

**TEMPORARY LEASE AND CONCESSION AGREEMENT  
FOR FOOD AND BEVERAGE CONCESSIONS**

**Memphis International Airport**

This TEMPORARY LEASE AND CONCESSION AGREEMENT (“**Agreement**”) made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY, a body politic and corporate, existing under and by virtue of the laws of the State of Tennessee (“**Authority**”); and ) \_\_\_\_\_, a limited liability company, and \_\_\_\_\_, a limited liability company, (**jointly “Concessionaire”**). The Authority and Concessionaire may sometimes be referred to herein individually as “party” or jointly as “parties.”

**WITNESSETH:**

WHEREAS, the Authority controls, operates and maintains an airport in the County of Shelby (“**County**”), State of Tennessee (“**State**”), known as Memphis International Airport (“**Airport**”); and

WHEREAS, the Authority operates a food and beverage concession program at the Airport in connection with its obligation to serve the traveling public; and

WHEREAS, due to a reduction of enplanements at the Airport, several restaurants have closed or are in the process of closing and, therefore, the Authority has a need to provide concession services in strategic parts of the Airport on a temporary basis as the Authority prepares to consolidate all airlines and concessions into one terminal and to redevelop its food and beverage concession services program to coincide with said consolidation; and

WHEREAS, the Authority has determined it to be in the best interest of the public to enter into a temporary concession agreement to maintain an appropriate level of concession services during the transition and until such time as a competitive bidding process can be accomplished; and

WHEREAS, the Authority desires to enter into a Temporary Lease and Concession Agreement with Concessionaire, a local disadvantage business enterprise, to provide food and beverage concession services in the Airport on a non-exclusive basis pursuant and subject to the terms and conditions hereunder.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges, and obligations herein, the Authority and Concessionaire hereby mutually undertake, promise and agree, each for itself and its successors and assigns as follows:

## **ARTICLE I GENERAL**

### **1.1 Interpretation.**

(a) References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

(b) The terms "hereby," "herein," "hereof," "hereto," "hereunder," and any similar terms used in this Agreement refer to this Agreement. The term, "including" shall not be considered in a limiting nature, but shall be construed to mean "including, without limitation."

(c) Words denoting persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction, or effect of this Agreement.

(e) Words denoting the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

**1.2 Incorporation of Exhibits.** The following Exhibits are hereby incorporated into and made a part of this Agreement:

- A. Leased Premises – Concession Space (A Concourse)
- B. Leased Premises – Concession Space (B Concourse)
- C. Leased Premises – Office Space
- D. Leased Premises – Cargo and Warehouse Space
- E. Permitted Concession Services

**1.3 Inconsistency with Any Other Document.** In the event of any inconsistency between this Agreement and any document heretofore published or provided to any third party, the terms of this Agreement shall control.

## **ARTICLE II LEASED PREMISES**

### **2.1 Leased Premises.**

(a) The Authority hereby leases to Concessionaire and Concessionaire hereby agrees to lease from the Authority the following locations at the Airport (collectively referred to herein as the "Leased Premises"):

(b) The Warehouse Space includes access through a shared area of the Authority's warehouse, which may be used by other concessionaires, and the exclusive use of a 2007 Chevrolet Express Van and a 2000 Isuzu Pickup Truck, ownership of which was transferred to the Authority by

the prior concessionaire of the Facilities pursuant to an exit strategy agreement (“**Authority’s Vehicles**”).

**2.2 Existing Improvements, Fixtures, and Equipment.** Pursuant to an exit strategy agreement with the prior concessionaire of the Facilities, the Authority maintains ownership of all existing equipment, fixtures, eating, tables, small appliances, cash registers, and a vehicle, among other things, located within the Facilities and Warehouse Space (“**Authority’s Equipment**”). Concessionaire shall have the right to use the Authority’s Equipment in accordance with the terms of this Agreement, but shall not gain any ownership rights in said Equipment during or after the Term and shall return same to the Authority upon termination of this Agreement in accordance with Section 12.5 herein. If Concessionaire replaces any such Equipment during the Term, as defined in Section 3.1 herein, Concessionaire shall promptly notify the Authority in writing.

**2.3 Relocation.**

(a) The Authority reserves the right to require Concessionaire, at any time during the term of this Agreement, to relocate all or any part of the Leased Premises from time to time as may be necessary, in the Authority’s reasonable judgment, for the purposes of development of the Airport. Concessionaire agrees to cause any such relocation to be accomplished expeditiously.

(b) In the event the Authority determines that it is necessary to relocate any part of the Leased Premises, the Authority shall notify Concessionaire in writing at least ninety (90) days in advance of the proposed relocation.

(c) The Authority will, to the extent feasible, provide Concessionaire with comparable space as a substitute for the relocated portion of the Leased Premises and no reduction in rent or other credits will be provided as a result of such relocation if a comparable substitute space is provided. The Authority shall pay the reasonable costs incurred by Concessionaire in improving the substitute space to a condition reasonably comparable to the then-current condition of the relocated premises and the reasonable costs of moving equipment, fixtures, and merchandise to the new location.

(d) In the event the Authority is unable to provide a comparable substitute space, an appropriate adjustment to the Concession Fees, Utility Charges, and/or other rentals and fees will be made as determined in the sole discretion of the Authority.

**ARTICLE III  
TERM**

**3.1 Term.** The term of this Agreement shall begin on \_\_\_\_\_, 20\_\_ and end on \_\_\_\_\_, 20\_\_ (“**End Date**”), but may continue on a month-to-month basis thereafter (“**Term**”) in the event airlines are still operating on the A Concourse and/or the availability of concession services is still critical during the Authority’s modernization project. Any extension of this Agreement beyond the End Date established herein is at the sole discretion of the Authority.

**3.2 Temporary Nature of Agreement.** Concessionaire hereby acknowledges that Facility A may be closed prior to the End Date in the event that all airlines operating on the A Concourse have successfully been moved to the B Concourse. Concessionaire also hereby acknowledges that the Authority will conduct a competitive bid process for a new concession program as all airlines are being consolidated onto the B Concourse and the Authority may terminate this Agreement in its entirety upon giving Concessionaire at least thirty (30) days advance written notice.

#### **ARTICLE IV USES, PRIVILEGES, AND OBLIGATIONS**

**4.1 General.** Concessionaire shall have the following non-exclusive uses, privileges, and obligations in connection with its use of the Leased Premises:

(a) Use of Leased Premises. The Facilities shall be used by Concessionaire only for Permitted Concession Services, as hereinafter defined, and for such other uses as the Authority may agree to in writing. The Office Space shall be used by Concessionaire for office and administrative purposes related to the operation of the Permitted Concession Services. The Warehouse Space shall be used for receiving, storage, preparation, and transportation of only products and goods necessary for the operation of the Permitted Concession Services. Concessionaire hereby acknowledges that in addition to the Warehouse Space, it will have access to a certain portion of the Authority's warehouse that is considered shared space and hereby agrees that it will in no way obstruct any other concessionaire's access to the exclusive areas of the Authority's warehouse to which such concessionaires are authorized to enter pursuant to a separate agreement with the Authority. Concessionaire also agrees not to obstruct the storage overflow area to the east of Facility B.

(b) Permitted Concession Services.

(i) Subject to the terms and conditions of this Agreement, the right to stock, prepare, and offer for sale within the Facilities only applies to the food and beverage merchandise more specifically set forth in Exhibit E attached hereto ("**Permitted Concession Services**"), which includes Concessionaire's menu selections. Excluded are all ground transportation services, advertising other than as an incidental aspect of promoting the Permitted Concession Services sold in the Facilities where the advertising is located and subject to the signage provisions of this Agreement, public telephone service, rented luggage carts, insurance services, lottery sales, currency exchange services, banking services, car rental operations, the rental of storage lockers, television and radio rentals, the operation of movie theatres and other entertainment facilities, business services such as computer, facsimile, telex, secretarial, typing, messenger, conference facilities, and office use, and all other uses not authorized by the Authority or not falling within the categories of retail businesses described above.

(ii) Additional Items. From time to time throughout the Term, the Authority and Concessionaire may mutually agree to modify in writing the Permitted Concession Services; provided however, that the Authority reserves the right to deny, in its sole

discretion, any request by Concessionaire to modify the Permitted Concession Services.

(iii) Trade Names. Unless otherwise approved in writing by the Authority, Concessionaire must conduct business in the Facilities only under such trade names as set forth in the Permitted Concession Services. Concessionaire represents that it is entitled to use all such trade names under all applicable laws.

(iv) Operating Covenant. Concessionaire agrees to keep all Facilities open for business and operating in accordance with the Permitted Concession Services and all other terms and conditions of this Agreement at all times during the Term.

(c) Ingress and Egress. The Concessionaire has the right of ingress to and egress from the Leased Premises over Airport roadways, including the use of common use roadways, subject to such rules and regulations now in existence or as may be established from time to time by the Authority.

(d) Authority's Vehicles. All of Concessionaire's employees who operate the Authority's Vehicles shall hold a valid state-issued driver's license and an Airport identification badge with airside authority. The Concessionaire shall be obligated to perform routine maintenance and repairs to the Authority's Vehicles during the Term and shall immediately notify the Authority if the Authority's Vehicles become inoperable or are involved in an accident. The Authority is not obligated, however, to replace the Authority's Vehicles in the event one or both become inoperable during the Term.

**4.2 Rights of Other Concessionaires.** Concessionaire understands and agrees that the Authority has the right to grant privileges under separate agreements for other concession services that may or may not be similar to the privileges granted herein to Concessionaire. In the event of a dispute between Concessionaire and any other lessee, licensee or concessionaire relative to the rights of the respective lessees, licensees or concessionaires, the President shall determine the rights of each lessee, licensee or concessionaire and Concessionaire agrees to be bound by such decision. For purpose of this Agreement, "**President**" shall mean the President and CEO of the Authority or his designee.

**4.3 Compliance with Law.** Concessionaire shall comply, in the design, construction, use, occupancy, and operation of the Leased Premises at its own cost, except as otherwise expressly provided in this Agreement, with (i) all regulations and directives now or hereafter promulgated by the United States Federal Aviation Administration ("**FAA**") or Transportation Security Administration ("**TSA**"), or their successor agencies, offices, or departments, pertaining to airport security; (ii) all federal, state, county, and municipal laws, rules, regulations, and ordinances, including all building, health, food preparation, and sanitation codes and all environmental laws; and (iii) all rules and regulations now or hereafter promulgated by the Authority in accordance with this Agreement.

**4.4 Obligation for Continuous Operation.** The Leased Premises shall be used only for the purposes specified in this Agreement. Concessionaire shall not at any time throughout the Term abandon any portion of the Leased Premises or cease operating therein without the prior written consent of the Authority.

**4.5 Prohibited Uses.** Concessionaire shall not conduct operations in or on the Leased Premises in a manner that in the judgment of the Authority:

(a) Adversely and materially interferes or would be likely to interfere with the reasonable use by others of common facilities at the Airport;

(b) Hinders or would be likely to hinder police, firefighting or other emergency personnel in the discharge of their duties;

(c) Would or would be likely to constitute a hazardous condition at the Airport;

(d) Would or would be likely to increase the premiums for insurance policies maintained by the Authority, unless such operations are not otherwise prohibited hereunder and Concessionaire pays the increase in insurance premiums occasioned by such operations, or

(e) Would involve any illegal purposes.

**4.6 Interference with Airport Building Systems.** Concessionaire shall not do or permit anything to be done that may interfere with the effectiveness of utility heating, ventilating or air conditioning systems or portions thereof on or adjoining the Leased Premises, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto, or interfere with the effectiveness of elevators or escalators in or adjoining the Facilities, or overload any floor in the Leased Premises.

**4.7 Prohibition Against Vending Machines.** Concessionaire shall not install or operate any coin, card, token or otherwise activated vending machines or devices of any kind without the prior written approval of the President.

## **ARTICLE V RENTALS, FEES AND ACCOUNTING RECORDS**

**5.1 Concession Fees.** For and in consideration of the rights and privileges granted herein, Concessionaire agrees to pay monthly rent to the Authority during the Term in the form of “**Concession Fees,**” which shall be calculated as follows:

(a) \_\_\_\_\_ % of the Gross Receipts, as defined below, attributable to the sale of food and nonalcoholic beverages; and

(b) \_\_\_\_\_8% of the Gross Receipts, as defined below, attributable to the sale of alcoholic beverages.

**5.2 Utility Charge.** In addition to the Concession Fees established herein, Concessionaire agrees to pay a monthly charge to the Authority equal to \$6.72 per square foot multiplied by the floor area of the Facilities, and Office Space (“**Utility Charge**”). Concessionaire hereby acknowledges that the Utility Charge is subject to change by the Authority on July 1<sup>st</sup> of every year. The Utility Charge for the period \_\_\_\_\_ through \_\_\_\_\_ as follows:

<u>Leased Premises</u>	<u>Sq. Ft.</u>	<u>Rate</u>	<u>Annual Charge</u>	<u>Monthly Charge</u>
Facility A		\$	\$	\$
Facility B		\$	\$	\$
Office Space		\$	\$	\$

**Total Monthly Utility Charge:**        \$

**5.3 Place of Payment.** Payment of rentals, fees, and charges hereunder are to be in lawful money of the United States of America (“**United States**”) and paid to the Authority’s Finance Department as set forth in Section 18.20 herein, unless otherwise notified by the Authority pursuant to the provisions thereof.

**5.4 Delinquent Fees.**

(a) Without waiving any other right of action available to the Authority in the event of default in the payment of all sums of money due hereunder, in the event that Concessionaire is delinquent in paying any such sums within five (5) business days after receipt of the Authority’s written notice of demand therefor, Concessionaire shall pay to the Authority interest thereon at the rate of eighteen (18%) per annum, or at the highest rate then allowed by law (“**Interest Charges**”), from the date such payment was due and payable until paid. Interest Charges shall not accrue with respect to disputed items being contested in good faith by Concessionaire in which event the legal rate of interest shall prevail. However, Interest Charges shall accrue on any disputed items not paid within five (5) days from the date of resolution computed from the date of resolution.

(b) The Authority shall have a lien upon all Tenant Improvements, as defined herein, including personal property of the Concessionaire placed in or on the Leased Premises, to the extent permitted by law, for the purpose of securing the payment of all sums of money that may be due to Authority from Concessionaire under this Agreement. For purposes of this Agreement, “**Tenant Improvements**” shall mean all leasehold improvements on, at or to the Leased Premises including Fixed Improvements as defined in Section 7.3 herein, furniture, fixtures and equipment, signage and decorations, and associated architectural and engineering fees and charges.

**5.5 Additional Fees and Charges.**

(a) Notwithstanding Concessionaire’s obligation to pay Authority any amounts described elsewhere in this Agreement, no matter how characterized, Concessionaire shall pay Authority additional fees and charges under the following situations: (i) where Authority has paid any sums or has incurred any obligations or expenses for which the Concessionaire has agreed, either expressly or by implication, to pay or reimburse Authority; or (ii) if Authority is required

or elects to pay any sums or incurs any obligations or expenses because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of its obligations under this Agreement.

(b) Such payments shall include all Interest Charges, costs, damages, and expenses reasonably related to such sums so paid or expenses so incurred and may be added to any installment of fees and charges thereafter due hereunder. Each and every part of such payment shall be recoverable by the Authority in the same manner and with like remedies as if it were originally a part of the rents, fees, and charges required to be paid herein.

#### **5.6 Definition of Gross Receipts.**

(a) As used herein, "**Gross Receipts**" shall mean the total dollar amount of all sales made at or from the Leased Premises regardless of where the order is received or delivered, including catalog, mail order, telephone and Internet orders, and any other revenues of any type arising out of or in connection with the Concessionaire's operations in the Leased Premises, whether performed by the Concessionaire, its subsidiaries, associated companies or any other entity, corporate or otherwise, for cash or credit or otherwise, of every kind, name and nature, regardless of where or whether collected, as if the same had been sold for cash and including receipts from promotions, advertising or any other use of the Leased Premises by Concessionaire. Gross Receipts does not, however, include the following:

(i) Federal, state, county and municipal sales taxes or other taxes separately stated and collected from customers;

(ii) The amount of any cash or credit refund made upon any sales, but only if the original sale was made in or from the Leased Premises and included in Gross Receipts;

(iii) Receipts from the sale of fixtures, equipment or other items of property that are incidental to the ordinary course of Concessionaire's business and not normally associated with sales;

(iv) Receipts from the sale or transfer of any inventory, supplies or equipment to another operation or affiliate of Concessionaire, whether or not located at the Airport, provided such sale is incidental to and not made for the purpose of circumventing the fee provisions of this Agreement;

(v) Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to snippets, suppliers or manufactures;

(vi) Receipts from the sale of uniforms or clothing to Concessionaire's employees where such uniforms or clothing are required to be worn by said employees;

(vii) Customary discounts given by Concessionaire on sales of merchandise or services to its own employees, if separately stated and accounted for and limited in total amount to not more than one percent (1%) of its Gross Receipts per month;

(viii) Discounts, if separately stated and accounted for, given by Concessionaire on sales of merchandise or services to other persons employed at the Airport who are in possession of a valid Authority or airline-issued security identification badge;

(ix) Gratuities for services performed by employees of Concessionaire that are paid by Concessionaire or its customers to such employees, except to the extent Concessionaire may be entitled to receive a portion of such gratuities; and

(x) Insurance proceeds received from the settlement or claims for loss of or damages to leasehold improvements, merchandise, fixtures, trade fixtures and other personal property of Concessionaire other than the proceeds of business interruption insurance.

(b) A “**sale**” is deemed to have been consummated for purposes of this Agreement, and the entire amount of the sales price must be included in Gross Receipts, at the time that: (i) the transaction is initially reflected in the books or records of Concessionaire, (ii) Concessionaire receives all or any portion of the sales price, or (iii) the applicable goods or services are delivered to the customer, whichever occurs first.

(c) Except as specified herein, if any charge for any of the products or services provided hereunder is not assessed, charged or collected, irrespective of the reason therefore, the proper amount of such charge shall, nevertheless, be included in Gross Receipts. Further, no deduction shall be made from Gross Receipts by reason of any credit loss, charge or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.

### **5.7 Accounting Records.**

(a) Monthly Statements. Within ten (10) days after the end of each month during the Term, Concessionaire shall submit to the Authority, in such detail and form as may be specified by the Authority, certain information, including a statement of its Gross Receipts during the preceding month upon which the Concession Fees are computed. Said statement is to be signed by a responsible accounting officer of Concessionaire and shall include, at a minimum, a breakdown of Concessionaire’s total sales for each facility and each merchandise or product category by which the Concession Fees are computed. The Authority reserves the right to make a change to the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Receipts hereunder and Concessionaire agrees to change the form of its statements to that requested by the Authority and to provide any such additional information the Authority may request.

(b) Concessionaire shall keep full and accurate books and records showing all of its Gross Receipts and a detailed reconciliation of any set offs hereunder and the Authority shall have the right, through its representatives and at reasonable times to inspect, examine, copy, and audit such books and records, including State sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to the Authority for at least three years following the period covered by such books and records. If the records are not available at the Leased Premises, Concessionaire agrees to pay the expenses of auditors who travel to conduct such audit.

**5.8 Audit.** The Authority reserves the right to audit Concessionaire's books and records at any time for the purpose of verifying Concessionaire's calculation of Gross Receipts and Concession Fees for any period within three (3) years prior to such audit. If, as a result of such audit it is established that Concessionaire has understated the Gross Receipts received from all operations at the Leased Premises by three percent (3%) or more, after the deductions and exclusions herein, the entire expense of said audit may be charged to Concessionaire at the Authority's sole discretion. Any fee due shall be paid by Concessionaire to the Authority with Interest Charges thereon from the date such additional fee became due.

**5.9 No Abatement or Set-Off.** Except as expressly provided herein, Concessionaire shall timely pay all fees, rents and other sums due hereunder without any abatement, suspension, set-offs, reductions or deductions.

## **ARTICLE VI TRANSITION PLAN**

**6.1 Exit Strategy of Prior Concessionaire.** The Facilities have been operated by \_\_\_\_\_ ("") prior to the beginning of the Term of this Agreement: Facility A and Facility B. \_\_\_\_\_ will transition out of the Facilities on \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.

**6.2 Transition to Temporary Concessionaire.** Concessionaire is hereby granted the authority to enter the Leased Premises on \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, prior to the beginning of the Term, for the sole purpose of preparing the Facilities for active operation: Facility A and Facility B. Concessionaire shall open the Facilities at 6:00 a.m. CT on \_\_\_\_\_, 20\_\_ so as to minimize the interruption of concession services available to the traveling public.

**6.3 No Warranty of Condition or Suitability.** The Authority makes no warranty, either express or implied, as to the condition of the Leased Premises or the suitability of the Leased Premises for Concessionaire's purposes or needs. If during the construction of improvements, if applicable, latent defects are discovered, the Authority and Concessionaire shall negotiate in good faith with respect to the costs for which each shall be responsible.

## **ARTICLE VII IMPROVEMENTS AND ALTERATIONS**

**7.1 Authority Approval Required.** Any improvements to be made to or upon the Leased Premises by Concessionaire, together with any subsequent alterations or additions, shall be subject to the prior written approval of the Authority.

**7.2 Title.** All improvements and any additions and alterations made to the Leased Premises by Concessionaire shall be and remain the property of Concessionaire until the termination of this Agreement, whether by lapse of time, cancellation, forfeiture or otherwise, at which time such improvements, subject to the rights of Concessionaire pursuant to Section 12.5 hereof, shall become the property of the Authority at no cost to the Authority.

7.3 **Removal and Demolition.** Concessionaire shall not remove or demolish, in whole or in part, any Fixed Improvements without the prior written consent of the Authority, which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent. For purposes of this Agreement, “**Fixed Improvements**” shall mean all leasehold improvements on, at or to the Leased Premises that are structural in nature or are affixed and cannot be removed without material damage to the Leased Premises, and associated architectural and engineering fees and charges.

## **ARTICLE VIII AUTHORITY'S RIGHTS AND OBLIGATIONS**

8.1 **Authority's Maintenance Obligations.** The Authority shall provide, or cause to be provided: (a) structural maintenance of the Airport's buildings, (b) maintenance of the mechanical, electrical, plumbing, and communications systems to the points of connections to the Leased Premises, and (c) washing of all windows on the outside of Airport's buildings.

8.2 **Alterations and Improvements to Airport.** Concessionaire acknowledges that from time to time the Authority may undertake construction, repair or other activities related to the operation, maintenance, and repair of the Airport, including the buildings, which may temporarily affect Concessionaire's operations hereunder. Concessionaire agrees to accommodate the Authority in such matters, even though Concessionaire's own activity may be inconvenienced or impaired, and Concessionaire agrees that no liability shall attach to the Authority, its commissioners, officers, directors, employees or agents by reason of such inconvenience or impairment.

8.3 **Utilities.**

(a) The Authority shall provide the Leased Premises with point of connection to the heating, ventilating and air conditioning, electrical, communication, potable water supply, and sanitary sewer systems. Concessionaire shall be responsible for extending these services to and throughout the Leased Premises.

(b) The Authority agrees to provide Concessionaire with heating, ventilation and air conditioning, electrical, natural gas to the extent available within the Facilities, water, and sanitary sewer services and Concessionaire agrees to pay the assessed charges for all utilities used in the Leased Premises including the Utility Charge. Concessionaire additionally agrees to pay all deposits, installation costs, meters, deposits or other charges individually assessed to Concessionaire. No such payment of utilities shall constitute a payment of rent or credit against any other provision of this Agreement.

(c) Authority shall not be liable to Concessionaire in damages or otherwise for delay or failure to supply or furnish, or for any delay in the supplying or furnishing of any utility service which Authority is obligated to supply or furnish, when such failure or delay is caused by necessary repairs or improvements, by any labor controversy, by an inability to secure water, gas, or electricity or other utilities at the Leased Premises, by any accident or casualty, by any act or omission of Concessionaire, or by any other cause or causes beyond the control of Authority.

## **ARTICLE IX OPERATIONAL STANDARDS**

**9.1 General.** It is the Authority's intention that Concessionaire's business shall be conducted in a manner so as to meet the needs of the Airport patrons and employees and in a manner that will reflect positively upon the Concessionaire and the Authority. The Concessionaire shall offer quality products and shall equip, organize, and efficiently manage the Facilities to provide First Class, as defined herein, service and products in a clean, attractive and pleasant atmosphere. For purposes of this Agreement, "**First Class**" shall mean, as an adjective herein, a manner of operation of the concessions, a standard of quality of materials and construction, or a standard of quality of products, merchandise and services, as the context herein might be, comparable to those of upscale shopping centers and similar high-quality airport and non-airport retail and food service establishments.

**9.2 Authority's Right to Monitor Performance.**

(a) Concessionaire shall maintain and operate the Facilities in an orderly, proper, and First Class manner which, in the sole judgment of the Authority, does not annoy, disturb or offend any person at the Airport. The Authority shall have the right to raise reasonable objections to the condition of the Leased Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, and the appearance and performance of service personnel; and to require any such conditions or practices objectionable to the Authority to be remedied by Concessionaire. If requested by Concessionaire, the Authority shall reduce its objections to writing and provide Concessionaire an opportunity to reply in writing to the objections, such reply to be given consideration by the Authority.

(b) The Authority reserves the right to conduct periodic performance audits of the Leased Premises to assure that all of the operational, safety, and compliance standards of this Agreement are consistently performed by Concessionaire. Concessionaire acknowledges that such performance audits will be conducted by the Authority, or its designee, and hereby agrees to cooperate with any such performance audit.

(i) Said performance audits may include minimum objective standards in the areas of (1) product quality, (2) customer service, (3) cleanliness, and (4) maintenance. If Concessionaire fails to meet minimum standards in any of these areas, the Authority may, at its discretion, assess fines pursuant to Section 9.17 herein.

(ii) In order to assure consistent adherence to performance standards throughout the Term, the Authority will use a rolling twelve (12) month cycle in the recording of incidents of failure to meet minimum standards. Fines for second and later violations will be assessed if any such violation occurs within twelve (12) months of the first violation.

(iii) Repeated violations and deficiencies in performance by Concessionaire may be cause, at the Authority's sole discretion, to terminate this Agreement.

### **9.3 Adherence to Standards.**

(a) Health and Safety Standards. Concessionaire shall ensure that all requirements of sanitary regulations adopted by the Authority, City, County, State or any other governmental authority, and the rules and regulations promulgated by the President are fully complied with in the Leased Premises. Concessionaire shall give access for inspection purposes to any duly authorized representative of such governing bodies and to the President. Concessionaire shall provide the Authority with copies of all inspection reports within forty-eight (48) hours of receipt.

(b) Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

(c) Concessionaire's Standards. Concessionaire shall submit to the Authority a copy of any of its own standards, plans, and/or manuals, including those related to customer service and operations, and shall ensure continuous adherence to Concessionaire's own standards in addition to all other standards as set forth herein.

### **9.4 Concessionaire's Maintenance Obligations.**

(a) General Obligations. With the exception of the Authority's maintenance obligations set forth in Section 8.1 herein, Concessionaire shall maintain the Leased Premises and every part thereof in good appearance and repair and in a safe condition. Concessionaire shall maintain and repair all improvements, including all furnishings, fixtures, and equipment, whether installed by Concessionaire or by others, including repainting or redecorating as necessary and replacing or repairing worn carpet, tile, fixtures or furnishings. All such maintenance and repairs shall be of a quality equal to or better than the original in materials and workmanship and all work, including paint colors, shall be subject to the prior written approval of the Authority.

(b) Janitorial Service. Concessionaire shall, without cost to Authority, provide all janitorial services for the Leased Premises. Concessionaire shall ensure that the Leased Premises and the public areas adjacent thereto are kept free from all rubbish, filth, and refuse.

(c) Preventive and Routine Maintenance Programs. Upon the execution of this Agreement, Concessionaire shall establish a preventive and routine maintenance program, the provisions of which shall be subject to the initial written approval of, and periodic review by, the President. Concessionaire shall from time to time, upon request, provide the President a written schedule of Concessionaire's cleaning and maintenance program.

(d) Maintenance Personnel and Program. Concessionaire agrees to employ sufficient personnel and provide necessary equipment to keep the Leased Premises and Concessionaire's personal property clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this section.

(e) Authority Sole Judge of Maintenance. The Authority shall be the sole judge of the quality of maintenance. The Authority or its authorized agents may at any time, without notice, enter

upon the Leased Premises to determine if maintenance satisfactory to the Authority is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by the Authority shall be conclusive evidence of satisfactory maintenance unless the Authority determines that there is a present and substantial danger of serious injury to users of the Leased Premises. If it is determined that said maintenance is not satisfactory, the Authority shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to the Authority's standards within fifteen (15) days after receipt of said written notice, the Authority or its agents thereafter shall have the right to enter upon the Leased Premises and perform the maintenance therefore, and Concessionaire agrees to promptly reimburse the Authority for the cost thereof, plus fifteen percent (15%) for administrative overhead.

(f) Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to the Authority of any hazardous or potentially hazardous condition in the Leased Premises or elsewhere on Airport property. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately upon receipt of oral notice from the President. At the direction of the President, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.

#### **9.5 Trash and Refuse.**

(a) Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Leased Premises and shall provide for its timely removal. Piling of boxes, cartons, barrels or other similar items in view of a public area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage, prior to removal from the Airport, in a clean and orderly condition so as not to attract rodents, pests, or birds or create an offensive order.

(b) In transporting trash and refuse from the Leased Premises, Concessionaire shall use only carts, vehicles or other conveyances that are covered, leak proof, and equipped with wheels suitable for operating on carpets without damage thereto. Such disposal shall take place only during hours approved by the Authority.

(c) Plumbing Facilities. The plumbing facilities within the Leased Premises and elsewhere in the Airport shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown or discarded therein. If installed in connection with the Leased Premises, Concessionaire shall, at its own expense, check and clean at least monthly all grease traps and grease receptors. The expense of any breakage, stoppage, or damage resulting from a violation of this provision, wherever such occurs, shall be borne by Concessionaire.

(d) If the Authority establishes an Airport-wide recycling program, Concessionaire agrees to participate in any such program at its own cost.

#### **9.6 Hours of Operation**

(a) Concessionaire shall ensure that each Facility is continuously and uninterruptedly open for business and shall provide all services and sales activities as required by this Agreement at

such hours as may be established from time to time by the President, in his sole and absolute discretion (“**Airport Hours**”). Concessionaire hereby understands and agrees that the Airport Hours may be seven (7) days per week, including local, state and federal holidays, twenty-four (24) hours per day.

(b) Operations During Periods of Flight Delays. In the event of delayed flights within the concourse on which any one or more of the Facilities are located, Concessionaire shall remain continuously open and provide all services and sales activities as required by this Agreement until said flights depart the gate or the President otherwise instructs, even if such period is beyond the current Airport Hours for said Facility.

(c) Emergency Operation. If the President deems it necessary, on an emergency basis, to serve the public during other than Airport Hours, Concessionaire shall remain continuously open and provide all services and sales activities in the Facilities as required by the President during the emergency period.

(d) The Concessionaire shall not be deemed to have breached or be in default in respect of such operating requirement as a result of the temporary closing of a Facility in connection with maintenance or repairs, renovation or remodeling, inventories or other temporary closing in the normal course of the Concessionaire’s business, provided that Concessionaire has received the prior written permission from the President for such temporary closing.

(e) Concessionaire shall prominently post in each of the Facilities, in an area visible to customers, the current listing of the Facility’s hours of operation.

## **9.7 Deliver of Goods.**

(a) Concessionaire shall monitor the movement of deliveries of merchandise to avoid conflict with other Airport functions and shall coordinate its use of the receiving docks with the use by other tenants or licensees of the Authority, as determined by the President. Any containers moving through the public areas or common areas must be covered or otherwise protected and all carts used to move supplies and equipment must be approved by the President.

(b) Concessionaire shall arrange for the timely delivery of all goods, stock, and supplies at such times, in such locations, and by such routes as are determined by the President. Concessionaire shall make significant efforts to avoid using the public areas for large quantity deliveries during peak periods. Concessionaire shall be responsible for the return of all pallets, storage containers, and other equipment belonging to its suppliers.

(c) Concessionaire shall maintain that portion of the receiving dock assigned for its use and designated for the delivery of food and beverages in a safe and sanitary condition.

(d) If the Authority shall provide or designate a service for the delivery, receiving and/or distribution of merchandise, supplies, and fixtures at the Airport, Concessionaire shall be required to use said service at Concessionaire’s proportional cost of said service, as determined by the Authority.

## **9.8 Cash and Record Handling Requirements.**

(a) General. Concessionaire shall at all times observe cash and record handling procedures and maintain cash and record handling systems in accordance with written procedures submitted to and approved by the Authority. The Authority and Concessionaire agree that such written procedures may be revised from time to time, as mutually agreed upon by Concessionaire and the Authority, upon the advent of generally accepted technological changes. The agreed-upon cash and record handling procedures and required systems shall be incorporated in the written policy and rules and regulations of Concessionaire that cover the accounting and handling of all sales and services transactions related to this Agreement.

(b) Minimum Features of Point of Sale Equipment. To provide an accurate record of concession transactions and a high level of customer service, Concessionaire shall provide in the Facilities cash registers or other point of sale equipment that have, at a minimum, the following features:

- (i) A reasonable number of segregated category addresses to allow for accurate reporting of gross receipts by various merchandise categories;
- (ii) Capable of recording transactions by sequential control number to an audit tape or computer file;
- (iii) Capable of printing a transaction history to tape or compute media by time, day, month, and year;
- (iv) Capable of printing a customer receipt showing the amount due, amount tendered, and change due to the customer as well as the time and date of transaction and name and telephone number of Concessionaire;
- (v) A fee display of sufficient size and legibility to be readily visible to the customer during a transaction; and
- (vi) A reasonable back-up and/or storage of data redundancy to assure sales data are always available and reliable.

(c) Failure to Use Required Procedures and Systems. Where customer sales have not been recorded because of failure by Concessionaire to comply with this section, Concessionaire shall pay to the Authority the amount which would have been due the Authority, plus Interest Charges thereon. The Authority shall have the right to make, through a qualified independent accounting consultant, a reasonable estimate of the losses, where they can be reasonably and realistically estimated. Concessionaire shall be provided a copy of the consultant's report and be entitled to challenge the estimate, if Concessionaire has a good faith belief the estimate is inaccurate.

## **9.9 Quality and Character of Merchandise.**

(a) Merchandising. Concessionaire shall be specifically required and obligated to have continuously in-stock, on display, and available for sale a full and complete stock of

merchandise consistent with the Permitted Concession Services. Concessionaire shall ensure that all such merchandise is at all times attractively and logically arranged and that all merchandise displays are fully stocked with product.

(b) Merchandise and Menu Selection. Concessionaire may from time to time, with written approval of the Authority, add or delete items from its menu selections provided that such additions or deletions shall be consistent with those authorized in this Agreement and do not conflict with the rights of other concessionaires at the Airport or rights reserved by the Authority herein.

(c) Quality of Merchandise. Concessionaire shall offer for sale only high quality products and those which are safe, sanitary, properly labeled, and as advertised. Upon written notice to Concessionaire by the Authority of any violation of this provision, Concessionaire shall forthwith correct the condition objected to within four (4) hours after receipt of such notice.

(d) Authority's Right to Object. Concessionaire shall upon written demand from the Authority cease selling any item that the Authority shall determine for good cause is objectionable for sale or display at the Airport and immediately remove such item from its inventory and not thereafter offer such item for sale at the Airport.

(e) Adult Materials. All adult materials, as defined by the Authority, shall be handled in a discreet manner, so as not to offend the public. Concessionaire agrees to immediately remove from the Facilities all adult materials which the Authority directs it to so remove and will not attempt to re-display any such type of material thereafter.

(f) Replacement of Refunds. Concessionaire shall, at all times during the Term and without any additional charge to customers, replace any merchandise determined by customers to be unsatisfactory, flawed or defective or shall provide customers a full refund therefore provided said customers have complied with any applicable warranty and use provisions applicable to the merchandise.

#### **9.10 Pricing.**

(a) Pricing Policy. Concessionaire acknowledges the Authority's desire to provide the traveling public and Airport employees with high quality products and services at reasonable prices. Accordingly, Concessionaire agrees that all products sold by Concessionaire shall be comparable in price to similar or equivalent products sold in comparable off-Airport locations within the Memphis Metropolitan Statistical Area as follows:

- (i) For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price at the Airport shall not exceed the pre-printed price;
- (ii) For nationally and locally branded Facilities, the selling price for products and services at the Airport shall not exceed by more than ten percent (10%) the selling price for the same products and services at the closest off-Airport location offering the same brand name; and

(iii) For all non-branded or proprietary Facilities, the selling price for products and services at the Airport shall not exceed by more than ten percent (10%) the average selling price for similar or equivalent products and services at three Price Benchmark Establishments as hereinafter described.

(b) Price Benchmark Establishments. Prior to the beginning of the Term, Concessionaire shall submit to the President, for his written approval, the names and addresses of at least three off-Airport retail or food service establishments in the Memphis Metropolitan Statistical Area that are generally comparable to the Facilities in terms of concept, branding, service, style, and merchandise selection or menu (“**Price Benchmark Establishments**”). Once approved by the President, the Price Benchmark Establishments shall not be changed during the Term, except to the extent that any of the Price Benchmark Establishments cease operations or, in the sole discretion of the President, alters its concept, branding, service, style or merchandise selection or menu so as to no longer be a valid comparison. Upon notice of such an occurrence, Concessionaire may propose a substitute Price Benchmark Establishment for approval by the President.

(c) Price Conformance. Concessionaire shall, within seven (7) calendar days of written notice from the President, adjust any prices that the President determines, in his sole discretion, to be inconsistent with the provisions of this section. Failure to rectify any pricing discrepancies within the aforementioned seven (7) calendar days shall constitute a material breach by Concessionaire of this Agreement and, in addition to all other remedies available to the Authority, the Authority may, in its sole and absolute discretion, terminate this Agreement.

(d) Price Changes. From time to time throughout the Term, but not more often than every three (3) months, or as the President and Concessionaire may otherwise agree, Concessionaire may petition the President by providing economic justification to adjust selling prices at the Facilities. After reviewing prices of similar or equivalent products and services at the Price Benchmark Establishments, the economic justification provided by Concessionaire, and any other information Concessionaire desires to disclose, the President shall, in his sole discretion, determine which adjustments are acceptable to the Authority consistent with the pricing policy established in this section. The President shall notify Concessionaire in writing as to his decision regarding each proposed adjustment. Concessionaire shall have ten (10) days from receipt of any such notice to agree in writing to all or a portion of the President’s determinations regarding pricing. Those adjustments agreed to by Concessionaire in writing shall automatically become a part of this Agreement by this reference.

#### **9.11 Conduct of Business**

(a) Concessionaire shall operate its businesses in the Leased Premises to the extent commercially reasonable so as to maximize the gross sales produced by such operation, maintain an adequate staff of employees, and maintain in the Leased Premises at all times a stock of merchandise as is reasonably designed to produce the maximum return to the Authority.

(b) Concessionaire shall have its display windows, signs, interior sales area, and permitted advertising displays adequately illuminated continuously during the Airport Hours and, if

such hours are less than twenty-four (24) hours, such additional hours as the President may establish from time to time in the President's sole and absolute discretion.

(c) Concessionaire hereby acknowledges that other concessionaires at the Airport may provide similar and competing business services, as it is imperative that passengers, employees, and visitors at the Airport are informed of the range of choices available in a fair and unbiased manner and regardless of the fact that the desired service/product/information may be better provided by a competitor. Concessionaire hereby agrees that it, its employees, directors, officers, and guests shall inform the public of services, but also all others who provide the same or similar services. Concessionaire shall not speak negatively of any other concessionaire's services; nor infer that the other's services are not correctly priced, a poor value for the money, or of inferior quality; nor make any other similar type of statement or inference in regard to the other's products or services. Concessionaire shall work in cooperation with other business service providers to create a team approach to providing these services to the public at the Airport.

(d) Credit or Charge Cards. Concessionaire shall accept as payment for goods and services the following nationally recognized credit or charge cards: American Express, Master Card, VISA, and Discover.

(e) Change Making. Concessionaire shall provide, without charge, change-making services at each cashier's location in the Facilities. Such service shall be equally provided to all persons, regardless if any purchase has been made or not.

(f) Merchandise Display. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs or displays of products outside the boundaries of the Leased Premises without the prior written approval of the President.

(g) Entrances. Concessionaire shall ensure that the passenger entrances to the Facilities are kept clear of any boxes, cartons, barrels or other similar items which would impede entrance to or exit from the Facilities. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner within the Facilities is forbidden.

(h) Customer Complaints. Concessionaire shall be required to respond to any complaints in writing within ten (10) days of receipt, with a good faith effort to explain, resolve or rectify the corresponding problem. Concessionaire shall provide the Airport with a copy of any complaint received the same day it is received by the Concessionaire and shall provide the Airport with a copy of the written response the same day it is sent. Complaints received by the Authority shall be forwarded to the Concessionaire, who shall respond utilizing the above procedure.

(i) Concessionaire shall be required to implement and utilize a customer comment system, whether by use of comment cards, telephone, Internet or otherwise. All such completed comments and Concessionaire's summary reports shall be provided to the Authority within ten (10) days of receipt and/or completion.

## 9.12 Personnel.

(a) General. Concessionaire shall maintain a sufficient number of properly trained employees, agents and/or representatives (“**Personnel**”) to ensure that all customers of Concessionaire receive prompt and courteous service at all times.

(b) Manager. The management, maintenance, and operation of the Leased Premises and the concession conducted thereon shall be at all times during the Term under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act on behalf of Concessionaire. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire with respect to the concession operations contemplated by this Agreement, shall represent the Concessionaire in dealings with the Authority, and shall coordinate all concession activities with the Authority. Concessionaire shall cause such manager to be assigned a duty station or office in the Leased Premises at which the manager shall be available during normal business hours. During the absence of such manager, Concessionaire will, at all times during Airport Hours, assign or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of the manager’s duties.

(c) Staffing Levels. Concessionaire shall recruit, train, supervise, direct, and deploy the number of Personnel necessary to promptly provide services to all customers and to meet all of the requirements of this Agreement. Concessionaire shall be continuously responsible for actively managing the number of Personnel to ensure that changes in passenger activity due to schedule changes, load factor changes or flight delays are adequately accommodated through increased numbers of Personnel. Any actual or perceived degradation in (i) the customer service requirements set forth in this Agreement or other duties, rights or responsibilities set forth in this Agreement provided by Concessionaire in the course of conducting Concessionaire’s business; or (ii) the training and competence of Concessionaire’s Personnel shall be conveyed to the Concessionaire and Concessionaire hereby agrees that it shall promptly institute training programs and/or add additional adequately trained and capable Personnel to the satisfaction of the Authority.

(d) Additional Requirements as to Personnel. In addition to the staffing level requirement set forth herein, Concessionaire shall ensure that all Personnel shall conform to the following:

- (i) All Personnel shall be neat, clean, and courteous at all times.
- (ii) No loud, boisterous or otherwise improper actions or language shall be permitted while on or about the Airport.
- (iii) Concessionaire shall at its sole cost and expense, provide each member of the sales staff with a uniform of a design to be approved by the President, in his discretion, which shall be worn whenever said staff are in the Facilities.
- (iv) All Personnel shall prominently display nametags, Airport identification badges, and any other required badges and/or pins while on the Airport.

- (v) All Personnel shall be actively working while on the sales floor in view of the public. No Personnel shall be engaged in personal conversation, via telephone, or otherwise, or activities such as reading, writing, or eating.
  - (vi) All Personnel shall be attentive to customer needs, display a positive attitude, and refrain from discussing personal issues or problems within the sales areas of the Facilities.
  - (vii) All Personnel shall know and utilize practices of good customer service such as (1) assisting customers with purchase decisions, (2) identifying product alternatives, (3) possessing and displaying good product knowledge, and (4) utilizing appropriate suggestive selling.
  - (viii) All Personnel shall provide warm, friendly, smiling, prompt, and courteous service.
  - (ix) All Personnel shall be proficient with and trained in the required operations of equipment and devices used in the Facilities to facilitate sales, including point of sale devices and credit card transaction equipment.
  - (x) All Personnel shall be familiar with all applicable policies of this Agreement, the Airport, and Concessionaire.
  - (xi) All Personnel engaged in sales activities shall speak and comprehend English at a level appropriate to their duties.
- (e) The Authority shall have the right to object to the demeanor, conduct, and appearance of any Personnel or any employee of any of Concessionaire's invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by Concessionaire, the Authority shall present its objections in writing and provide Concessionaire the opportunity to reply to the objections in writing, such reply to be given consideration by the Authority.

### **9.13 Badge Required**

(a) Concessionaire's employees who need access to the Airport's secure area will be required to attend Security Identification Display Area (SIDA) training, submit to criminal history records checks, and be approved by the Authority, in its sole discretion, to obtain an airport identification/access badge ("**Airport Badge**"). All such Personnel will be required to strictly adhere to all applicable security requirements of the FAA, TSA, and Authority.

(b) Failure to strictly adhere to any applicable security requirement may subject Concessionaire's employees to temporary or permanent revocation of the Airport Badge, even on first offense. Concessionaire understands these requirements and agrees to advise its employees of this provision and of all FAA, TSA, and Authority security rules and regulations. Concessionaire further understands and agrees that none of its employees, officers, agents, or subcontractors' employees, officers and agents shall be allowed in the Airport's secure area at any time for any purpose, unless a satisfactory background

investigation has been completed on such individual. Otherwise, such individual is to be, at all times, either escorted or under the supervision and surveillance of a person whose background has been satisfactorily investigated, provided the person responsible for escort is properly escorting said individual. Additionally, Concessionaire understands and agrees that the Authority shall have no liability whatsoever to Concessionaire or its employees for the denial or revocation of an Airport Badge.

(c) Concessionaire shall provide the Authority with the names and emergency phone numbers of all on-call employees who are available twenty-four (24) hours a day to respond to emergencies and security violations.

(d) Upon completion of the employment of any employee or termination of this Agreement, Concessionaire agrees to use its best efforts to ensure that all security items and Airport Badges are returned to the Authority's Director of Operations and Public Safety Division.

**9.14 Parking.** Concessionaire and its employees will be provided adequate vehicular parking space located as near as possible to the Airport's airline terminal building. Notwithstanding the foregoing, Concessionaire recognizes that the Authority has the reasonable discretion to assign parking. The rates established for use of the Authority's parking facilities shall be periodically reviewed to ensure that the cost of providing and maintaining such facilities is adequately covered. The Authority will determine the reasonable cost of providing parking facilities, which shall be assessed equally among users of the parking spaces, and provide Concessionaire with thirty (30) days advance written notice of any increases in Airline parking rates, if applicable.

**9.15 Signs and Advertising**

(a) Definition of Signs. For purposes of this section, "signs" shall include identification signs, company logos, advertising or promotions, photographs, art displays, and the like.

(b) Right to Install. Concessionaire shall have the right to install and operate upon or in the Leased Premises and, at Concessionaire's sole cost and expense, signs containing its name and representing its business. Concessionaire acknowledges the Authority's desire to maintain a high level of aesthetic quality in the Airport's airline terminal building and in all concession facilities throughout said building. Therefore, Concessionaire covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Leased Premises, it will submit to the Authority the size, design, content, and intended location of each sign and every sign it proposes to install on or within the Leased Premises, and that no signs of any type shall be installed on or within the Leased Premises without the specific prior written approval of the Authority as to the size, design, content, and location. Handwritten or hand-lettered signs are prohibited. Notwithstanding any prior written approval, upon written notice from the President at any time during the Term, Concessionaire shall install, remove or modify any signs as the President deems necessary for identification or information to the public, passengers or other Airport users. Failure to require removal of any sign placed on or about the Leased Premises without written permission shall not limit the Authority's prerogative to require removal of any unapproved sign.

(c) Signs and Fixtures Outside Premises. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the President.

(d) Removal of Signs. Upon termination of this Agreement, Concessionaire shall, if requested by the President, remove any and all identification signs and similar devices placed by Concessionaire on or in the Leased Premises. In the event of the failure on the part by Concessionaire to diligently remove each and every sign as requested by the President, the President may perform such work and, upon demand, Concessionaire shall pay the cost thereof to the Authority.

**9.16 Inspection by the Authority.** Concessionaire hereby acknowledges and agrees that the Authority shall have the right at its cost to monitor, inspect or test all of Concessionaire's services at any time whether done directly by the Authority or by its agents, but in no event shall such monitoring, inspection or testing unduly interfere with Concessionaire's operations.

**9.17 Failure to Comply with Performance Standards.**

(a) Concessionaire acknowledges the Authority's desire to provide the public and air travelers with the level and quality of service as described herein. Accordingly, the Authority has established a series of fines, as set forth in Table 1 of this section that it may assess, in its sole discretion, for various violations of this Agreement. Concessionaire and Authority agree that the fines set forth herein are reasonable, and Concessionaire further agrees to pay to the Authority any and all assessed fines in accordance with the rates or in the amounts specified herein upon the occurrence of the specified violation and upon written demand by the Authority. Concessionaire further acknowledges such fines are not exclusive remedies and the Authority may pursue other remedies as allowed for in this Agreement, at its sole discretion.

(b) Except for violations of requirements regarding Airport Hours, health codes, delivery, and vendor access, which shall accrue immediately and without notice upon violation, other fines shall not be assessed unless the violation continues for more than three (3) calendar days after the Authority has given Concessionaire written notice of the violation; provided, however, after the Authority has given Concessionaire notice of a violation of the same operating requirement more than twice during any twelve (12) month rolling year commencing upon the first notice of violation of said operating requirement, the fine shall be immediately assessed with no opportunity to cure. Further, after two (2) violations of the same operating requirement within any twelve (12) month rolling year commencing upon the first notice of violation of said operating requirement, the Authority reserves the right, in its sole discretion, to deem said repeated violations a default hereunder and to seek any other remedies available to it under this Agreement including termination of this Agreement.

**Table 1  
Performance Standard Fines**

<b>Infraction</b>	<b>Fine</b>
Required merchandise not available	\$500 per day
Premises unclean, trash not picked up	\$500 per day
Signage policy infraction	\$50 per incident
Pricing policy infraction (following two notices)	\$100 per occurrence
Failure to make repairs (per location)	\$500 per day
Delivery and vendor access infractions	\$100 per occurrence
Airport (operating) Hours infraction (per location)	\$100 first occurrence; \$250 second occurrence; \$500 third occurrence; \$1,000 per occurrence thereafter
Inadequate staffing (per location)	\$100 first occurrence; \$250 second occurrence; \$500 third occurrence; \$1,000 per occurrence thereafter
Health code violations (per location) Scores below 90%	\$50 per occurrence
Scores below 80 %	\$100 per occurrence
Scores below 70%	\$150 per occurrence
Performance audit scores (per location) Scores below 90%	\$50 per occurrence
Scores below 80 %	\$100 per occurrence
Scores below 70%	\$150 per occurrence

**ARTICLE X  
INDEMNIFICATION AND INSURANCE**

**10.1 Indemnification.** Concessionaire agrees to defend, indemnify, and hold harmless the Authority and its commissioners, officers, employees, contractors, agents and representatives from and against any and all liabilities, demands, suits, losses, fines, judgments, including all reasonable costs for investigation and defense thereof, including attorney fees, court costs, and expert fees, which may arise, in whole or in part, out of the acts, errors or omissions of the Concessionaire or its officers, employees, agents, contractors, licensees or invitees; or out of the storage, sale, distribution, use or giving away of alcoholic beverages from, on or about the Leased Premises; unless such claim is caused by the sole negligence of the Authority. The Authority shall give the Concessionaire reasonable notice of any such claims or actions. The Concessionaire, in carrying out its obligations hereunder, shall use legal counsel reasonably acceptable to the Authority. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage. The provisions of this section shall survive the termination of this Agreement.

## 10.2 Insurance.

(a) Prior to commencing operations under this Agreement, Concessionaire shall, at its sole cost, acquire and maintain throughout the Term the insurance coverage required herein. Acceptance by Authority of insurance submitted by the Concessionaire does not relieve or decrease in any manner the liability of the Concessionaire for performance of the obligations required under this Agreement. The Concessionaire shall increase such minimum limits upon receiving notice in writing from the Authority. The Concessionaire is responsible for any losses, claims, and costs of any kind that Concessionaire's insurance does not cover.

(i) Commercial General Liability

Concessionaire shall maintain Commercial General Liability insurance that covers all operations of the Concessionaire at the Airport. The coverage shall be written on an occurrence coverage form with coverage at least as broad as that provided under the current edition of the Insurance Services Office Commercial General Liability Policy, CG 00 01 04 13 and shall provide coverage for bodily injury, property damage, personal injury, blanket contractual, independent contractors, products, and completed operations coverages. Other than standard exclusions applicable to pollution, asbestos, lead, mold, employment practices, ERISA and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms that apply to property damage, products, and completed operations, or contractual liability. Concessionaire shall maintain Commercial General Liability not less than:

**\$1,000,000** bodily injury and property damage per occurrence  
**\$2,000,000** general aggregate

If Commercial General Liability insurance or another equivalent coverage form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Leased Premises or the general aggregate shall be twice the required loss limit.

(ii) Automobile Liability

Concessionaire shall maintain Automobile Liability insurance, including follow form umbrella liability insurance, if necessary, that covers liability with respect to the use or operation of any automobile, including those owned, hired or otherwise operated or used by or on behalf of the Concessionaire and the Authority's Vehicles, which are leased by Concessionaire pursuant to this Agreement. The coverage shall be at least as broad as the current edition of the Insurance Services Office Business Automobile Policy, CA 00 01 10 13

**\$1,000,000** per occurrence, bodily injury and property damage

(iii) Workers' Compensation

Concessionaire shall maintain Workers' Compensation insurance coverage in accordance with the statutory requirements of the State and shall voluntarily provide workers' compensation coverage for proprietors, partners or others not statutorily required to maintain workers' compensation insurance.

(iv) Employer's Liability

Concessionaire shall maintain Employer's Liability insurance of not less than the following:

**\$100,000** bodily injury by accident for each person

**\$100,000** bodily injury by disease for each person

**\$500,000** bodily injury by disease, policy limit

(v) Liquor Liability

Concessionaire shall maintain Liquor Liability insurance covering bodily injury and property damage in the amount of **\$1,000,000** per occurrence and in the aggregate insuring against loss, damage, suits, claims, costs, and expenses by reason of the storage, sale, distribution, use or giving away of alcoholic beverages in, from, on or about the Leased Premises, whether such liability arises under any present or future law, statute, or ordinance of the State or any other governmental authority relating to the sale or other disposition of fermented alcoholic or other intoxicating liquors in, from, on or about the Leased Premises.

(vi) Umbrella and Excess Liability

Concessionaire shall maintain Umbrella and Excess Liability insurance providing excess coverage over and above those coverage's listed above. Such insurance shall be written on an occurrence form with minimum limits of **\$1,000,000** per occurrence and in the aggregate.

(b) The insurance required by this section shall be written by a company or companies licensed to do business in the State and rated "A-" or better and rated "Class VII" or better under the "Financial Size Category" in the latest edition of Best's Key Rating Guide.

(c) With the exception of Workers' Compensation and Employer's Liability insurance, the Memphis-Shelby County Airport Authority and its commissioners, officers, directors, employees, and agents shall be included as an Additional Insured under the insurance policies required herein. Coverage afforded the Additional Insured under these policies shall be primary insurance. If the Additional Insured has other insurance which is applicable to the loss, such other insurance shall be on an excess and/or contingent basis.

(d) Concessionaire shall furnish Certificates of Insurance acceptable to the Authority, which shall be filed with the Authority prior to commencement of the performance of any activities authorized pursuant to this Agreement.

(e) The Authority reserves the right to conduct an annual review of the insurance requirements contained herein and modify accordingly to be consistent with current accepted standards of practice as it relates to this type of contractual arrangement.

### **10.3 Waiver of Subrogation.**

(a) To the fullest extent permitted by law, Concessionaire agrees to waive all rights of subrogation against the Authority and its commissioners, officers, directors, employees and

agents, and shall cause each of its insurers to waive their rights of subrogation against the Authority and its commissioners, officers, directors, employees and agents, for all costs, expenses, losses, damages, claims, suits or demands, howsoever caused (a) to real or personal property, including vehicles, equipment, tools, and any other property owned, leased or used by Concessionaire and its employees, agents, or contractors; and (b) to the extent such loss, damage, claims, suits or demands are covered, or should be covered, by the required or any other insurance maintained by Concessionaire.

(b) This waiver shall apply to all first party property, equipment, vehicle and workers compensation claims, unless prohibited under applicable state law, and all third party liability claims. This waiver shall apply to all deductibles, retentions or self-insured layers applicable to the required insurance or any other insurance maintained by Concessionaire. Concessionaire agrees to endorse the required insurance policies to permit waivers of subrogation in favor of the Authority as required hereunder and to indemnify, defend, and hold the Authority harmless from any loss or expense incurred as a result of the Concessionaire's failure to obtain such waivers of subrogation from its insurers.

**10.4 Other Insurance.** The Concessionaire shall, upon request, furnish to the Authority adequate evidence or provisions for Social Security and Unemployment Compensation Insurance to the extent such provisions are applicable to the Concessionaire's operations hereunder.

**10.5 Performance Bond.**

(a) Prior to beginning operations at the Airport, Concessionaire, at its sole cost and expense, shall cause to be made, executed, and delivered to the Authority from the beginning of the Term through the termination of this Agreement, a performance bond in the amount of \_\_\_\_\_ Dollars (\$00.00) to guarantee Concessionaire's complete performance of this Agreement ("**Performance Bond**"). The amount of the Performance Bond herein shall be reviewable by the Authority annually and the Concessionaire agrees to promptly increase said amount upon receiving written notice from the Authority. The Performance Bond shall be made payable to the Memphis-Shelby County Airport Authority and shall be duly issued by an insurer or corporate surety that:

- (i) Is authorized to conduct insurance business in the State;
- (ii) Currently holds a certificate of authority authorizing it to write surety bonds in the State;
- (iii) Is otherwise in compliance with the provisions of the Tennessee Insurance Code;
- (iv) Holds a valid certificate of authority by the U.S. Department of Treasury pursuant to 31 U.S.C. §§9304 - 9308; and
- (v) Has an "Excellent" or better rating and a Financial Size Category of "Class VII" or higher according to the most current edition of Best's Key Rating Guide; provided however, that the Authority may accept an insurer or corporate surety that is not rated by Best Key Rating Guide.

(b) Proof of Surety. The person signing on behalf of the surety must provide "power of attorney" or other documents authorizing the Authority to execute said Performance Bond on behalf of the surety.

(c) If Concessionaire is found to be in default by the Authority, the Authority shall have the right to enforce the Performance Bond and apply the proceeds thereof to cover payments owed to the Authority by Concessionaire and to pay such costs as may be incurred by the Authority as a result of Concessionaire's breach of contract. However, in no event shall enforcement of the Performance Bond be deemed an exclusive remedy to the Authority.

## **ARTICLE XI DAMAGE OR DESTRUCTION OF LEASED PREMISES**

**11.1 General.** If the Leased Premises is damaged or destroyed, whether in whole or in part, so as to render it unusable for the purpose of which it was intended, the President shall have the option to repair or restore same. Any such election shall be made by the President within thirty (30) days following the damage or destruction by serving written notice of the President's decision upon the Concessionaire. In the event the President does not elect to repair or restore the Leased Premises, the Concessionaire shall be entitled to terminate this Agreement.

**11.2 Partial Damage.** If any part of the Leased Premises is partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but not rendered unusable, and the President elects to repair same, the Authority shall proceed with due diligence to do so at its own cost and expense and the Concessionaire shall continue to make payments hereunder during such period of repair; provided that if the President determines that the revenue producing capability of the Facilities has been impaired, the Concession Fees and/or Utility Charges with respect to the Leased Premises shall be reduced in proportion to the degree of impairment as determined by the President until repair of the Leased Premises has been completed. Notwithstanding the foregoing, if the damage is caused by an act or omission of the Concessionaire, its agents, employees, suppliers, subcontractors, joint venture partners, or contractors, the Concessionaire shall be responsible for the cost of repairing same and shall pay the costs therefore. During any period where Concessionaire repairs the Leased Premises at its own cost under the terms of the immediately preceding sentence, all Concession Fees and Utility Charges with respect to the Leased Premises shall be payable.

**11.3 Extensive Damage.** If damage to the Leased Premises shall be so extensive as to render the Facilities unusable, but capable of being repaired within thirty (30) days, and the President elects to repair same, the Authority shall proceed with due diligence to do so at its own cost and expense, and the fees and charges payable herein shall be paid up to the time of such damage and thereafter cease until such time as the Facilities are fully repaired or restored; provided, however, that if the damage is caused by an act or omission of the Concessionaire, its agents, employees, suppliers, subcontractors, joint venture partners, or contractors, the Concessionaire shall be responsible for the cost of repairing said Facilities and shall pay the costs therefore. During any such period where the Concessionaire repairs said Facilities at

its own cost under the terms of the immediately preceding sentence, all Concession Fees and Utility Charges with respect to the Leased Premises shall be payable.

**11.4 Complete Destruction.** In the event the Leased Premises is completely destroyed by fire, explosion, the elements, the public enemy or other casualty, or so damaged that it will remain unusable for more than thirty (30) days, and the President elects to repair same, fees and charges payable hereunder shall be paid up to the time of such damage or destruction and shall thereafter cease until such time as the Leased Premises is fully restored. If within twelve (12) months after the time of such damage or destruction the Leased Premises shall not have been repaired or reconstructed, Concessionaire may give the Authority written notice of its intention to terminate this Agreement in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the Leased Premises is completely destroyed as a result of any act or omission by Concessionaire, its agents, employees, suppliers, subcontractors, joint venture partners or contractors, the President may, in his discretion, require Concessionaire to bear the cost of the repair and reconstruction of the Leased Premises, pay the costs therefore, and pay all Concession Fees and Utility Charges with respect to the Leased Premises during the reconstruction or repair.

**11.5 Limit of Authority Obligations.** It is understood that, in the application of the provisions of this article, the Authority's obligations shall be limited to repairing or reconstructing the structural portions of the Leased Premises as required, to the same extent and of equal quality as existed immediately prior to the damage, but only to the extent that insurance proceeds are available therefore. Redecoration and replacement of Concessionaire's improvements, furniture, equipment, fixtures, and supplies shall be the responsibility of Concessionaire and any such redecoration, refurbishing, and reequipping shall be of equivalent quality to that originally installed hereunder.

**11.6 Liability of Concessionaire.** The provisions of this article shall not relieve Concessionaire of its responsibility for damage to any part of the Leased Premises caused by any act or omission, whether intentional or negligent, of Concessionaire, its agents, employees, suppliers, subcontractors, joint venture partners or contractors.

## **ARTICLE XII TERMINATION**

**12.1 Termination by Concessionaire.** Concessionaire may terminate this Agreement and all its obligations hereunder upon giving sixty (60) days advance written notice to the Authority, except as hereinafter provided, upon or after the happening of one or more of the following events and provided that Concessionaire is not in default in the payment of any fees or charges to the Authority:

- (a) The permanent abandonment of the Airport as an airline terminal or the permanent removal of such passenger airline service from the Airport so as to result in the loss by Concessionaire of all or substantially all of the economic benefit of this Agreement;

- (b) The inability of Concessionaire to use the Airport for a period of longer than ninety (90) days because of the issuance of any order, rule or regulation by any competent governmental authority or court having jurisdiction over Concessionaire or the Authority that prevents Concessionaire from operating its business; provided, however, that such inability or such order, rule or regulation is not due to any fault of Concessionaire; or
- (c) The material breach by the Authority in the performance of any covenant or agreement herein required to be performed by the Authority and the failure of the Authority to remedy such breach for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.

**12.2 Termination by Authority.** The Authority may terminate this Agreement and all of its obligations hereunder at any time that the Authority is not in default, upon or after the happening of any of the following events:

- (a) Concessionaire files a voluntary petition in bankruptcy;
- (b) Proceedings in bankruptcy shall be instituted against Concessionaire and Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings;
- (c) A court shall take jurisdiction over Concessionaire and its assets pursuant to proceedings brought under the provisions of any federal reorganization act;
- (d) A receiver of Concessionaire's assets shall be appointed;
- (e) Concessionaire abandons its conduct of its concessions business or any part thereof at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Concessionaire is involved;
- (f) Any assignment is made by Concessionaire for the benefit of its creditors; or
- (g) The material breach by Concessionaire of any of the covenants or agreements herein contained and the failure of Concessionaire to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, the Authority shall give to Concessionaire notice in writing to correct such breach and if such breach shall continue for thirty (30) days after the receipt of such notice by Concessionaire, the Authority may thereafter terminate this Agreement without forfeiture, waiver or release of the Authority's rights to any sum of money due or to become due under the provisions of this Agreement.

**12.3 Termination and Reletting.** Should there occur an early termination of this Agreement pursuant to the terms of this article, the Authority shall have the right to re-enter the Premises, make repairs as necessary, and enter into another agreement for the Leased Premises and privileges or any part thereof for the remainder of the Term.

- 12.4 Notice of Termination.** If any of the events enumerated in this article shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by giving notice in writing, said termination to be effective upon the date specified in such notice.
- 12.5 Property Rights Upon Termination.** Upon termination of this Agreement for any reason except those outlined in Section 12.2 hereof, concessionaire shall forthwith surrender the Leased Premises to the Authority in as good condition as when Concessionaire entered upon the same, normal wear and tear excepted. Concessionaire shall, however, have the right to remove any and all equipment, fixtures, software, and other personal property that it may have installed in the Leased Premises and that were purchased or provided by Concessionaire. This right shall not include the right to remove any Fixed Improvements, including air conditioning or heating equipment, plumbing fixtures, wiring, lighting fixtures, or floor coverings glued or fastened to the floors, and shall not include Authority's Equipment or any other fixtures, machinery or equipment that was furnished or paid for by the Authority. The Leased Premises shall be left in a broom clean condition. If Concessionaire shall fail to remove its equipment, fixtures or other personal property within fifteen (15) days after the termination of this Agreement, such equipment, fixtures, and other personal property not removed by Concessionaire shall be deemed abandoned by Concessionaire and shall become the property of the Authority. Concessionaire shall pay the cost of any repairs required as a result of Concessionaire's removal of its equipment, fixtures, and other personal property.

### **ARTICLE XIII ASSIGNMENT, SALE, TRANSFER AND SUBLETTING**

- 13.1 Assignment.** Concessionaire shall not assign this Agreement or any part hereof in any manner whatsoever nor shall it assign any of the privileges herein granted without the prior written consent of the Authority, which consent will not be unreasonably withheld.
- 13.2 Transfer.** Concessionaire shall not allow its interest under this Agreement to be transferred to, assigned to, passed to or devolved upon any other person, firm or corporation by operation of law, stock transfer or otherwise, it being understood that a transfer or series of transfers of an amount or amounts totaling fifty percent (50%) or more of Concessionaire's outstanding voting stock or other manner of ownership to one party or a group of parties acting in concert so as to effectuate a "change in control" within the meaning of the Securities Act of 1933 shall be deemed to be a transfer of Concessionaire's interest hereunder.
- 13.3 Merger.** Concessionaire shall not become a merged corporation in merger or a constituent corporation in a consolidation, unless such merger or consolidation is with Concessionaire's parent or a subsidiary of Concessionaire, or a corporation in dissolution, without the prior written consent of the Authority, which shall be at the Authority's sole discretion.

**13.4 Subletting.**

Concessionaire shall not sublease the Leased Premises or any portion thereof, or any privileges granted herein, without the prior written consent of the Authority. The Authority reserves the right, as a condition of approving any sublease, to increase, decrease or restructure the Concession Fees, Utility Charges, and any other fees and charges specified in this Agreement. Any sublease approved by the Authority shall not release Concessionaire from any of its obligations hereunder and shall require the sublessee to abide by all of the terms and conditions set forth herein.

**13.5 Right of Authority to Terminate.** The occurrence of any of the foregoing events shall constitute a material breach hereof by Concessionaire, in which event the Authority may terminate this Agreement in accordance with Section 12.2 hereof.

**ARTICLE XIV  
HAZARDOUS SUBSTANCES**

**14.1 Compliance During Term.** Concessionaire agrees to comply with all laws and to obey all rules, regulations or administrative orders of the Authority and all agencies of the City, County, State, and the United States as these laws, rules, regulations, and administrative orders may now exist and as may be hereafter adopted relating to protection of the environment.

**14.2 Regulation of Hazardous Substances.** Concessionaire shall not cause or permit a Hazardous Substance, as defined in this article, to be used, stored or generated on the Leased Premises, except for Hazardous Substances of types and quantities customarily used or found in Concessionaire's business, so long as said Hazardous Substances are used, stored, and/or generated in full compliance with all laws. Concessionaire shall not cause or permit the Release, as defined in 42 U.S.C. Section 9601(22), of any Hazardous Substance, contaminant, pollutant, or petroleum product in, on, or under the Leased Premises, or into any ditch, conduit, stream, storm sewer or sanitary sewer connected thereto or located thereon. Concessionaire shall fully and timely comply with all applicable federal, state, and local laws, regulations, and ordinances relating to protection of the environment, including 42 U.S.C. Section 6991 et. seq.

**14.3 Compliance Upon Termination.**

(a) Upon termination of this Agreement, Concessionaire shall at Concessionaire's sole expense remove or permanently clean up all Hazardous Substances that Concessionaire or anyone for whom Concessionaire is responsible, including a customer, invitee, employee, agent or person having a contractual relationship with the Concessionaire, caused to be situated on, at, in, or under the Leased Premises. This shall be done in compliance with all applicable federal, state, and local laws, regulations, and ordinances and shall include the performance of any necessary clean up or remedial action. Concessionaire shall provide Authority with copies of all records related to any Hazardous Substances that are required to be maintained by any applicable federal, state or local laws, regulations, or ordinances.

(b) Concessionaire shall at Concessionaire's sole expense clean up, remove, and remediate (i) any Hazardous Substances in, on, or under the Leased Premises in excess of allowable levels established by all applicable federal, state, and local laws, regulations, and ordinances, and (ii) all contaminants and pollutants in, on, or under the Leased Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up or remediated by any applicable federal, state, or local law, regulation, ordinance, standard, or order. This obligation does not apply to a Release on or at the Leased Premises or any portion thereof prior to the beginning of the Term, or any earlier date to which Concessionaire may be authorized to enter the Leased Premises, or caused solely by the act or omission of the Authority or a third party for whom the Concessionaire is not responsible.

**14.4 Indemnity for Non-Compliance.** Concessionaire shall defend, indemnify, and hold harmless the Authority and its consultants, agents, officers, commissioners, and employees from and against all claims, damages, losses, and expenses, whether direct, indirect or consequential, including attorney's fees arising out of or resulting from the Concessionaire's use of the Leased Premises or acts or omissions of others on the Leased Premises for whom Concessionaire is responsible. Without limiting the generality of the foregoing, the above indemnification provision extends to liabilities, damages, suits, penalties, judgments, and environmental clean-up, removal, response, assessment or remediation costs arising from the actual, threatened or alleged contamination of the Leased Premises or actual, threatened or alleged release of any Hazardous Substances, pollutant, contaminant or petroleum in, on, or under the Leased Premises, provided that said actual, threatened or alleged contamination or release occurs on or after the beginning of the Term, or any earlier date to which Concessionaire may be authorized to enter the Leased Premises, and is not caused by contamination that existed at the Leased Premises prior thereto. Concessionaire's obligations under this section shall survive the termination of this Agreement.

**14.5 Definition of Hazardous Substances.** As used herein, the term "**Hazardous Substances**" shall mean any and all substances, chemicals, wastes, sewage or other materials which are now or hereafter regulated with respect to the environment, public health or worker safety or required removal, warning or restriction on the use, generation, disposal or transportation thereof including: (i) any substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," or "air pollutant" in the comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601, et. seq.; the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. Section 1801, et. seq.; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901, et. seq.; the Superfund Amendment and Reauthorization Act of 1986 (SARA), 42 U.S.C. Section 6921, et. seq.; the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. Section 1251, et. seq.; or the Clean Air Act (CAA), 42 U.S.C. Section 7401, et. seq.; and correlative state statutes and regulations, all as amended hereafter; and (ii) any hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical or compound described in any other applicable federal, state or local statute, ordinance, code, rule, regulation, order, decree or other law now or at any time hereafter in effect regulating, relating to, or imposing liability or standards of conduct

concerning any hazardous, toxic, or dangerous substance, chemical, material, compound, or waste. The term Hazardous Substances also means and includes asbestos; flammable, explosive, or radioactive materials; gasoline; oil; motor oil; waste oil; petroleum, including crude oil or any fraction thereof; petroleum-based products; paints and solvents; lead; cyanide; DDT; printing inks; acids; pesticides; ammonium compounds; polychlorinated biphenyls; and other regulated chemical products.

- 14.6 Authority's Representation.** To the best of the Authority's current actual knowledge and belief at the time of execution of this Agreement, the Authority is not aware of any disposal of any Hazardous Substances in the Leased Premises prior to the date of execution of this Agreement. Concessionaire hereby acknowledges that the Authority has provided Concessionaire with an opportunity to inspect the Leased Premises prior to the execution of this Agreement.

## **ARTICLE XV NON-DISCRIMINATION**

- 15.1 Obligation of Concessionaire.** Concessionaire for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof does hereby covenant and agree (a) that no person on the grounds of race, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises; (b) that in the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) that Concessionaire will use said Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964," as amended.
- 15.2 Assurance of Concessionaire.** Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by said Subpart E. Concessionaire further assures that it will require that its covered subcontractors provide assurances to Concessionaire that they similarly will undertake affirmative action programs, if required, and that they will require assurance from their subcontractors, as required by 14 CFR Part 152, Subpart E, to the same effect.
- 15.3 Noncompliance.** In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to re-enter the Leased Premises and said Leased Premises shall thereupon revert to and vest in and become the absolute property of the Authority and its assigns. This provision shall not be effective until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

## **15.4 Federal Aviation Administration (FAA) Mandated Provisions.**

**1. General Civil Rights Provisions.** The Lessee and its Transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Lessee or its Transferee for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any Transferee for the longer of the following periods:

- (a) The period during which the property is used by the Airport Sponsor or any Transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) The period during which the Airport Sponsor or any Transferee retains ownership or possession of the property.

**2. Title VI Clauses for Compliance with Nondiscrimination Requirements.** During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

- (1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- (2) **Non-discrimination:** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor’s obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- (4) **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access

to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this Contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  1. Withholding payments to the Contractor under the Contract until the Contractor complies; and/or
  2. Cancelling, terminating, or suspending a contract, in whole or in part.
- (6) Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**3. Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (b) 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- (c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- (i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et. seq.*).

**4. Federal Fair Labor Standards Act.** All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**5. Occupational Safety and Health Act.** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor

retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **ARTICLE XVI PUBLIC USE AND FEDERAL GRANTS**

- 16.1 Subordination of Agreement.** It is mutually understood and agree that this Agreement shall be subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the Authority and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the Authority for Airport purposes, and/or the expenditure of federal funds for the extension, expansion or development of the Airport. It is the intent of the Authority and Concessionaire that no provisions of this Agreement violate federal law. Any term of this Agreement determined by an agency or court having jurisdiction to violate federal law shall be null and void. It is also mutually understood and agreed that this Agreement shall be subordinate to any license or permit of entry that may be granted by the Secretary of Defense.
- 16.2 Grant Agreements.** The Leased Premises and the Authority are subject to the terms of those certain sponsor assurances made to guarantee the public use of the Airport as incidental to grant agreements between the Authority and the United States, and the Quit Claim Deed from the United States, predecessor in title to the Leased Premises. The Authority represents that none of the provisions of this Agreement violates any of the provisions of the Sponsor's Assurance Agreement or said Quit Claim Deed.
- 16.3 Non-Exclusive Rights.** It is further covenanted and agreed that nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.
- 16.4 Right to Amend.** In the event that the FAA requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to obtain such funds; provided, however, that in no event will Concessionaire be required, pursuant to this section, to agree to an increase in the Concession Fees or a change in the use to which Concessionaire has put the Leased Premises, provided it is an authorized use hereunder.

## **ARTICLE XVII RULES AND REGULATIONS**

- 17.1 Regulations of Authority.** The occupancy and use by Concessionaire of the Leased Premises and the rights herein conferred upon Concessionaire shall be subject to valid rules and regulations, ground transportation operating procedures, and Authority directives as

are now or may hereafter be prescribed by the Authority through the lawful exercise of its powers.

- 17.2 Security Rules and Regulations.** Concessionaire shall comply with all Authority, TSA, and FAA security directives, rules and regulations in effect upon execution of this Agreement or as may be modified or enacted from time to time throughout the Term. Concessionaire understands and agrees that fines and/or penalties may be assessed by the TSA or FAA for Concessionaire's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for non-compliance with regulations applicable to Concessionaire's operations. In the event the Authority shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Authority may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Authority that any action or inaction by Concessionaire, or any party for which Concessionaire is responsible, resulted in all or part of the fine or penalty being assessed against the Authority, the Concessionaire shall promptly pay said fine or penalty.

## **ARTICLE XVIII MISCELLANEOUS PROVISIONS**

- 18.1 Taxes and Licenses.** Concessionaire shall pay all taxes of whatever character, including ad valorem and intangible taxes that may be levied or charged upon the fee title, Leased Premises, leasehold improvements, or operations hereunder and upon Concessionaire's rights to use the Leased Premises. Concessionaire shall pay all sales taxes on its occupancy or use of the Leased Premises whether such taxes are assessed against Concessionaire or the Authority. Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. The Authority shall assist Concessionaire to the extent necessary and permissible in obtaining said licenses or permits.
- 18.2 Inspection of Premises.** The Authority or its duly authorized representatives may enter upon the Leased Premises at any and all reasonable times during the Term for the purpose of determining whether Concessionaire is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the Authority.
- 18.3 Holding Over.** Should Concessionaire hold over without the prior written consent of the Authority after this Agreement has terminated in any manner, such holding over shall be deemed merely a tenant at sufferance on the same terms and conditions as herein provided, except for fees and charges, which may be increased in the sole discretion of the Authority. During any such period of sufferance, Concessionaire shall continue to pay the Concession Fees and Utility Charges no matter which party requests the holdover.
- 18.4 Redelivery of Premises.** Concessionaire shall, upon termination of this Agreement, quit and deliver up the Leased Premises to the Authority peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by Concessionaire

or the Authority, normal wear and tear excepted. In addition to landlord's lien provided by State law, the Authority shall have a specific lien on all property of Concessionaire on the Leased Premises as security for nonpayment of all fees and charges, including amounts due from any holding over by Concessionaire.

- 18.5 Successor Concessionaire.** Upon the termination of this Agreement, Concessionaire will cooperate fully with the Authority and any successor concessionaire, without the Authority or successor concessionaire having to incur any material expense not otherwise required in this Agreement, to ensure an effective and efficient transition of Concessionaire's duties to any successor concessionaire. Such efforts and cooperation shall include, to the extent practicable and permissible, the transfer of all licenses and permits at no cost to the successor concessionaire. Concessionaire acknowledges its responsibility to help to assure continued First Class concession services at the Airport during any transition to a successor concessionaire.
- 18.6 Quiet Enjoyment.** The Authority agrees that Concessionaire, upon payment of all fees and charges to be paid by Concessionaire under the terms of this Agreement, and upon observing and keeping the terms, covenants, and conditions of this Agreement on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the Term.
- 18.7 No Liens.** Concessionaire shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Leased Premises by Concessionaire, and shall keep the Leased Premises and Concessionaire's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire's act or omission.
- 18.8 Waivers.** No waiver of default by the Authority or any of the terms, covenants or conditions hereof to be performed, kept, and observed by Concessionaire shall be construed or operate as a waiver by the Authority of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by Concessionaire.
- 18.9 Waiver of Claims.** Concessionaire hereby waives any claim against the Authority, and its commissioners, officers, agents, and employees, that it may have on the date of execution of this Agreement for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part hereof from being carried out.
- 18.10 Security.** The Authority shall provide or cause to be provided, during the Term, all proper and appropriate public fire and police protection similar to that afforded to other concessionaires, tenants or licenses at the Airport. The Authority shall issue and enforce rules and regulations with respect thereto for all portions of the Airport. Concessionaire shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire,

but such right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of the Authority hereunder.

**18.11 Attorney's Fees.** In the event that the Authority brings any action, suit or proceeding to collect all or a portion of the fees and charges due under this Agreement, to take possession of the Facilities or to ensure compliance with this Agreement, and the Authority is granted judgment, Concessionaire shall pay the Authority's reasonable attorney's fees, in an amount allowed by the court in said action, suit or proceeding. If Concessionaire is granted judgment, the Authority shall reimburse Concessionaire for its reasonable attorney's fees.

**18.12 Terms Binding Upon Successors.** All the terms, conditions, and covenant of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment or subletting herein.

**18.13 No Third Party Beneficiary.** This Agreement is made for the benefit of the parties hereto and nothing herein shall be construed to create any right or benefit enforceable by any third party.

**18.14 Survival of Certain Provisions.** Concessionaire shall remain obligated to the Authority under all clauses of this Agreement that expressly or by their nature extend beyond and survive the termination of this Agreement, including the indemnity provisions hereof.

**18.15 Severability.** In the event any term, covenant or condition herein shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein, provided that such invalidity does not materially prejudice either Concessionaire or the Authority in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

**18.16 Written Amendment.** Unless otherwise provided herein, this Agreement may be amended only by a written instrument duly executed by the parties.

**18.17 Time of Essence.** Time is expressed to be of the essence in this Agreement.

**18.18 Force Majeure.**

(a) Timely performance by both parties is essential to this Agreement. However, neither party is liable to the other for damages resulting from delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. For purposes of this Agreement, "**Force Majeure**" shall mean fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

(b) This relief is not applicable unless the affected party does the following:

(i) Uses due diligence to remove the Force Majeure as quickly as possible;

(ii) Provides the other party with prompt written notice of the cause and its anticipated effect; and

(iii) Provides the other party with written notice describing the actual delay or non-performance incurred within seven (7) days after the Force Majeure ceases.

(c) The Authority may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the Authority.

(d) If the Force Majeure is of such a nature that it materially affects the operating capabilities of the Airport for a continuous period in excess of ninety (90) days, the Authority or Concessionaire may terminate this Agreement by giving seven (7) days' written notice to the other party. This termination does not constitute a default or breach of this Agreement. Concessionaire waives any claim it may have for financial losses or other damages resulting from the termination of this Agreement, except for amounts due hereunder at the time of termination.

(e) Concessionaire is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Concessionaire shall employ only fully trained and qualified personnel during a strike.

**18.19 Estoppel Certificate.** Authority agrees that, from time to time upon not less than ten (10) days' prior written request by Concessionaire, the President having knowledge of the following facts will deliver, if true, to the Concessionaire a statement in writing certifying:

(a) That this Agreement is unmodified and in full force and effect or, if there have been modifications, a description of such modifications; and that the Agreement as modified is in full force and effect;

(b) The dates to which fees and other charges have been paid;

(c) That the Concessionaire is not in default under any provision of this Agreement or, if in default, the nature thereof in detail; and

(d) Such further matters as may be requested by Concessionaire and as are simply reflective of the terms of this Agreement.

**18.20 Notices.** All notices provided for herein shall be in writing and served or given by mail, hand-deliver, or an overnight delivery service. Any notice served by mail shall be by registered mail. Any notice permitted or required to be served upon Concessionaire may be served upon it at:

Any notice permitted or required to be served upon the Authority may be served upon it with a copy to General Counsel at:

**Memphis-Shelby County Airport Authority**  
**2491 Winchester Road, Suite 113**  
**Memphis, TN 38116-3856**  
**Attn: Director of Properties**

Either party may give notice in writing to the other party of any change in such address, and, in such event, notices shall then be given to the party's substituted address.

**18.21 Agreement Made in Tennessee.** This Agreement is subject to and shall be interpreted under the laws of the State of Tennessee and the Ordinances of the City of Memphis and County of Shelby, Tennessee. Court jurisdiction shall exclusively be in the Circuit or Chancery Court for Shelby County or in the United States District Court for the Western District of Tennessee. Concessionaire shall insure that Concessionaire and its employees, agents, and officers are familiar and comply with all applicable federal, State and local laws, regulations, and ordinances as now written or hereafter amended or promulgated.

**18.22 Independent Contractor.** In the performance of Concessionaire's obligations under this Agreement, it is understood, acknowledged, and agreed between the parties that Concessionaire is at all times acting and performing as an independent contractor, and the Authority shall neither have nor exercise any control or direction over the manner and means by which Concessionaire performs Concessionaire's obligations under this Agreement, except as otherwise stated herein. Concessionaire understands and agrees that Concessionaire and its employees, agents, servants or other personnel are not Authority employees. Concessionaire shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Concessionaire or any of its employees, agents, servants or other personnel performing services or work under this Agreement, whether of a direct or indirect nature. Further it is expressly understood and agreed that for such purposes neither Concessionaire nor its employees, agents, servants or other personnel shall be entitled to any of the Authority payroll, insurance, unemployment, workers' compensation, retirement or any other benefits whatsoever.

*The remainder of this page intentionally left blank.*

IN WITNESS WHEREOF, the parties have caused this Temporary Lease and Concession Agreement to be executed by their duly authorized representatives as of the date first above written.

**MEMPHIS-SHELBY COUNTY  
AIRPORT AUTHORITY**

**(CONCESSIONAIRE)**

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

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

Title: President & CEO

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to Content:**

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

Vice President Finance and  
Administration & CFO

**Approved as to Form and Legality:**

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

Legal Counsel

**Reviewed and Approved:**

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

Director of Properties