluding [(i) the issuance of new Voting Shares for the capital contribution set out in Article 5, paragraph 1 of the Basic Agreement]<sup>11</sup> and (ii) the issuance and allotment of new Voting Shares to the Voting Shareholders on a pro rata basis based on the ratio of capital contribution), the Company will exercise its voting rights at the shareholders meeting to approve such issuance only where the Company has obtained prior written approval from Kobe City pursuant to Article 5 of the Basic Agreement.

4. If the Company intends to dispose of its Voting Shares to a third party with the approval of Kobe City pursuant to item (2), the Company will ensure that the third party will submit a covenant document with a content equivalent to that of this Covenant to Kobe City in advance. Subject to the provision of the preceding item, the Company will, with the approval of Kobe City, exercise its voting rights at the shareholders meeting to approve the issuance of new Voting Shares and vote for the resolution approving such issuance only where the conditions precedent to such issuance include that the SPC shall have each party to the allotment of new Voting Shares submit to Kobe City in advance a covenant document with a content equivalent to that of this Covenant.

5. The Company will not dispose of its Voting Shares to any person who does not satisfy any of the following requirements. The Company will exercise its voting rights at the shareholders meeting to approve the issuance or allotment of new Voting Shares by the SPC (excluding the issuance and allotment of new Voting Shares to the Voting Shareholders on a pro rata basis based on the ratio of capital contribution) and vote for the resolution approving such issuance or allotment only where the conditions precedent to such issuance or allotment include that the SPC shall not allot the Voting Shares to any person who does not satisfy any of the following requirements:

- (i) A person who does not fall under any of Article 167-4 of the Order for Enforcement of the Local Autonomy Act (Cabinet Order No. 16 of 1947), Article 3 of the Contract Rules of Kobe City (Rule No. 16 of 2014) or any

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<sup>11</sup> This is subject to change depending on the method of capital contribution and other related matters proposed by the Preferred Negotiation Right Holder.



item of Article 5 of the Guidelines on Elimination of Organized Crime Groups from Contracts etc. of Kobe City (Mayor Decision of 2010);

- (ii) A person who does not fall under the grounds for disqualification of a private business operator to implement a qualified project stipulated in Article 9 of the PFI Act; or
- (iii) A person against whom a petition for the commencement of reorganization proceedings under the Corporate Reorganization Act (Act No. 154 of 2002) or rehabilitation proceedings under the Civil Rehabilitation Act (Act No. 225 of 1999) has not been filed.

6. The Company will not dispose of the Voting Shares in a manner that would result in the SPC becoming a subsidiary or affiliate 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 or their subsidiaries (hereinafter collectively, "Air Carrier"); or affiliates (including subsidiaries) of an Air Carrier. Further, the Company will exercise its voting rights at the shareholders meeting to approve the issuance of new Voting Shares by the SPC and vote for the resolution approving such issuance only where the conditions precedent to such issuance include that the SPC shall not cause such result.

7. If the Company, as a shareholder of the SPC, executes a shareholders agreement (meaning all the agreements concerning the contribution ratio or voting rights ratio of each of the Voting Shareholders in the SPC or operation of the SPC to be executed between two or more Voting Shareholders) or changes the agreement after its execution, the Company will ensure that the agreement does not contain any provisions inconsistent with the qualification criteria that conform with the participation qualification applicable to participation applicants and applicants at the time of the bidding or any provisions inconsistent with the matters proposed in the Proposal Documents. If the Company executes a shareholders agreement, promptly upon execution of the agreement (or if any shareholders agreement has been already executed as of the time of submission of this Covenant, promptly upon the submission of this Covenant), the Company will submit a copy of the agreement to Kobe City (or notify Kobe City if the agreement is cancelled or terminated).

8. Regardless of whether the Project Agreement is terminated after the Project Commencement Date and before the Project Expiration Date (both dates are as defined therein), the Company will not exercise its voting rights at the shareholders meeting for

a resolution approving the SPC's dissolution or restructure, until the period of time, during which the SPC has the liability for defects under the Project Agreement, expires.

9. The Company shall not disclose any matters concerning this Covenant to a third party or use the matters for any purpose other than those stipulated herein without consent of Kobe City, unless the disclosure is ordered by a court or competent government authority or necessary for obtaining financing for the Project by the Company or the SPC; or the disclosure is made to (i) the employees and professionals such as lawyers, certified public accountants, and certified public tax accountants of the Company or the SPC, or (ii) the companies and their respective employees agreed in advance with Kobe City as falling under a parent company, subsidiary, affiliate or other associated companies of the Company or the SPC, and their professionals such as lawyers, certified public accountants, and certified public tax accountants who need to know the information where such disclosure is made on the condition that they assume the same confidential obligations assumed by the Company.

10. This Covenant shall be construed in accordance with the laws of Japan. The Kobe District Court shall have exclusive jurisdiction in the first instance for all disputes arising in connection with this Covenant. The original of this Covenant shall be in the Japanese language, and any English translation, if prepared, shall serve only as a reference. This Covenant shall be construed in accordance with the Japanese version.

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