

EXHIBIT 1
DRAFT CONCESSION(S) AGREEMENT

WORKING DRAFT



CONCESSION AGREEMENT

"[CLICK HERE AND TYPE AGREEMENT NUMBER]"

PARTIES AND ADDRESSES:

CITY OF FRESNO:

Airports Department
4995 East Clinton Way
Fresno, California 93727
Telephone: (559) 621-4500
Fax: (559) 251-4825

CONCESSIONAIRE:

"[Click Here and Type Concessionaire's Name]"

"[Click Here and Type Concessionaire's Address]"

"[Click Here and Type Concessionaire's City, State Zip Code]"

TABLE OF CONTENTS

Contents

RECITALS		8
ARTICLE I.	DEFINITIONS	9
SECTION 1.01	DEFINITIONS	9
ARTICLE II.	PREMISES	17
SECTION 2.01	PREMISES DESCRIPTION	17
SECTION 2.02	ADDITIONS TO AND DELETIONS FROM THE PREMISES	17
SECTION 2.03	RECLAIMING OF PREMISES FOR AIRPORT PURPOSES	18
SECTION 2.04	MODIFICATIONS TO PREMISES, TENANT IMPROVEMENTS	19
SECTION 2.05	INGRESS AND EGRESS	19
SECTION 2.06	PREMISES ACCEPTANCE AS IS	19
SECTION 2.07	NO WARRANTY OF ECONOMIC VIABILITY	20
ARTICLE III.	TERM	20
SECTION 3.01	TERM	20
SECTION 3.02	HOLDOVER	20
SECTION 3.03	RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION	20
SECTION 3.04	END OF TERM TRANSITION	21
ARTICLE IV.	RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS	22
SECTION 4.01	DEFINITION OF GROSS RECEIPTS	22
SECTION 4.02	CONCESSION SPACE RENT	23
SECTION 4.03	SUPPORT SPACE RENT	23
SECTION 4.05	ANNUAL RENTAL ADJUSTMENTS	23
SECTION 4.06	PERCENTAGE RENT	23
SECTION 4.07	AIRPORT CHARGES	24
SECTION 4.08	SCREENING	24
SECTION 4.09	ADDITIONAL RENT	24
SECTION 4.10	FAILURE TO MAKE TIMELY PAYMENTS	25
SECTION 4.11	OFF SET CREDITS ON ACCOUNT	25
SECTION 4.12	CITY'S LIEN	25
SECTION 4.13	RECORD KEEPING, REPORTS, ANNUAL AUDIT, & END OF YEAR ADJUSTMENT	26
	A. GENERALLY ACCEPTED ACCOUNTING PRINCIPLES	26
	B. FINANCIAL REPORTS	26
	C. FINDINGS	27
	D. END OF YEAR ADJUSTMENT	27
	E. FORM, FREQUENCY, AND METHOD OF REPORTING	27
SECTION 4.14	PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS	28
SECTION 4.15	FORM OF PAYMENT	29

SECTION 4.16	CITY’S RIGHT TO PERFORM AUDITS, INSPECTIONS, OR ATTESTATIONS	29
SECTION 4.17	SEVERE DECLINE IN ENPLANEMENTS	31
	A. CONCESSION SPACE RENT REDUCTION/SUSPENSION	31
	B. CONCESSION SPACE RENT REINSTATEMENT	31
	C. DETERMINATION OF TOTAL ENPLANEMENTS AND “TRUE-UPS”	32
	D. TOTAL ENPLANEMENT DETERMINATIONS	32
	E. NO EFFECT	32
	F. EFFECT OF DEFAULT	32
	G. SUB-CONCESSIONAIRES	32
ARTICLE V.	PERMITTED USES	33
SECTION 5.01	PERMITTED USE	33
	A. USES	33
	B. CONCESSION LOCATIONS	33
	C. PERMITTED PRODUCTS, SERVICES AND PRICES	33
SECTION 5.02	NON-EXCLUSIVE RIGHTS	34
SECTION 5.03	RESTRICTIONS	34
SECTION 5.04	PERMITS AND LICENSES	34
ARTICLE VI.	OPERATIONS AND PERFORMANCE STANDARDS	34
SECTION 6.01	CITY’S RIGHT TO MONITOR PERFORMANCE	34
	A. PERFORMANCE AUDITS	34
	B. ANNUAL REVIEW	35
	C. REMEDIATION PLAN	36
SECTION 6.02	QUALITY OF PRODUCTS AND SERVICES	37
SECTION 6.03	PRICING	38
	A. PRODUCTS & PRICING	38
	B. PRICING MODELS	38
	C. PRICING POLICY	39
	D. POLICY ADHERENCE	41
	E. AIRPORT EMPLOYEE DISCOUNT	41
SECTION 6.04	HOURS OF OPERATION	41
	A. STORE HOURS	41
	B. EXTENSION OF STORE HOURS	41
	C. FAILURE TO OPEN	42
	D. POSTED HOURS	42
SECTION 6.05	PERSONNEL	42
	A. STAFFING	42
	B. GENERAL MANAGER	42
	C. ADDITIONAL PERSONNEL REQUIREMENTS	43
	D. COMPLIANCE WITH IMMIGRATION LAW	43
	E. CITY’S RIGHT TO OBJECT	43
SECTION 6.06	DELIVERY OF GOODS	43
SECTION 6.07	BADGING AND SECURITY REQUIREMENTS	44
SECTION 6.08	EMPLOYEE PARKING	46
SECTION 6.09	POINT OF SALE (POS) TERMINALS	46
SECTION 6.10	CASH HANDLING AND CREDIT CARD REQUIREMENTS	47
SECTION 6.11	ADVERTISED SALES OR PROMOTIONS	48

SECTION 6.12	COMPLAINTS	48
SECTION 6.13	OPERATING PROCEDURES AND STANDARDS	49
SECTION 6.14	COMPREHENSIVE MANAGEMENT OPERATIONS PLAN AND MANUAL.	49
SECTION 6.15	CLEANING AND ROUTINE MAINTENANCE	51
	A. GENERAL OBLIGATIONS	51
	B. PREVENTIVE AND ROUTINE CLEANING AND MAINTENANCE PROGRAM	51
	1. JANITORIAL SERVICE	51
	2. PEST CONTROL	51
	3. PLUMBING	52
	4. ELECTRICITY	52
	5. HVAC	53
	6. GREASE REMOVAL SYSTEMS	53
	7. TRASH, WASTE, AND REFUSE	53
	8. LIGHTING	54
	C. ROUTINE REFURBISHMENT	54
	D. MAINTENANCE PERSONNEL AND PROGRAM	54
	E. CITY SOLE JUDGE OF MAINTENANCE	54
	F. EMERGENCY REPAIRS	55
SECTION 6.16	COMMON MAINTENANCE	55
	A. ELECTRICITY SYSTEMS	55
	B. HVAC SYSTEMS	55
	C. LIFE SAFETY SYSTEMS	56
	D. SANITARY SEWER SYSTEM	56
	E. TRASH, WASTE AND REFUSE	56
	F. EXTERIOR WINDOWS AND STRUCTURES	56
SECTION 6.17	PAGING, AUDIO, VIDEO SYSTEMS AND FREQUENCY PROTECTION	56
SECTION 6.18	PROHIBITED ACTS	57
<u>ARTICLE VII.</u>	<u>FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS</u>	<u>58</u>
SECTION 7.01	VIOLATIONS	58
SECTION 7.02	MULTIPLE VIOLATIONS	58
SECTION 7.03	SECTION PAYMENT	59
<u>ARTICLE VIII.</u>	<u>FEDERAL AID REQUIREMENTS</u>	<u>59</u>
SECTION 8.01	NON-DISCRIMINATION	59
SECTION 8.02	CITY'S AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) POLICY	60
SECTION 8.03	ACDBE NON-DISCRIMINATION	61
SECTION 8.04	ACDBE PARTICIPATION AND COMPLIANCE	61
	A. ACDBE GOAL	61
	B. ACDBE TERMINATION AND SUBSTITUTION	62
	C. REPORTING REQUIREMENTS	62
	D. MONITORING	63
	E. PROMPT PAYMENT	63
	F. OTHER REQUIREMENTS	63
	G. NON-COMPLIANCE	63

ARTICLE IX.	CONSTRUCTION AND CAPITAL INVESTMENT	64
SECTION 9.01	CONSTRUCTION BY CONCESSIONAIRE	64
SECTION 9.02	DESIGN AND CONSTRUCTION STANDARDS	64
SECTION 9.03	INITIAL CAPITAL INVESTMENT	64
SECTION 9.04	DEVELOPMENT SCHEDULE	65
SECTION 9.05	SUBMITTAL AND APPROVAL OF PLANS	65
	A. SUBMITTAL OF PLANS	65
	B. DISCLAIMER OF COMPLIANCE WITH LAWS OR CODES	66
	C. APPROVALS EXTEND TO ARCHITECTURAL AND AESTHETIC MATTERS	66
	D. DESIGN AND PERMITTING	66
SECTION 9.06	CONSTRUCTION	66
SECTION 9.07	COMPLETION OF CONSTRUCTION	67
SECTION 9.08	TITLE TO IMPROVEMENTS	68
SECTION 9.09	SIGNAGE	68
SECTION 9.10	ANNUAL REFURBISHMENT	68
ARTICLE X.	DISCLAIMER OF LIENS	69
ARTICLE XI.	MAINTENANCE UTILITES AND REPAIRS	69
SECTION 11.01	CONCESSIONAIRE’S MAINTENANCE OBLIGATIONS	69
SECTION 11.02	CITY’S MAINTENANCE AND UTILITY OBLIGATIONS	70
SECTION 11.03	CITY’S PERFORMANCE OF CONCESSIONAIRE’S OPERATING OBLIGATIONS	71
ARTICLE XII.	DEFAULT, REMEDIES, AND TERMINATION RIGHTS	72
SECTION 12.01	EVENTS OF DEFAULT	72
SECTION 12.02	CITY’S REMEDIES	73
ARTICLE XIII.	INDEMNIFICATION AND RELEASE	75
ARTICLE XIV.	INSURANCE	76
SECTION 14.01	INSURANCE REQUIREMENTS	76
SECTION 14.02	MINIMUM LIMITS OF INSURANCE CONCESSIONAIRE	77
SECTION 14.03	UMBRELLA OR EXCESS INSURANCE	78
SECTION 14.04	DEDUCTIBLES AND SELF-INSURED RETENTIONS	78
SECTION 14.05	OTHER INSURANCE PROVISIONS/ENDORSEMENTS	78
SECTION 14.06	PROVIDING OF DOCUMENTS	79
SECTION 14.07	MAINTENANCE OF COVERAGE	80
SECTION 14.08	SUBCONTRACTORS	80
ARTICLE XV.	SURETY FOR PERFORMANCE	81
SECTION 15.01	FORM OF SURETY	81
SECTION 15.02	APPLICATION OF SURETY	81
SECTION 15.03	RELEASE OF SURETY	81
ARTICLE XVI.	PROPERTY DAMAGE	82
SECTION 16.01	COMPLETE DESTRUCTION	82
SECTION 16.02	LIMITS OF CITY’S OBLIGATIONS DEFINED	82

SECTION 16.03	ALTERNATE SPACE	83
ARTICLE XVII.	DAMAGING ACTIVITES	83
ARTICLE XVIII.	COMPLIANCE WITH LAWS, REGULATIONS,	85
ORDINANCES, AND RULES		85
SECTION 18.01	MINIMUM COMPENSATION / LIVING WAGE	85
ARTICLE XIX.	AIRPORT SECURITY	85
ARTICLE XX.	AMERICANS WITH DISABILITIES ACT	85
ARTICLE XXI.	FAA APPROVAL	86
ARTICLE XXII.	RIGHT OF FLIGHT	86
ARTICLE XXIII.	FEDERAL RIGHT TO RECLAIM	86
ARTICLE XXIV.	PROPERTY RIGHTS RESERVED	87
ARTICLE XXV.	ASSIGNMENT AND SUBCONTRACT	87
ARTICLE XXVI.	CORPORATE TENANCY	88
ARTICLE XXVII.	RIGHT TO DEVELOP AIRPORT	88
ARTICLE XXVIII.	ATTORNEY'S FEES AND COSTS	88
ARTICLE XXIX.	RIGHT TO AMEND	88
ARTICLE XXXI.	NOTICES AND COMMUNICATIONS	89
ARTICLE XXXII.	BOND ORDINANCES	89
ARTICLE XXXIII.	FORCE MAJEURE	90
ARTICLE XXXIV.	RELATIONSHIP OF THE PARTIES	90
ARTICLE XXXV.	CITY APPROVALS	90
ARTICLE XXXVI.	INVALIDITY OF CLAUSES	91
ARTICLE XXXVII.	TIME IS OF THE ESSENCE	91
ARTICLE XXXVIII.	TAXES	91
ARTICLE XXXIX.	PATENTS AND TRADEMARKS	91
ARTICLE XL.	AGENT FOR SERVICE OF PROCESS	92
ARTICLE XLI.	COMPLIANCE WITH PUBLIC RECORDS LAW	92
SECTION 41.01	AGREEMENT SUBJECT TO CALIFORNIA PUBLIC RECORDS ACT	92
SECTION 41.02	INDEMNIFICATION IN EVENT OF INTERVENTION	93

ARTICLE XLII. DATA SECURITY	93
ARTICLE XLIII. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS	93
ARTICLE XLIV. HAZARDOUS SUBSTANCES AND OSHA COMPLIANCE	94
ARTICLE XLV. CITY'S SMOKING/VAPING POLICY	94
ARTICLE XLVI. WAIVERS	94
ARTICLE XLVII. COMPLETE AGREEMENT	94
ARTICLE XLVIII. ORDER PRECEDENCE	95
ARTICLE XLIX. BROKER'S COMMISSION	95
ARTICLE L. NO LIMIT ON CITY'S POWERS	95
ARTICLE LI. SIGNATURES	96

DRAFT

FOOD & BEVERAGE/NEWS & CONVENIENCE CONCESSION AGREEMENT

This Concessions Agreement (hereinafter, Agreement) is made and entered into this <enter numerical day> day of <enter month>, <enter year> (Effective Date), by and between the City of Fresno, a California municipal corporation (hereinafter referred to as, City or a Party) , and [_____] <type of business organization and state of incorporation>, authorized to conduct business in the State of _____, dba [Trade Name] (hereinafter referred to as, Concessionaire or a Party), (collectively, hereinafter referred to as, Parties).

RECITALS

WHEREAS, City is the owner and operator of Fresno Yosemite International Airport (Airport), which is located in the City of Fresno, County of Fresno, State of California; and

WHEREAS, City issued a Request for Proposals (Proposal No. 12300507), the terms of which are incorporated by reference herein) for “Food & Beverage Concessions and News & Convenience Concessions” on [Date issued], to solicit written proposals; and

WHEREAS, pursuant to such solicitation, Concessionaire submitted a written proposal, dated [submittal date], which is incorporated herein by this reference to the extent consistent with this Agreement; and

WHEREAS, on the basis of City’s evaluation of such proposal, City selected Concessionaire for the award of this Agreement; and

WHEREAS, on [Award date], the City Council awarded Concessionaire the Agreement for “[F&B or N&R] Concessions”; and

WHEREAS, Concessionaire desires and is ready, willing and able to establish the Concessions at the Airport upon the terms and conditions herein; and

WHEREAS, Under the Surplus Land Act, Government Code Section 54220-54234, surplus land is defined as “land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use,”; and

WHEREAS, Subject space (see Exhibit A) of the Airport Passenger Terminal is not a disposition of surplus land pursuant to the Surplus Land Act, because no development or demolition will occur; and

NOW THEREFORE, in accordance with Chapter 5, Article 4, of the Fresno Municipal Code, and subject to all the terms, conditions and limitations contained within said Chapter of said Article, all of which are incorporated herein by reference, and in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for such other good and valuable consideration hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

SECTION 1.01 DEFINITIONS

As referred to or used herein the following terms have the following meanings:

The following terms shall have the meanings set forth below:

Additional Rent: Refers to all sums of money required to be paid by Concessionaire to City hereunder, including, but not limited to: Support Space Rent (if any), Miscellaneous Charges, Concessionaire's share of taxes assessed against City, operating costs and expenses, utility charges, and any other sums or charges which may be due from Concessionaire hereunder.

Agreement: Refers to this Concession Agreement, including all exhibits, appendices, schedules, attachments, and subsequent amendments thereto, as the same may be amended from time-to-time.

Agreement Year: (a) With respect to the first Agreement Year during the Term, the period commencing on the Commencement Date and continuing through the end of City's Fiscal Year in which the Commencement Date occurs, and (b) with respect to each Agreement Year thereafter during the Term, each twelve-month period commencing on the first day of City's Fiscal Year and ending on the last day of City's Fiscal Year, provided that if the Term expires or is terminated on a day other than the last day of an Agreement Year, the last Agreement Year will then end as of the date of such expiration or termination.

Airport Concession Disadvantaged Business Enterprise ("ACDBE"): Refers to a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as an ACDBE by City, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23.

Airport: Refers to Fresno Yosemite International Airport, which is located at 5175 E Clinton Way, Fresno, CA 93727.

Airport Terminal(s): The passenger transportation facilities at the Airport, existing or under construction as of the Effective Date of this Agreement, or to be constructed during the Term of this Agreement, known individually as Terminal A, Terminal B, and Federal Inspection Station, including all user movement areas, areas leased exclusively or preferentially to any third party or parties, common areas and baggage claim areas therein and interconnecting hallways, concourses, and bridges.

Alcoholic Beverage Control (ABC) Type 47 (On Sale General Eating Place) License: Refers to a permit authorizing the sale of all types of alcoholic beverages: namely, beer, wine, and distilled spirits, for consumption on the premises, and the sale of beer and wine for consumption off the premises.

Annual Refurbishment: Refers to an expenditure by Concessionaire of a minimum of one-half of one percent (0.5%) of total Gross Revenues, commencing in the fourth year of the Term of this Agreement and occurring annually, for refurbishment of the Premises.

Annual Report: An audit report prepared annually by an Independent Certified Public Accountant (CPA), in accordance with Generally Accepted Auditing Standards expressing an opinion from the Independent CPA on whether the Schedule of Gross Receipts, Rent and all other fees and charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement.

Approved Project: Refers to any portion of the Premises, Concessionaire's construction, furnishing, fixturing, and remodeling of such portion of the Premises as reviewed and approved by City in accordance with the Tenant Handbook.

As Built Drawings: Refers to record documents of the construction, additions, and other modifications constructed by Concessionaire on the Premises including but not limited to Concessionaire's Agreement, as built models, and drawings in the format as required by City.

Assigned Premises: Refers to specific areas of the Airport Terminals, or elsewhere at the Airport, that are assigned (or leased to Concessionaire to occupy) and use for the purposes set forth herein. Concession may be conducted pursuant to this Agreement, including those City owned fixtures and properties therein more specifically described in Exhibit A hereto incorporated herein, which Concessionaire, at its sole cost, expense and liability may use solely in its pursuit of this Agreement and upon the terms and conditions therein provided that title thereto shall at all times be and remain in City and further provided that such fixtures and equipment shall be returned to City along with the Assigned Premises in the manner and according to the terms and conditions in this Agreement.

Base Building Work: Refers to the sub-floor, structural elements, demising walls at the exterior of the Premises, utilities infrastructure, and other base building improvements, structures, and fixtures that City installs at the Premises. Base Building Work includes preparation of portions of the Premises designated for concessions activities in Shell condition.

Capital Investment: Refers to the dollars spent by Concessionaire in the actual construction, remodeling, furnishing, fixturing, and equipping of any portion of the Premises, in connection with an Approved Project for such portion of the Premises. Capital Investment includes:

1. Architectural and Engineering fees: All soft costs associated with designing the approved project.
2. Leasehold Improvements: All improvements and equipment that are structural in nature or are affixed to the Premises and cannot be removed without material damage to the Premises including, but not limited to, mechanical, electrical, and

plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving.

3. **Furniture, Trade Fixtures, and Equipment (FF&E):** All furniture, fixtures and major equipment installed by Concessionaire within the Premises for use in its performance of the Concession which may be removed from the Premises without causing material damage to the Premises.

Certificate of Occupancy: Refers to a document issued by the City of Fresno stating that the building or proposed use of a building or land has complied with all laws and ordinances, and with an approved site plan and any conditions required by the Commission or Board, relative to the proposed building or use.

City's Work: Refers to any work to be done by or on behalf of City to prepare the Premises for Concessionaire.

Claim: Refers to any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification and defense under Article XIII of this Agreement.

Common Use Areas: Refers to the areas of the Airport Terminals that are not leased, licensed, or otherwise designated or made available by City for exclusive or preferential use by a specific party or parties.

Comprehensive Management Operations Plan & Manual: Refers to a comprehensive manual of standard operating procedures outlining measures designed to promote meeting Concessionaire's responsibilities under this Agreement, to include performance targets, goals, and measures. Concessionaire shall maintain such Manual during the Term of this Agreement and any extensions.

Concession: Refers to the rights granted to Concessionaire by City to develop and operate a business to sell food & beverage, retail, or passenger services products to the public and related operations thereto, in accordance with the terms and conditions of this Agreement.

Concession Location(s): Refers to the locations, individually or collectively, within the Premises which are intended for the sale of Concessionaire's goods and services.

Concessionaire: Refers to the legal entity that is party to this Agreement who is bound by this Agreement to develop and operate the Concession at the Airport. Concessionaire shall include all approved sub-concessionaires of Concessionaire who are operating within the Premises pursuant to subleases with Concessionaire. In all provisions of this Agreement that require a person to comply with a specific provision requiring representation of Concessionaire, this person shall be an authorized official of Concessionaire.

Concessionaire Improvement: Refers to any modifications or improvements made to the Concession Location from time to time as determined by Article IX of this Agreement by the Concessionaire at their sole cost.

Concessionaire's Operating Obligations: Refers to the various maintenance, repair, and operating duties hereunder to be performed by Concessionaire, at its own cost and expense, in the performance of the Concession. The performance of the obligation by the Concessionaire, or payment to a third party for the performance of these obligations, are not rental payments or other considerations for the right to occupy real property but are acknowledgements by the Concessionaire of its obligation to maintain, repair, and otherwise keep the Premises in optimal condition.

Concessions Design Criteria: The compilation of City's design and construction standards governing all aspects of the Concessionaire's design and construction of the Premises. City reserves the right to amend the Concessions Design Criteria during the Term.

Concessions Services: Refers to the certain Concessionaire's Operating Obligations and other maintenance and repair performed by City on behalf of and for the benefit of Concessionaire as further described in Article XI hereunder.

Concessions Services Fee: Refers to the amounts paid to City by Concessionaire as payment for Concessions Services as further described in Article XI hereunder.

Concession Space Rent: Refers to the annual rent payable, paid in twelve (12) equal monthly installments, by Concessionaire to City each Agreement Year based on the total square footage amount of the Premises as further described in Section 4.02.

Concession Space Rental Rate: Initially \$40 per square foot/year, adjusted on the first annual anniversary of the Date of Beneficial Occupancy and each year thereafter, based on the annual percentage change in the CPI-U Index. The annual adjustment result in Rent will not be less than the amount charged during the prior contract year, or more than five percent (5%) above the prior year's rate.

Critical Dates:

1. Commencement Date or Date of Beneficial Occupancy ("DBO"): The day the first Concession Location under this Agreement opens for business.
2. Effective Date: The date of full execution of this Agreement by the Parties.
3. Expiration Date: The 15th anniversary of the Premises Completion Date.
4. Premises Completion Date: The earlier to occur of (a) the opening for business of all Concession Locations following completion of all Approved Projects, or (b) the latest of the dates established under this Agreement for completion of all Approved Projects for all Concession Locations.

5. **Required Completion Date:** Refers to the date set forth in a Notice to Proceed by which Concessionaire must achieve Substantial Completion of an Approved Project, except as such date may be extended in accordance with the provisions herein.
6. **Required Opening Date:** Refers to the date set forth in the Development Schedule by which Concessionaire must open each Concession Location for business as defined in the Tenant Handbook, except as such date may be extended in accordance with the provisions herein.
7. **Space Turnover Date:** The date provided in a Notice to Proceed, which makes a portion of the Premises available to Concessionaire to commence the Approved Project in such portion of the Premises.

DBE Coordinator: Refers to the City of Fresno's DBE/Small Business Program Coordinator, a single position supervisory class responsible for developing and implementing the Federal Disadvantaged Business Enterprise Program certification procedures and for investigating and monitoring contracts for utilization of minority and disadvantaged business enterprise participation for compliance by contractors.

Department of Transportation (DOT): Refers to The United States Department of Transportation (USDOT or DOT), one of the executive departments of the U.S. federal government.

Director of Aviation or Director: Shall mean the Director of Aviation, or designee of the Airport as from time to time appointed by the City.

Enplanement Stabilization for Three Consecutive Months: Refers to the actual Enplanements for a particular month equaling or exceeding 75% of the actual Enplanements of the same month in the previous year, and such threshold is achieved for three (3) consecutive months.

Enplanements or Enplaned Passengers: Refers to all passengers' boarding flights at the Airport from scheduled or chartered flights, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of same or another airline. Enplaned Passengers shall generally be measured for the entire Airport by Airline.

FAA: The Federal Aviation Administration or any successor thereto.

Fresno-Madera Metropolitan Statistical Area: Refers to the metropolitan area in the San Joaquin (Central) Valley of California consisting of Fresno and Madera counties as defined by the U.S. Office of Management and Budget.

Generally Accepted Accounting Principles: Refers to a common set of accounting principles, standards, and procedures issued by the Financial Accounting Standards Board.

Generally Accepted Auditing Standards: Refers to a set of systematic guidelines used by auditors when conducting audits on companies' financial records issued by The Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA).

Gross Receipts/Revenues/Sales: Refers to the total amount of monies paid or earned by Concessionaire at or from the Premises in its performance of the Concession, as further described in Section 4.01.

Guaranty of Agreement: Refers to a contract between two parties where one party agrees to pay a debt or perform a duty in the event that the original party fails to do so.

Joint Venture: Refers to a partnership between two or more companies to form a new business entity.

Jurisdiction: Refers to the Superior Court of the State of California, County of Fresno, where this Agreement is performed.

Liquidated Damages: Refers to the damages to be paid by the Concessionaire to the City for failure to complete any part of this Agreement as referenced by the term. The Liquidated Damages amount shall be assessed at one hundred dollars (\$100.00) per day under this Agreement.

Master Fee Schedule: Refers to the annual schedule of fees published by the City of Fresno, which can be modified from time to time.

Monthly Concession Report: Refers to report (in a form as set forth in Exhibit C attached hereto) certified by Concessionaire and that Concessionaire shall deliver to City no later than fifteen (15) days after the end of each month during the Term, stating Gross Receipts (with any and all sales of liquor separately identified) for said month for each Concession Location, sales for said month by each Concessions Location with subtotals by type of Concession, calculation of Percentage Fee payable for said month, sales per square foot and per enplaned passenger with subtotals by type of Concession, and receipts per square and per enplaned passenger with subtotals by type of concession when information available.

Notice to Proceed: Refers to any portion of the Premises, the written notice from City to Concessionaire delivering possession of such portion of the Premises to Concessionaire to commence the initial Approved Project for such portion of the Premises, and which establishes the Space Turnover Date and Required Completion Date for such portion of the Premises.

Party/Parties: Shall have the meanings set forth in the Recitals to this Agreement.

Past Due Interest Rate: Refers to a late payment charge equal to the lesser of the maximum rate allowable by law or one and one-half percent (1.5%) per month on the total amount overdue for each month thereafter until such delinquent installment or other payment amount(s) shall be received by City, which, at any time and from time to time

during the life of the Agreement, be changed by action of the City Council of City when, in said Council's opinion, economic conditions and/or other relevant facts and/or circumstances may reasonable warrant such action.

Personal Property: Refers to Trade Fixtures, including Concessionaire's nonattached removable decorations, detached floor coverings, and furnishings that are not in any way attached to the Premises, inventory, and other nonattached personal items.

Percentage Rent: Refers to the rent paid by Concessionaire to City, on a monthly basis based on a percentage calculated in accordance with Section 4.06.

Point of Sale (POS): Refers to the place where a customer executes the payment for goods or services and where sales taxes may become payable, including both the physical concession location or a virtual sales point including (but not limited to) computers or mobile electronic devices.

Premises: Refers to the portion(s) within the Airport consisting of the Concession Locations and Support Spaces depicted on Exhibit A attached hereto containing approximately xxxx Square Feet, including any improvements to be made or modifications to be made thereto.

Product Price List: Refers to a listing, substantially consistent with Exhibit G, of the goods and services to be sold from the Concession Location which must include the prices to be charged to the public for said goods and services.

Public Areas: Refers to certain areas of the Terminal designated by City to be public or to be used in common, including, but not limited to, the walkways, streets, roadways, waiting rooms, hallways, restrooms and other passenger conveniences.

Remediation Plan: Refers to a written plan developed by Concessionaire to improve the performance of Concession Location(s) including, but not limited to, proposed remedial activities such as employee training, staffing changes, merchandise and service modifications, facility refurbishment and repair, and/or replacement of concept or brand.

Replacement Premises: Shall mean other location(s) within the Airport Terminals containing substantially the same area, visibility, and exposure to passenger traffic as the portion(s) of the Premises being reclaimed by City.

Severe Decline in Enplanements for Three Consecutive Months: Refers to the actual Enplanements achieved during a one-month period is less than 75% of the actual Enplanements of the same month in the previous year, and such shortfall continues for three (3) consecutive months.

Substantial Completion: Refers to the stage in the process of any construction or other work when such work is sufficiently complete, as reasonably determined by City, so that (i) in the case of City's Work, Concessionaire is able to take possession of the Premises for the purpose of performing the Approved Project, or (ii) in the case of Approved Project work, Concessionaire has received a Certificate of Occupancy and/or a Temporary

Certificate of Occupancy from City and is able to occupy the Premises for the purpose of opening for business. In no event shall Substantial Completion of any work occur prior to the issuance by City of the Notice to Proceed. It is the intent of the Parties that the application of the term Substantial Completion in the context of this Agreement shall coincide with the application of that term in Fresno, California, under State of California laws, so that the date on which Substantial Completion occurs under this Agreement shall be the same date relative to the imposition and levy of local ad valorem taxes.

Support Space(s): Refers to the non-selling locations, individually or collectively, within the Premises which are intended for the support of Concessionaire's operation of the Concession including, but not limited to, offices, commissary, and storage spaces.

Support Space Rent: Refers to the annual amount payable by Concessionaire to City for the use and occupancy of the Support Spaces, as further described in Section 4.03.

Support Space Rent Rate: Refers to the fair market rental rate per square foot for the Support Spaces, as further described in Section 4.03.

Surety: Refers to the guarantee of the debts of one party by another. An organization or person that assumes the responsibility of paying debt in case the debtor defaults or is unable to make the payments.

Tenant Handbook: The compilation of City's standards, procedures, construction activities, requirements, directives, and rules and regulations governing the operations of concessionaires and actions of their employees, representatives, agents, and vendors, which is incorporated herein by reference. City reserves the right to amend the Tenant Handbook during the Term. Any amendment of the Tenant Handbook will be binding on Concessionaire without amendment to this Agreement, provided that the amendment of the Tenant Handbook does not conflict with other terms and conditions of this Agreement.

Tenant Improvement Request: Refers to any requests made by Concessionaire for modifications or improvements made to the Concession Spaces from time to time as determined by Article IX of this Agreement.

Term: Refers to the period beginning on the Commencement Date and ending on the Expiration Date.

Term Options: Refers to the number of years the Term may be extended at the sole discretion of the Airport.

Title VI List of Pertinent Nondiscrimination Statutes and Authorities: Refers to a series of regulations under Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, which provides that: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance".

Total Enplanements: Refers to the complete number of passengers enplaning and deplaning airline carriers at Fresno Yosemite International Airport.

Trade Fixtures: Refers to all furniture, fixtures, and major equipment installed by Concessionaire, for use in its performance of the Concession, removable from the Premises without causing material damage to the Premises.

TSA: The U.S. Department of Homeland Security Transportation Security Administration or any successor thereto.

Unamortized Investment: Refers to the unamortized amount, for that portion of the Premises at the time such amount is referred to herein, of Concessionaire's Capital Investment or portion thereof, using straight line amortization, calculated daily, over the period beginning on the latter of (i) the Premises Completion Date or (ii) the completion of an Approved Project to which such Capital Investment refers and ending on the Expiration Date.

ARTICLE II. PREMISES

SECTION 2.01 PREMISES DESCRIPTION

City hereby leases to Concessionaire and Concessionaire hereby agrees to lease from City the Premises within the Airport consisting of the Concession Locations and Support Spaces as listed and depicted on Exhibit A, attached hereto, and incorporated herein, including any improvements to be made or modifications to be made thereto. No other part of the Airport Terminals or the Airport shall be part of the Premises.

The total estimated areas of the Premises, Concessions Locations, and Support Spaces are incorporated in Exhibit A.

If the Premises is not fully constructed at the time of Agreement execution, then the actual square footage determined after completion of construction shall be adjusted and acknowledged by the parties. No later than 30 days after the City, Concessionaire shall certify in writing the actual as-built areas of the Premises, Concession Locations, and Support Spaces. The Parties agree to modify Exhibit A to incorporate such as-built areas, such modifications to be confirmed by letter executed by City, without need for formal amendment to the Agreement.

SECTION 2.02 ADDITIONS TO AND DELETIONS FROM THE PREMISES

City and Concessionaire may, during the Term and by mutual agreement, add additional space(s) or delete space(s) from the Premises. All space(s) added to the Premises pursuant to this Section 2.02 shall be subject to all the terms, conditions, and other provisions of this Agreement and Concessionaire shall pay to City all rents, fees, and charges applicable to the additional space(s) in accordance with this Agreement. In the case of deletions of space(s) from the Premises, rents, fees, and charges paid to City by Concessionaire shall be appropriately adjusted. The Parties agree to modify Exhibit A, and Exhibit B as necessary, to incorporate space additions to the Premises and space

deletions from the Premises by letter executed by the Director of Aviation or designee and acknowledged by Concessionaire, without need for formal amendment to this Agreement.

SECTION 2.03 RECLAIMING OF PREMISES FOR AIRPORT PURPOSES

City reserves the right to reclaim the Premises when, in the sole discretion of City, such reclaiming is necessary for the development or operations of the Airport or is in the best interest of City. City will make a reasonable effort to identify other location(s) within the Airport Terminals containing substantially the same area, visibility, and exposure to passenger traffic as the portion(s) of the Premises being reclaimed (such other location(s), if any, hereinafter referred to as, the Replacement Premises).

City shall exercise such right to reclaim by giving Concessionaire not less than 90 days prior written "Notice of Intent to Reclaim Premises" specifying the effective date of the reclaiming and identifying Replacement Premises, if any. Concessionaire shall, by written notice given to City no later than 30 days after receipt of Notice of Intent to Reclaim Premises, notify City of its acceptance of the Replacement Premises, if any, whereupon, as of the effective date provided in City's Notice of Intent to Reclaim Premises:

1. All the terms, covenants, conditions, and provisions of this Agreement shall continue in full force and effect and apply to the Replacement Premises.
2. Concessionaire shall move from the Premises, or portion(s) thereof being reclaimed by City, into the Replacement Premises on or before the effective date stated in the City's Notice of Intent to Reclaim Premises and shall vacate and surrender possession of the Premises or portion(s) thereof being reclaimed by City.
3. Subject to the other provisions of this Agreement, Concessionaire shall be deemed to have accepted possession of the Replacement Premises in its "as is" condition as of the effective date stated in City's Notice of Intent to Reclaim Premises.
4. City will pay to Concessionaire reasonable and proper moving expenses to include moving of furniture, equipment, and other personal property into the Replacement Premises. Concessionaire shall pay all other costs to improve and fit out the Replacement Premises.

In addition, City will pay to Concessionaire, within 15 days of the effective date stated in City's Notice of Intent to Reclaim Premises, an amount equal to the Unamortized Investment in the portion(s) of the Premises being reclaimed less any of the Unamortized Investment attributable to Trade Fixtures moved to the Replacement Premises.

Concessionaire shall not be compensated and City shall not be liable for any inconvenience to Concessionaire or for any interruption of Concessionaire's business, because of moving to Replacement Premises.

If no Replacement Premises are available, as determined solely by City, if Concessionaire fails to respond to City's Notice of Intent to Reclaim Premises within 30 days after receipt of such notice or otherwise rejects the Replacement Premises, or if City deems the use(s) or concept(s) are not appropriate at the Replacement Premises, then the Agreement for the Premises or portion(s) thereof being reclaimed will terminate on the Effective Date provided in the Notice of Intent to Reclaim Premises and provisions of this Agreement related to termination shall apply.

The Parties agree to modify, within ten (10) days of the Effective Date stated in the Notice of Intent to Reclaim Premises, Exhibit A and Exhibit B, as necessary, to delete the portion(s) of the Premises being vacated and incorporate the Replacement Premises, if any. These modifications will be confirmed by letter executed by the Director of Aviation or designee and acknowledged by Concessionaire, without need for formal amendment to this Agreement.

SECTION 2.04 MODIFICATIONS TO PREMISES, TENANT IMPROVEMENTS

City shall have the right to make minor modifications to any portion of the Premises at the sole discretion of City to accommodate Airport operations, security renovations, maintenance, or other work to be completed in the Airport Terminals. Minor modifications are subject to all provisions in Section 2.02.

Minor modifications are those that may affect the Premises, but which do not have any material effect in the Concessionaire activities.

SECTION 2.05 INGRESS AND EGRESS

Subject to all applicable rules, regulations, or City policies governing the use of the Airport, City grants to Concessionaire the non-exclusive right to use, in common with others, certain areas of the Airport Terminals designated by City to be public or to be used in common, including, but not limited to, the walkways, streets, roadways, waiting rooms, hallways, restrooms and other passenger conveniences (Public Areas) for Concessionaire's employees, customers, contractors, agents, invitees and suppliers for the uses for which those Public Areas were designed. Concessionaire's rights under this Section shall include the right of ingress and egress to and from the Premises. City reserves the right to modify the Public Areas at any time and in any way, it deems appropriate, including, but not limited to, reconfiguration of the Public Areas, expansion, or contraction of the Public Areas, or changing access points to and from the Public Areas. Access to some Public Areas will be restricted to Concessionaire's employees who display valid security access badges issued by City.

SECTION 2.06 PREMISES ACCEPTANCE AS IS

Concessionaire understands, acknowledges, and accepts the Premises in its present condition, "As Is" with all faults and with absolutely no warranties as to condition or suitability for use being given by City. City shall have no obligation, liability, or responsibility to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any obligation to maintain,

repair, or replace utilities or telephone/data service) on or to the Premises during the Term other than as explicitly stated in this Agreement.

SECTION 2.07 NO WARRANTY OF ECONOMIC VIABILITY

City makes no warranty, promises or representations as to the economic viability of the Premises or Concessionaire's business concept(s) or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire business operations. Concessionaire acknowledges that airline gate usage and other aspects of Airport operations are subject to change during the Term without notice and that City makes no warranty regarding the location of airline gate usage. Except as is specifically set forth herein, City shall not, by virtue of the existence of this Agreement, be constrained in connection with its operation of the Airport.

ARTICLE III. TERM

SECTION 3.01 TERM

This Agreement shall be effective and binding upon the Parties as of the Effective Date. The Term of this Agreement shall begin on the Premises Completion Date and continue through the Expiration Date, as stated in this Agreement, unless sooner terminated as herein provided.

SECTION 3.02 HOLDOVER

Any occupancy of Premises by Concessionaire with the written consent of City after the Expiration Date shall be on a month-to-month basis with all provisions of this Agreement, including rent, fees and charges, remaining in place until such time that City gives notice to Concessionaire to surrender the Premises. Notice to surrender premises will be provided not less than 30 days prior to the anticipated surrender date.

Any occupancy of Premises by Concessionaire after the termination of this Agreement without the written approval of City constitutes a month-to-month lease on the same terms and conditions as this Agreement. Concessionaire must pay Concession Space Rent, Support Space Rent, and Percentage Rent for the entire holdover period for that portion of Premises where the Agreement has expired or been terminated. No occupancy of any portion of the Premises by Concessionaire after the expiration or other termination of this Agreement with respect to such portion of the Premises extends the Term, except as a holdover tenancy. In the event of such holdover tenancy, Concessionaire shall indemnify City against all damages arising out of the Concessionaire's holdover tenancy, including but not limited to, any costs incurred by City to evict Concessionaire, and all insurance policies and Security Deposits required to be obtained and maintained by Concessionaire as set forth in this Agreement shall continue in full force and effect.

SECTION 3.03 RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

Concessionaire shall, upon termination of this Agreement, with or without cause, surrender the Premises to City peaceably, quietly and in as good order and condition as

the same now are or may be hereafter improved by Concessionaire or City, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore, excepted. Concessionaire shall remove all signage and provide temporary walls to seal all openings of premises that meet the guidelines outlined in the Tenant Handbook. Concessionaire shall also provide to City all keys to doors, window displays or any area of controlled access within the footprint of the Premises. City shall be entitled to exercise the non-judicial remedy of locking Concessionaire out of the Premises as a means of enforcing City's right of possession, regardless of whether Concessionaire is delinquent in rental payments, including without limitation the de-activation of Concessionaire's security badges or credentials; and this right of de-activation shall not, and legally cannot, limit or otherwise affect City's governmental police powers to de-activate security credentials for security or other governmental reasons.

Upon expiration or termination of this Agreement, Concessionaire shall, subject to City's lien described in Section 4.12, remove all furniture, fixtures and equipment installed by Concessionaire and Concessionaire or brand proprietary property, inventory, and other personal property, and leave the Premises in broom clean condition. Any damage to the Premises caused by Concessionaire's removal of such furniture, fixtures, equipment, or property shall be immediately repaired by Concessionaire at Concessionaire's expense and to the satisfaction of City. Notwithstanding the foregoing, if Concessionaire fails to remove such furniture, fixtures, equipment or property within ten (10) days from the date of termination of this Agreement, then Concessionaire shall be deemed to have abandoned same and City shall have the right, at its option, and in its sole discretion, to take title to said furniture, fixtures, equipment and/or property and sell, Agreement, salvage, or dispose of the same in any manner permitted by law. Concessionaire shall have no right, interest, or claim in or to any proceeds of the sale or other disposition of such items. Any net expense City incurs in disposing of such items shall be immediately reimbursed by Concessionaire. No act by City shall be deemed an acceptance of a surrender of the Premises. No acceptance of a surrender of the Premises shall be valid unless it is in writing and signed by City.

SECTION 3.04 END OF TERM TRANSITION

During the final Agreement Year, City plans to award and transition to a new agreement for concessions services that may include rights to the Premises or portions thereof. If Concessionaire is not selected for the new agreement, City will notify Concessionaire in writing of the exact dates of a transition period. Concessionaire will cooperate fully with City and Concessionaire's successor to ensure an effective and efficient transition of the Premises and concession operations to the successor. Concessionaire acknowledges its responsibility to continuously perform the Concession in a professional, high-quality, and customer-centric manner during the transition to the successor.

ARTICLE IV. RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS

SECTION 4.01 DEFINITION OF GROSS RECEIPTS

Gross Receipts (sometimes referred to as Gross Revenues or Gross Sales) include all monies paid or payable to Concessionaire for sales made, services rendered, and customer orders fulfilled at or from the Premises, regardless of when or where the customer order is placed (including outside the Premises), and any other receipts, credits, rebates, allowances, internet sales, mobile app sales (owned or third-party), or revenues of any type arising out of or in connection with Concessionaire's or Concessionaire's sub-concessionaires' or agents' operations at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances (RDAs), and any other type of ancillary advertising or product placement fees, and other allowances and fees. Gross Receipts shall not include:

1. Any taxes imposed by law that are separately stated to and paid by a customer and directly payable to the taxing authority by Concessionaire.
2. Amounts and credits received from suppliers for products and merchandise returned by concessionaire.
3. Cash and credit card refunds to customers for merchandise returned.
4. Amounts and credits received in settlement of claims for loss of, or damage to, merchandise.
5. Insurance proceeds received from the settlement of claims for the loss of or damages to Concessionaire's property at or on the Premises other than the proceeds from business interruption insurance.
6. Inter-company store transfers.
7. United States Postal Service stamp sales.
8. Uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees.
9. Reimbursements from Concessionaire's sub-concessionaires for any taxes, fees, franchise or license fees, utilities or other services paid or provided by Concessionaire for or on behalf of its sub-concessionaires; provided, however, that any reimbursement more than the actual cost of such taxes, fees, franchise or license fees, utilities or other services shall be included in Gross Receipts.
10. Rental, fees, and charges paid to Concessionaire by its sub-concessionaires pursuant to the provisions of this Contract; provided, however, that any such payment more than the amounts required hereunder shall be included in Gross Receipts.
11. Gift cards sold at the Premises. When a gift card is redeemed or accepted as payment for a purchase at the Premises, the transaction must be reported as part of Gross Receipts.
12. Amounts for coupons and other forms of discounts (including Airport but not limited to, employee meals, complimentary customer meals, and the Airport

employee discount described in Section 6.03), such that only the amounts received are ultimately included in Gross Receipts.

13. Gratuities for services performed by employees paid by Concessionaire or by its customers except to the extent Concessionaire may be entitled to receive a portion of the gratuities.

SECTION 4.02 CONCESSION SPACE RENT

Commencing on the Date of Beneficial Occupancy, Concessionaire covenants and agrees for each contract year of the Term to pay to City Concession Space Rent, calculated in advance and without demand or invoice. Concession Space Rent is payable in 12 monthly equal payments, beginning on the Commencement Date and on the first day of each month thereafter throughout the Term of this Agreement. Concession Locations are shown in Exhibit A and attached and incorporated herein, as set forth in sub-paragraph 1 of this Section below:

1. Concession Space Rent shall consist of an annual sum calculated on the basis of forty dollars (\$40.00) per square foot for the area of the Concessionaire's Space.

SECTION 4.03 SUPPORT SPACE RENT

As consideration for the right and privilege to Support Space as granted herein, Concessionaire agrees for each contract year of the Term to pay to City Support Space Rent, calculated in advance and without demand or invoice. Concession Space Rent is payable in 12 monthly equal payments, beginning on the Commencement Date and on the first day of each month thereafter throughout the Term of this Agreement. Support Spaces are shown in Exhibit A and attached and incorporated herein, as set forth in sub-paragraph 1 of this Section below:

1. Support Space Rent shall consist of an annual sum calculated on the basis of twenty dollars (\$20.00) per square foot for the area of the Concessionaire's Support Space.

SECTION 4.05 ANNUAL RENTAL ADJUSTMENTS

The Concession Space Rent and Support Space Rent will be adjusted on the first annual anniversary of the Date of Beneficial Occupancy and each year thereafter, based on the annual percentage change in the CPI-U Index. However, in no event will the annual adjustment result in Rent being less than the amount charged during the prior contract year or more than five percent (5%) above.

SECTION 4.06 PERCENTAGE RENT

At all times while Gross Receipts are being generated from the Premises, Concessionaire shall calculate Percentage Rent each Agreement Month, which Percentage Rent shall be equal to the product of the applicable Percentage Rent Rate(s) times the amount of Concessionaire's Gross Receipts during such Agreement Month. The Percent Rent Rate(s) shall be ten percent (10%) for the term of this Agreement. Concessionaire shall

pay Percentage Rent to City monthly without prior notice or demand within fifteen (15) days after the expiration of each Agreement Month. All Percentage Rent payments shall be computed based on all Gross Receipts made during the previous Agreement Month as all such Gross Receipts are indicated on Concessionaire's Monthly Concession Report.

SECTION 4.07 AIRPORT CHARGES

Concessionaire shall pay to City any other fees and charges assessed by City relating to City's operation and maintenance of the Airport, including without limitation, for segregation and/or removal of garbage and refuse, in accordance with standard rates or nondiscriminatory prorated charges, established by City from time to time, as well as any additional charges assessed by City relating to Concessionaire's activities or operations at the Airport, which charges shall equal Concessionaire's proportionate share. Such other fees and charges may include, but shall not be limited to, fees for security badges and charges to account for additional expenses City incurs in operating the Facilities due to Concessionaire's operations. All persons employed at the Terminal are required to obtain background checks, security clearances and identification security badges from City and City has the right to institute a charge for the processing, issuance and reviews and renewals. All security badges must be properly accounted for by Concessionaire and promptly returned in accordance with City's and all other applicable rules, policies and regulations.

SECTION 4.08 SCREENING

If applicable as may be required by local, state, or federal Law, including, but not limited to, the Federal Aviation Administration's (FAA), the Transportation Security Administration's (TSA), City's or any other applicable rules and regulations now in effect or hereinafter enacted, costs incurred for the screening of Concessionaire's goods, merchandise, products, equipment, materials and supplies, which shall be paid by Concessionaire directly to City.

SECTION 4.09 ADDITIONAL RENT

In addition to Concession Space Rent, Support Space Rent and Percentage Rent, Concessionaire shall pay, as Additional Rent, all sums of money required to be paid by Concessionaire to City hereunder, including, but not limited to: Concessionaire's share of taxes assessed against City, operating costs and expenses, utility charges, and any other sums or charges which may be due from Concessionaire hereunder. If such amounts or charges are not paid at the time and in the manner as provided herein, they shall nevertheless be collectible as Additional Rent with the next payment of Concession Space Rent thereafter falling due, but nothing herein shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of City. All amounts of rentals payable in each month shall be deemed to comprise a single rental obligation of Concessionaire.

SECTION 4.10 FAILURE TO MAKE TIMELY PAYMENTS

Without waiving any other right or action available to City, in the event Concessionaire is delinquent in the payment of rents, fees, or charges hereunder or rightly due and owing by an audit of Concessionaire's books and records as provided in Section 4.13, and in the event Concessionaire is delinquent in paying to City any such rents, fees, or charges for a period of six (6) days after the payment is due, City reserves the right to charge Concessionaire interest thereon, from the date such rents, fees, or charges became due to the date of payment, and shall accrue interest at the Past Due Interest Rate from the due date until paid in full, or the maximum rate allowed by law.

In the event of a dispute as to the amount to be paid, City shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, interest shall apply only to the deficiency.

The right of City to require payment of interest and the obligation of the Concessionaire to pay same shall be in addition to and not in lieu of the right of City to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

The failure of City to act in the event of a delinquent payment or series of payments shall in no way waive the right of City to act at a subsequent time. City expects all rents, fees, and charges to be paid on time and Concessionaire agrees to pay on time.

Notwithstanding other provisions of this Agreement, and without limiting the other provisions of this Agreement concerning, among other things, events deemed to constitute default of Concessionaire, City may, in City's reasonably exercised discretion, terminate this Agreement upon written notice to Concessionaire if (i) there are recurring instances in which Concessionaire's payments required hereunder are not timely or are insufficient to cover sums actually due and payable; or (ii) Concessionaire fails to maintain adequate records and accounts reflecting its business operations at the Airport and calculation of Gross Receipts/Revenues under this Agreement; or (iii) Concessionaire fails or refuses to submit the formal supporting paperwork as required herein.

SECTION 4.11 OFF SET CREDITS ON ACCOUNT

If any credit on the Lessee's account is 180 days or older, the Lessor has the right to apply such credit to the outstanding balance without prior written consent from the Lessee and which invoice to apply the credit to.

SECTION 4.12 CITY'S LIEN

City shall have a lien upon all Trade Fixtures and Personal Property of the Concessionaire placed in or on the Premises, to the extent permitted by law, for the purpose of securing the payment of all sums of money that may be due to City from Concessionaire under this Agreement.

This lien shall supersede any other lien including any lien created in connection with Concessionaire's financing. Concessionaire is prohibited from pledging any Trade Fixtures and/or Personal Property without prior, written permission of City.

SECTION 4.13 RECORD KEEPING, REPORTS, ANNUAL AUDIT, & END OF YEAR ADJUSTMENT

A. Generally Accepted Accounting Principles

Concessionaire shall prepare and maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books and records that include all financial transactions in the performance of this Agreement. Concessionaire's system of accounts shall allow each Concession Location to be distinguished from all other Concession Locations. Concessionaire shall maintain source documents sufficient to support its books, records, and reports. The books and source documents to be kept by Concessionaire must include records of inventories and receipts of merchandise, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Premises by all persons or entities conducting business in or from the Premises. Pertinent original sales records include: (i) cash register tapes, including tapes from temporary registers, (ii) serially prenumbered sales slips, (iii) the original records of all mail and telephone orders at and to the Premises, (iv) settlement report sheets of transactions with subtenants, concessionaires, licensees and assignees, (v) original records indicating that merchandise returned by customers was purchased at the Premises by such customers, (vi) memorandum receipts or other records of merchandise taken out on approval, (vii) detailed original records or any exclusions or deductions from Gross Receipts/Revenues, (viii) sales tax records, and (ix) all other sales records, if any, that would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Gross Receipts/Revenues. All monies related to this Agreement shall be deposited to and paid from a business bank account(s), the records for which shall be subject to review and audit in accordance with the provisions hereof.

B. Financial Reports

1. Daily Gross Receipts/Revenues: Upon request of the City, Concessionaire agrees to report Gross Receipts/Revenues for periods of less than one month in a format and frequency as requested by City.
2. Monthly Concession Report: No later than fifteen (15) days after the end of each month during the Term, Concessionaire shall deliver to City a certified Monthly Concession Report, in a form as set forth in Exhibit C attached hereto, stating Gross Receipts/Revenues for said month for each Concession Location and the calculation of Percentage Fee payable for said month.
3. Annual Audit: No later than 90 days after the end of each Agreement Year during the Term, Concessionaire shall, at its sole cost and expense, provide an annual audit report by an independent Certified Public Accountant, licensed in the

State of California and acceptable to City, of Concessionaire's monthly Gross Receipts/Revenues and the amounts paid to City as Rent for the subject Agreement Year, or part thereof (said annual audit report hereinafter referred to as Annual Report). There may be no limitation on the scope of the engagement that would preclude the auditor from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Receipts/Revenues. The engagement will include a Schedule of Gross Receipts, Rent and all other fees and charges for each month of the Concessionaire's operations in the Agreement Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to City. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion on whether the Schedule of Gross Receipts, Rent and all other fees and charges has been completely and accurately presented, calculated, and reported according to the terms of this Agreement.

C. Findings

City reserves the right to challenge any findings or conclusions of the Annual Report if it believes an error may have occurred. In such event, City may conduct its own audit under the provisions in Section 4.16 or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by City of any dispute will be final. Delivery of an Annual Report containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

D. End of Year Adjustment

If Concessionaire has paid to City an amount greater than Concessionaire is required to pay as Rent for an Agreement Year under the terms hereof, Concessionaire shall be entitled to a credit against Concessionaire's MAG for the amount of the overpayment. If Concessionaire has paid less than the amount required to be paid as Rent for such Agreement Year, then Concessionaire shall pay the difference to City in the next payment of the MAG.

E. Form, Frequency, and Method of Reporting

Acceptance of monthly reports and payments by City does not constitute agreement by City with the amounts reported and paid. City reserves the right to change the form and frequency of reports and statements, including, but not limited to, the Monthly Concession Report, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Receipts/Revenues hereunder. Concessionaire agrees to change the form of the

required reports and statements as requested by City and to provide any additional statistics and information City may request.

City shall have the right at any time to require that reports be delivered electronically using technology and procedures designated by City. If City instructs Concessionaire to deliver any reports and statements required hereunder by computer, e-mail, internet website, or transmission, City shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

SECTION 4.14 PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS

- A. Unless otherwise provided in this Agreement, fixed (i.e. non-activity based) Airport rentals, fees and charges shall be due and payable the first (1st) day of each month, in advance, without invoice.
- B. Unless otherwise provided in this Agreement, variable (i.e. activity based) Airport rentals, fees, and charges shall be due and payable the fifteenth (15th) day of each month following the month in which assessed, without invoice.
- C. Unless otherwise provided in this Agreement, all other rentals, fees, and charges shall be due and payable on invoice within thirty (30) days of the date of the invoice.
- D. The acceptance by City of any payment by Concessionaire shall neither constitute City's approval of, nor preclude City from questioning the accuracy of, computations in Monthly Activity Report, submitted to City as provided in this Agreement, or from recovering any additional payment actually due from Concessionaire.
- E. Any payment not received by the due date shall be deemed delinquent and shall accrue interest at the Past Due Interest Rate from the due date until paid in full, or the maximum rate allowed by law.
- F. All payments due and payable herein shall be paid in lawful money of the United States of America, without set off, by check or wire transfer made payable to City and delivered or wired, as applicable, to the following address or account, or to such other address or account as City by service of written notice upon Concessionaire, may otherwise direct the payment thereof from time to time during the term hereof:

Via Mail/Express
City of Fresno - Airports
Fresno Yosemite International Airport
Attn: Airport Accounting
4995 East Clinton Way
Fresno, CA 93727-1504

SECTION 4.15 FORM OF PAYMENT

City reserves the right to require other methods of payment as designated in writing by City. Concessionaire shall provide City with necessary information and authorizations as needed to facilitate such payments.

SECTION 4.16 CITY'S RIGHT TO PERFORM AUDITS, INSPECTIONS, OR ATTESTATIONS

Notwithstanding Concessionaire's requirement to submit the Annual Report set forth herein, Concessionaire shall make available to City, upon the written request of the City, at the offices of the Concessionaire at the Airport such books, records and accounts, or photocopies thereof, that are relevant to payment of rentals, fees and charges required under this Agreement for the current year and the preceding calendar year, and shall make such records, or photocopies thereof, available for inspection and audit by City or its authorized representative at reasonable and mutually agreed upon hours and times during the entire term of this Agreement and for two (2) years thereafter.

This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance agreements, records of refunds or voids, and joint venture or partnership agreements. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire's suppliers or others, assisting City in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts/Revenues are deposited) as reasonably considered necessary by City, or its representative, to complete the audit/inspection. There may be no limitation in the scope of the audit, inspection or attestation that would hinder City in testing the accuracy and completeness of the reported Gross Receipts/Revenues. All such books, records, and agreements shall be kept for a minimum period of five (5) years after the close of each Agreement Year.

Audits and inspections will be conducted at the Airport. However, if agreed to by City, the audit or inspection can be conducted at another location, in which event Concessionaire shall reimburse City for reasonable transportation, food and lodging costs associated with the audit or inspection, accrued in accordance with City's Policy and Standard Procedure relating to travel expenses. Concessionaire shall allow City's representatives to photocopy any records the representatives determine to be necessary to conduct and support the audit or inspection. Concessionaire shall provide City's representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the audit or inspection. Concessionaire shall not charge City for reasonable use of Concessionaire's photocopy machine while conducting the audit or inspection, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical microform or other media. Concessionaire shall provide all records and retrievals requested within seven (7) days of the request. The Parties recognize that City will incur additional costs if records

requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree that City may assess liquidated damages in the amount of \$100 per day for each record requested that is not received. Such damages may be assessed beginning on the eighth (8th) day following the date the request was made. Accrual of such damages will continue until specific performance is accomplished.

If, because of any audit or inspection, it is established that Concessionaire owes additional rents, fees, or charges to City, Concessionaire will pay such additional rents, fees and charges and City may assess interest in accordance with Section 4.10. If it is established that Concessionaire underreported Gross Receipts/Revenues or underpaid fees related to Gross Receipts/Revenues by three percent (3%) or more for the period under consideration, the entire expense of the engagement may be billed to Concessionaire. Any additional payments due shall be paid, no later than Concessionaire's next payment of the Guaranteed Rent, by Concessionaire to City. If it is established that Concessionaire underreported Gross Receipts/Revenues or underpaid fees related to Gross Receipts/Revenues by five percent (5%) or more for the period under consideration, City shall be entitled to terminate this Agreement for cause upon thirty (30) days' written notice, regardless of whether the deficiency is paid. If because of any audit or inspection, it is established that Concessionaire has correctly reported or over reported Gross Receipts/Revenues or has paid fees related to Gross Receipts/Revenues equivalent to or greater than the sum due, City shall refund Concessionaire and the entire expense of the audit or inspection shall be paid by City.

Concessionaire will include a provision providing City the same rights to initiate and perform audits, inspections, or attestations in any sub-concessionaire agreement that it enters and cause its sub-concessionaires to similarly include the statements in further sub-concessionaire agreements.

Record Retention. The Concessionaire will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

Retention Period. The Concessionaire agrees to comply with the record retention requirements in accordance with 2 C.F.R. section 200.333. The Concessionaire shall maintain all books, records, accounts and reports required under this Agreement for a period of at not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

Access to Records. The Concessionaire agrees to provide sufficient access to City to inspect and audit records and information related to performance of this contract as reasonably may be required.

Access to the Sites of Performance. The Concessionaire agrees to permit City access to the sites of performance under this Agreement as reasonably may be required.

SECTION 4.17 SEVERE DECLINE IN ENPLANEMENTS

A. Concession Space Rent Reduction/Suspension

If at any time during the Term, there is a Severe Decline in Enplanements for Three Consecutive Months as compared to same time period in the previous year, then the Concession Space Rent shall be temporarily suspended (or may be reduced in proportion to the enplanement decline) as follows:

1. The Concession Space Rent reduction/suspension shall be effective on the first day of the month immediately following the Severe Decline in Enplanements for Three Consecutive Months.
2. During such Concession Space Rent reduction/suspension period, Concessionaire shall be required to pay the greater of the Percentage Rent or reduced Concession Space Rent, unless and until the Concession Space Rent is fully reinstated as provided below. On or before the 10th day of each month, Concessionaire will submit to City a Sales Report showing Concessionaire's Gross Revenues achieved with respect to the prior month, together with the Percentage Rent calculated on such Gross Revenues, cumulated by Agreement Year.
3. If this Agreement provides that the Percentage Rent is based on a tiered gross revenue structure, for purposes of determining the Percentage Rent payable, the annual Gross Revenues shall continue to cumulate as provided in this Agreement. For example, if Concessionaire's Agreement Year is November 1 through October 31, then for purposes of calculating Percentage Rent for April, all gross revenues achieved to date (from November 1 through April 30) will be cumulated.

B. Concession Space Rent Reinstatement

Once Enplanement Stabilization for Three Consecutive Months has been achieved, then the Concession Space Rent is reinstated, and will continue unless and until there is another Severe Decline in Enplanements for Three Consecutive Months, as follows:

1. Such Concession Space Rent reinstatement will be effective on the first day of the month following an Enplanement Stabilization for Three Consecutive Months.
2. In the event the Concession Space Rent is reinstated after the commencement of an Agreement Year or other period for annual gross revenue accumulation specified in this Agreement, the Concession Space Rent will be pro-rated accordingly.

C. Determination of Total Enplanements and “True-Ups”

The parties acknowledge that Total Enplanements for a particular month are not usually determined as of the first day of the following month. Accordingly, unless and until the Concession Space Rent is suspended as provided herein, Concessionaire shall continue to pay the Percentage Fee as and when required hereunder. When Concession Space Rent is later suspended pursuant to Section 4.17(A), then City shall issue a rent credit to reflect any resulting overpayment in rent. If and to the extent Concessionaire has any outstanding obligations to City hereunder, City may decline to issue such rent credit or reduce the rent credit by the amount outstanding. When the Concession Space Rent is reinstated, Concessionaire shall pay to City within five (5) days after City shall have given notice to Concessionaire of such reinstatement, the deficiency, if any, between the Percentage Rent paid by Concessionaire and the Concession Space Rent, for the month(s) following such reinstatement.

D. Total Enplanement Determinations

Director of Aviation or designee shall have the sole discretion as to the Total Enplanement calculations, and whether there exists a Severe Decline in Enplanements for Three Consecutive Months and/or an Enplanement Stabilization for Three Consecutive Months.

E. No Effect

The Concession Space Rent suspension shall have no effect on (i) any adjustments specified in this Agreement to be made to the Concession Space Rent; or (ii) the Deposit Amount.

F. Effect of Default

Notwithstanding anything to the contrary herein, in the event Concessionaire shall default under this Agreement or any other agreement, the Director of Aviation or designee may immediately reinstate the Concession Space Rent, without giving to Concessionaire the benefit of any notice or right to cure as may otherwise be provided under this Agreement or other agreement.

G. Sub-Concessionaires

Without limiting the provisions of Article XXV (Assignment and Subcontract) if Concessionaire subleases any portion of the Premises, Concessionaire shall offer to such sublessor(s) the same types of Concession Space Rent suspension as are provided herein.

H. Example of Severe Decline in Enplanements Calculation

For purposes of this Section, please refer to Exhibit I for an example of how the Severe Decline in Enplanements for Three Consecutive Months clause is calculated.

ARTICLE V. PERMITTED USES

SECTION 5.01 PERMITTED USE

A. Uses

The Premises shall be used by Concessionaire only for the purposes of performing the Concession, as further described in this Agreement and for such other uses as City may agree to in writing. Concessionaire recognizes that the specific limited use prescribed herein is a material consideration to City in order that the Airport will, in City's sole discretion, maintain an appropriate concession mix to efficiently serve the traveling public and to produce the maximum Gross Sales possible for all Concessionaires.

The Support Spaces shall be used by Concessionaire only for office and administrative purposes related to the operation of the Concession and the storage and preparation of products necessary for the operation of the Concession. No portion of the Premises shall be used to warehouse, stock, or store any goods, wares or merchandise not intended to be offered for sale at or from the Premises.

B. Concession Locations

Exhibit B, Permitted Uses, which is attached hereto and made a part hereof, sets forth the trade name for each Concession Location and a listing, by general category, of goods and services that Concessionaire is allowed to sell from each Concession Location. Such list of the Permitted Uses shall constitute a limitation of the goods and services, which may be sold at each Concession Location.

Concessionaire's Permitted Uses will be limited to its proposed and approved concepts and uses within the Food & Beverage and Retail, News & Convenience categories, as further described in Exhibit B.

C. Permitted Products, Services and Prices

No later than 30 days prior to the opening of a Concession Location, Concessionaire must submit to City, for its written approval, a listing, substantially consistent with Exhibit G and as requested by City, of the goods and services to be sold from the Concession Location. Such listing (hereinafter referred to as the Product Price List) must include the prices to be charged to the public for the goods and services.

Once approved by City, the Product Price List for each Concession Location shall remain in effect through the first year of this Agreement. Concessionaire shall not add, delete, or sell any goods or services not included on the Product Price List, nor change the price of any good or service, without first receiving written approval from City, which approval shall not be unreasonably withheld or delayed. Written approval shall serve to modify the Product Price List without need for amendment of this Agreement.

City may, at its discretion, require Concessionaire to add goods or services that are in public demand to the Product Price List for any Concession Location.

Within ten (10) business days of a written request by City, Concessionaire shall provide a current Product Price List.

SECTION 5.02 NON-EXCLUSIVE RIGHTS

The rights granted herein for the performance of the Concession shall be non-exclusive. City may, at any time, award space (existing or newly created) to other parties who may have rights or may sell goods or products like those non-exclusively granted herein. City may, in its sole discretion, grant exclusive rights to other concessionaires to sell goods or services that Concessionaire is not authorized to sell, whether such agreements are awarded competitively or through negotiations and regardless of whether the terms of such agreements are favorable than the terms of this Agreement.

In the event of a dispute between Concessionaire and any other party operating at the Airport as to the rights of the parties under their respective contracts, City shall determine the rights of each party and Concessionaire agrees to be bound by City's decision.

SECTION 5.03 RESTRICTIONS

Nothing in this Section/Article will be construed as authorizing Concessionaire to conduct any business separate and apart from this Agreement or in areas at the Airport other than the Premises.

All rights and privileges not specifically granted to Concessionaire for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to City.

SECTION 5.04 PERMITS AND LICENSES

Concessionaire will obtain and maintain throughout the Term all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concession. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed within the Premises and forwarded to City upon issuance and each renewal.

In the event, City is required or has obtained any of the necessary permits, Concessionaire will reimburse City for any permit fees and associated costs in obtaining said permits.

ARTICLE VI. OPERATIONS AND PERFORMANCE STANDARDS

SECTION 6.01 CITY'S RIGHT TO MONITOR PERFORMANCE

A. Performance Audits

It is City's intention that Concessionaire's business be conducted in a manner to meet the needs of the Airport's patrons and employees and in a manner that will reflect positively upon the Concessionaire and City. The Concessionaire shall equip, organize, and efficiently manage the Concession to provide exemplary service and products in a clean, attractive, and pleasant atmosphere.

City in its sole discretion shall have the right to raise reasonable objections to the condition of the Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, and/or the appearance and performance of service personnel, and to require any such conditions or practices objectionable to City to be promptly remedied by Concessionaire. If requested by Concessionaire, City shall submit its objections in writing and provide Concessionaire an opportunity to reply to the objections. Such reply will be given consideration by City.

City reserves the right to conduct periodic performance audits of the Premises to assure that all the operational, safety and compliance standards of this Agreement are consistently performed by Concessionaire. Concessionaire acknowledges that performance audits will be conducted by City, or its representative, and hereby agrees to cooperate with all performance audits.

1. Performance audits may include minimum objective standards in any or all the areas of (i) product quality; (ii) customer service; and (iii) cleanliness and maintenance. If Concessionaire fails to meet minimum standards in any of these areas, City may, at its discretion, assess fines as set forth in the Tenant Handbook. City representatives may also take photographs as deemed necessary during inspection of premises. City representatives will make best efforts not to interfere with Concessionaire's business operation
2. To assure consistent adherence to performance standards throughout the Term, City will use the Agreement Year 12-month cycle in the recording of incidents of failure to meet standards. City reserves the right to assess fines for violations of performance standards as set forth in the Tenant Handbook.
3. If Concessionaire fails to address repeated violations and deficiencies in performance standards by either Concessionaire or any of its sub-lessee(s), City, at its sole discretion, reserves the right to trigger remedies available to City, which depending on the severity of the repeated violations and deficiencies may include the termination of this Agreement.

B. Annual Review

No later than 90 days after the end of the first full Agreement Year after the Premises Completion Date, and the end of each Agreement Year thereafter, in City's sole discretion, Concessionaire and City may meet to review and evaluate the financial, customer service, and operational performance of each Concession Location. During the review, City may determine, in its sole discretion, that the performance of one or more of the Concession Locations is unsatisfactory if one or more of the following occurred during the prior Agreement Year:

1. Sales per Enplaned Passenger were less than seventy-five percent (75%) of the Projected Sales per Enplaned Passenger for the Concession Location, as set forth in Concessionaire's response to REQUEST FOR PROPOSALS FOR FOOD & BEVERAGE CONCESSIONS AND NEWS & CONVENIENCE

CONCESSIONS AT FRESNO YOSEMITE INTERNATIONAL AIRPORT TERMINAL (notwithstanding any incidence of Exceptional Circumstances/Severe Decline in Enplanements within the Agreement Year).

2. Sales per Enplaned Passenger were less than seventy-five percent (75%) of Sales per Enplaned Passenger for the same Concession Location during each of the two (2) preceding Agreement Years (notwithstanding any incidence of Severe Decline in Enplanements within the Agreement Year).
3. Scores on any secret shopper survey(s) conducted by City or its representative were less than seventy-five percent (75%) of the maximum achievable scores for the survey(s).
4. Scores on any operational survey(s) conducted by City or its representative were less than seventy-five percent (75%) of the maximum achievable scores for the survey(s).

C. Remediation Plan

If City determines, based on the performance criteria specified in this Section 6.01(B), that a Concession Location performed unsatisfactorily during the prior Agreement Year, City will provide written notice to Concessionaire. Within 30 days of receipt of such written notice, Concessionaire shall prepare and submit to City, for its approval, a Remediation Plan, as described below, to improve the performance of the Concession Location.

The Remediation Plan shall include, but not be limited to, proposed remedial activities such as employee training, staffing changes, merchandise and service modifications, facility refurbishment and repair, and/or replacement of concept or brand. Upon approval by City, Concessionaire agrees to diligently implement the approved Remediation Plan and further agrees to submit to City monthly reports on the progress of such implementation. If the approved Remediation Plan includes the replacement of a concept or brand, then City and Concessionaire will enter good faith negotiations concerning a concept or replacement brand. If the concept or brand replacement is mutually agreed to, the reimbursement for Unamortized Investment and the Capital Investment required for the concept or brand substitution will be a component of the good faith negotiations.

In the event City determines, after six (6) months of implementation of a Remediation Plan, the subject Concession Location is still performing in an unsatisfactory manner, City reserves the right to require Concessionaire to replace the underperforming concept or brand, if not already replaced by the Remediation Plan. Within 90 days of receipt of written notice from City requiring a replacement, Concessionaire shall submit to City a proposal for a brand or concept replacement plan. Such replacement plan shall include, but not be limited to, a detailed description of the brand or concept, capital expense required to re-brand, sales projections, and the specific timetable to replace the brand or concept. City, in its sole discretion, reserves the right to approve or deny the replacement plan and require Concessionaire to submit another replacement plan.

SECTION 6.02 QUALITY OF PRODUCTS AND SERVICES

Concessionaire shall ensure that all customers are provided the optimum quality of food, products and services, and Concessionaire shall keep in stock and have ready for sale at all times of operation, a sufficient supply and variety of food, beverage, articles, and goods offered for sale at each Concession Location, consistent with the Product Price List, to meet the demand of customers at the Airport.

If City identifies any deficiencies with respect to the operations, including, without limitation, quality, variety, and quantity of goods or services offered, Concessionaire shall be notified in writing by City and shall correct, or cause to be corrected, such problem or problems within seven (7) days, unless City authorizes in writing a longer period. If Concessionaire fails to correct within seven (7) days after written notice is given by City, City may assess fines as described in the Tenant Handbook.

Concessionaire shall develop and implement creative merchandising techniques and displays to optimize customer satisfaction and Gross Receipts/Revenues, including without limitation, food and beverage displays; retail merchandise displays; display cases; promotional displays; attractive and durable packaging; menu boards or table-top menus; and pictures of food and beverages or retail merchandise. Prices for all food and beverages, including alcoholic beverages, shall be prominently displayed on menus or menu boards and available to all customers. All food, beverages, retail merchandise and other items sold or kept for sale shall be of high quality and wholesome and must comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, local and other governmental bodies of competent jurisdiction that apply in any manner to Concessionaire or Concessionaire's operations and activities under this Agreement. Concessionaire's printed or digital menus and/or price lists shall include the appropriate use of descriptive terminology that accurately and truthfully describes the food, beverages, services, or products being offered.

City reserves the right to approve all merchandising displays. Concessionaire hereby affirms that City, in its sole discretion, has the absolute right to require that Concessionaire discontinue the sale of any product City deems unsatisfactory, distasteful, or inappropriate for any reason and to require Concessionaire to modify merchandising displays for any reason. If Concessionaire fails to comply with any such City request within one (1) day after written notice from City, City may assess fines as described in the Tenant Handbook.

All franchise and/or license standards applicable to a Concession Location shall be met or exceeded. Copies of the franchise/license standards and performance audit forms shall be sent to City prior to the first day of business at such Concession Location. Concessionaire shall submit to City copies of all inspections conducted by the franchisor, licensor or mystery shopper service hired by the franchisor or licensor within ten (10) days of receipt by Concessionaire.

All food and non-alcoholic beverages available for sale should be made available for customers to carry out if they so request. The containers and plasticware for carry out should be recyclable, made of sustainable materials, high quality, and substantial enough for the customer to take on an airplane. All carry out packaging must be approved by City for quality, usefulness, and durability.

SECTION 6.03 PRICING

A. Products & Pricing

Concessionaire has caused to be attached hereto as Exhibit K a complete listing of all goods, menu items and/or services Concessionaire is allowed to sell from the Premises as well as the prices to be charged to the public. The execution of this Agreement constitutes acceptance by City of the merchandise, services, and pricing as reflected on the referenced exhibit. Prices must be visibly displayed to customers for all products. For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price shall not exceed the pre-printed price.

Concessionaire shall not add, delete or sell merchandise categories, menu items and/or services not reflected on the aforesaid exhibit without first receiving written approval from City, which shall not be unreasonably withheld or delayed. It is agreed that in the event of any conflict between Concessionaire and another Concessionaire as to specific items sold, City shall have the sole authority to resolve the conflict as it deems appropriate.

B. Pricing Models

Concessionaire shall comply with one or more of the pricing models listed below. The pricing model(s) applicable to this Agreement shall be selected by City and communicated to Concessionaire.

- 1. Airport Brands (concessions located exclusively at airports):**
Concessionaire shall price its products and services at or below the average price charged at other U.S. airports for the same product or service. To determine the average price charged for a product or service, Concessionaire shall use pricing from same-brand concessions at the three U.S. airports (other than FAT) most similar in passenger volume to FAT.
- 2. Franchise or Corporate-Owned Brands (concessions with same-brand “street-side” locations in the Fresno-Madera Metropolitan Statistical Area):**
Concessionaire shall price its products and services no more than ten (10) percent above the average price charged at other Fresno-Madera Metropolitan Statistical Area locations for the same product or service. To determine the average price charged for a product or service, Concessionaire shall use pricing from three same-brand locations in the Fresno-Madera Metropolitan Statistical Area.

3. **Custom Brands** (concessions with no same-brand “street-side” locations in the Fresno-Madera Metropolitan Statistical Area): Concessionaire shall price its products and services no more than ten (10) percent above the average price charged at other Fresno-Madera Metropolitan Statistical Area locations, within five (5) miles of the Airport, selling similar products and services. To determine the average price charged for a product or service, Concessionaire shall use pricing from three locations selling similar products and services in the Fresno-Madera Metropolitan Statistical Area and within five (5) miles of the Airport.
4. **Unique Brands** (concessions with same-brand “street-side” locations; however, the locations are not comparable based on product offerings, pricing strategies, or other differences): Concessionaire shall price its products and services no more than ten (10) percent above the average price charged at other Fresno-Madera Metropolitan Statistical Area locations within five (5) miles of the Airport selling similar products and services. To determine the average price charged for a product or service, Concessionaire shall use pricing from three locations selling similar products and services within five (5) miles of the Airport in the Fresno-Madera Metropolitan Statistical Area.
5. **Local Brands** (concessions with same-brand locations only in California): Concessionaire shall price its products and services no more than ten (10) percent above the average price charged at other locations for the same product or service. To determine the average price charged for a product or service, Concessionaire shall use pricing from three same-brand locations in the Fresno-Madera Metropolitan Statistical Area; same-brand locations in California may be used to the extent that there are not enough locations in the Fresno-Madera Metropolitan Statistical Area.
6. **Other Brands** (concessions that, in the City’s opinion, do not meet one of the pricing models listed above): Concessionaire shall price its products and services using a pricing model separately stated and agreed to by City and Concessionaire.

C. Pricing Policy

Concessionaire agrees to the following provisions with respect to products and pricing:

1. Except as indicated in Section 6.03, paragraph B.1 (Airport Brands), institutional, event, sporting, and other non-“street-side” locations (e.g., schools, hospitals, airports, arenas, stadiums, amusement parks, convention centers, and hotels) may not be used to determine the average price charged for a product or service.
2. Upon receiving a Certificate of Occupancy, Concessionaire shall provide to City an updated list of products and services it proposes to sell, along with the proposed price for each item. Prior to completing any pricing model, Concessionaire shall submit to City a listing of potential comparable locations, products, and services to be approved by the Director or designee. Once a preapproved list is determined, if an established location no longer exists, Concessionaire may propose a

replacement comparable location (as described for the applicable pricing model in Section 6.01, paragraph B) to be used to determine the average price charged for each listed product or service, along with the specific products and services that Concessionaire believes to be comparable. City shall have sole discretion to determine whether the replacement comparable location (as well as the particular products or services to be compared) are similar. City will review the replacement comparable location (and the products and services to be compared) and either approve them or direct Concessionaire to use other locations and/or products and services.

3. On (insert applicable calendar date) of each year thereafter, Concessionaire shall provide an updated products and services list with current prices.
4. City shall have sole discretion to determine what constitutes an individual product or service, including, for example, products or services sold in combination or bundled together.
5. City may grant exceptions(s) to the pricing provisions; however, any such exception or determination must be in writing and signed by Airport Director or designee. Under no circumstances shall Concessionaire be entitled to any such exception without the appropriate approval.
6. Concessionaire shall at all times and for all products and services sold comply with the applicable pricing model. City may at any time compel Concessionaire to, within two (2) business days, lower prices on specific items to bring them into compliance with Section 6.03, but nothing herein shall negate the general default and remedies provisions of this Agreement.
7. City may at its discretion require Concessionaire to submit documentation verifying compliance with the pricing requirements herein. For such evaluations, market basket pricing of the top three selling SKUs (based on revenue) per product category needing verification will be used; products and services price-controlled by MSRP shall not be included in the market basket. City may require Concessionaire to submit its price comparison using an automated process. If Concessionaire fails to submit said documentation of compliance within the time specified by City, or if documentation submitted is erroneous, Concessionaire may be charged Liquidated Damages per the Concessions Handbook.
8. At any time during the Term hereof City may make or cause to be made a survey of prices being charged for products and services offered by Concessionaire from the Premises hereunder. If the survey concludes that any prices being charged by Concessionaire on the Premises are not in accordance with the terms of this Agreement, Concessionaire may be charged Liquidated Damages per the Concessions Handbook.
9. Failure to comply with the provisions of Section 6.01 shall constitute a material default. If Concessionaire, after receiving notice to reduce prices and/or

application of any penalty, is later found to have again violated the pricing policies within the same Agreement Year, City shall have the right to collect Liquidated Damages and/or terminate this Agreement for cause by giving thirty (30) days written notice. Failure of City to exercise its right to terminate this Agreement shall not constitute a waiver of City's right to terminate at a later date for the same, similar or continued violation of the pricing policies.

D. Policy Adherence

Failure to comply with the provisions of Section 6.03 shall constitute a material default. If Concessionaire, after receiving notice to reduce prices and/or application of any penalty, is later found to have again violated the pricing policies within the same Agreement Year, City shall have the right to collect Liquidated Damages per the Concessions Handbook and/or terminate this Agreement for cause by giving thirty (30) days written notice. Failure of City to exercise its right to terminate this Agreement shall not constitute a waiver of the City's right to terminate at a later date for the same, similar or continued violation of the pricing policies.

E. Airport Employee Discount

Concessionaire shall offer a minimum ten percent (10%) discount on all food & beverage, retail, passenger services, and non-alcoholic beverages purchased by Airport employees and employees of airlines operating at Airport who have been issued (and show at the time the discount is requested) appropriate identification badges. The discount shall be based on Concessionaire's normal non-sale or non-promotional prices. No discount shall be given on value meals, as well as food and non-alcoholic beverages with a manufacturer pre-printed price.

SECTION 6.04 HOURS OF OPERATION

A. Store Hours

Concessionaire shall ensure that each Concession Location is open for business without interruption from not less than one (1) hour before the first scheduled departure each day to thirty (30) minutes after the last departure of the day and is providing all goods and services as required by this Agreement.

City may, in its sole discretion, require store hours to change during the Term. Concessionaire hereby acknowledges and agrees to operate the Concession Locations as required which, if requested by City, may be twenty-four (24) hours per day seven (7) days per week, including all holidays. Concessionaire may request changes to Store Hours after six (6) full months of operations under this Agreement. City may, in its sole discretion, approve or deny such requested changes.

B. Extension of Store Hours

Concessionaire agrees to remain open beyond store hours for certain events including, but not limited to, the following:

1. In the event of a delayed flight in the Terminal in which any Concession Location(s) is located, Concessionaire shall remain continuously open and provide all goods and services as required by this Agreement beyond the then current store hours for the Concession Location(s) in the affected Terminal and until the delayed flight departs the gate or City otherwise instructs.
2. In the event of an emergency, as determined by City, Concessionaire shall remain continuously open and provide all goods and services as required by this Agreement for the Concession Locations beyond the then current Store Hours as instructed by City.

C. Failure to Open

Failing to open for business within thirty (30) minutes of the required opening time or closing more than thirty (30) minutes early, shall constitute a violation of this Section for which City may collect liquidated damages as set forth in this Agreement.

D. Posted Hours

The Concessionaire will prominently post store hours in a professional manner for each Concession Location at the Concession Location and in a format approved by City.

SECTION 6.05 PERSONNEL

A. Staffing

Concessionaire shall hire, train, supervise, and deploy a sufficient number of personnel to service customers in a timely and efficient manner and to properly meet Concessionaire's obligations herein. If replacing an existing concession, the new concessionaire shall make every effort to hire and train the previous concession employees subject to the concessionaire hiring policies and procedures.

Concessionaire shall closely monitor personnel to ensure first class service to customers in compliance with this Agreement. The satisfactory performance of the obligation hereunder shall be determined in the sole discretion of City. Concessionaire shall take all proper steps to discipline personnel who participate in acts of misconduct on or about the Premises.

B. General Manager

Concessionaire shall appoint a General Manager to oversee and manage the performance of the Concession and represent and act on behalf of Concessionaire. The General Manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire with respect to the Concession including, but not limited to, authority to control the conduct and demeanor of Concessionaire's personnel. The General Manager shall represent the Concessionaire in dealings with City and shall

coordinate all concession activities with City. The General Manager shall be assigned to an office at the Airport and shall be available during City's regular business hours. The General Manager shall designate a qualified, competent, and experienced subordinate to be in charge and available during its absence during Concessionaire's regular operating hours.

C. Additional Personnel Requirements

In addition to the personnel requirements set forth herein, Concessionaire shall ensure that all personnel engaged in the operation of the Concession shall comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, local and other governmental bodies of competent jurisdiction that apply in any manner to Concessionaire or Concessionaire's operations and activities under this Agreement.

D. Compliance with Immigration Law

Concessionaire shall employ only individuals who are in compliance with any and all current laws and regulations of the U. S. Immigration and Naturalization Service.

E. City's Right to Object

City shall have the right to object to the demeanor, conduct, and appearance of any personnel of Concessionaire or any of its invitees or those doing business with it. Immediately upon notice of objection by City, Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by Concessionaire, City shall present its objections in writing and provide Concessionaire the opportunity to reply to the objections and such reply will be given consideration by City.

SECTION 6.06 DELIVERY OF GOODS

1. The General Manager (as defined in Section 6.05(B)) will make deliveries to Concession Locations and Concessionaire's Support Spaces as stated below. Concessionaire shall transport inventory among Concession Locations and Support Spaces in the same building at such times and by such routes stated below. Concessionaire shall make every effort to avoid using the Common 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 to locations designated for return by the General Manager.
2. Delivery Locations: All deliveries shall be made through the loading dock at the front of the Airport Terminal Security Identification Display Area (SIDA). All deliveries must be broken down in the adjacent Support Space and then transported to the appropriate Concession Locations.
3. Concessionaire shall use only carts or conveyances for transporting goods that are sealed, leak-proof, and equipped with pneumatic wheels suitable for operating

on carpet or other flooring without damage thereto, and which are approved by City. Additionally, Concessionaire shall have at a minimum one (1) vehicle dedicated to the Airport that is capable of moving products and disposing of large items. The vehicle must be affixed with the company logo and a blinking beacon for airfield driving purposes.

SECTION 6.07 BADGING AND SECURITY REQUIREMENTS

All employees and staff will be required to pass a TSA mandated security background check and attend various training classes. All employees and staff must adhere to all security rules and regulations and be properly badged at all times. All concession employees and staff will be required to wear an easily identifiable uniform representing its trade name, and otherwise in compliance with Fresno Yosemite International Airport requirements, at all times.

Concessionaire must conduct pre-employment background checks on each of its employees assigned to work under this Agreement prior to any employee being assigned to work at Fresno Yosemite International Airport. Concessionaire shall be responsible for the cost of the pre-employment background check.

At a minimum, the pre-employment background check for each of Concessionaire's employees must include:

- i. Prior employment reference checks;
- ii. Both felony and misdemeanor criminal records checks for each location at which the prospective employee has resided during the past seven (7) years;
- iii. Driving records checks for all employees operating vehicles in the performance of the work under this Contract.

Concessionaire must provide the City with the background check findings upon request.

The City requires Concessionaire's employees who work at Fresno Yosemite International Airport included under the terms of this Agreement to undergo additional background checks, including a Department of Motor Vehicles - DDL check, Department of Justice - Bureau of Criminal Identification (BCID) fingerprint check, Customs and Boarder Protection (CBP) check, and a FBI fingerprint check; such services, however, will be performed at no cost to Concessionaire. The City's Badging Application and list of disqualifying crimes is included in this Agreement as Exhibit H.

The Concessionaire's employees shall be subject to and shall at all times conform to the City's security rules and requirements and shall cooperate with City Police and Security personnel. Any violations or disregard of these rules may be cause for denial of access to the City of Fresno's property.

All of Concessionaire's personnel must undergo an identification procedure by the City prior to beginning the work. Concessionaire's employees will be issued Airport security badges which must be visibly worn above the belt at all times during performance of the work. Concessionaire shall be responsible for all costs relating to the preparation of

identification badges for each employee. Concessionaire shall be billed by the City at the applicable rate (currently \$63.75 for each new badge with prints and \$25.00 for each lost badge).

Lunch boxes, thermos bottles and other personal packages may be subject to Police or Security inspection upon entering and leaving Fresno Yosemite International Airport's premises.

Concessionaire's employees must remain in their assigned work areas, except when taking an authorized break in a designated break area.

Concessionaire's employees admitted to the City's property (i.e., Fresno Yosemite International Airport) must conduct themselves in an orderly and safe manner. Fighting or engaging in horseplay, being under the influence of alcohol or drugs or bringing alcohol or drugs onto the City's property, gambling, soliciting, stealing, taking pictures or bringing cameras or other photographic devices anywhere on City property, and any immoral or otherwise undesirable conduct will not be permitted.

Firearms, weapons and/or explosives may not be brought onto the City's property (i.e., Fresno Yosemite International Airport).

The operation of the Concessionaire's vehicles or private vehicles by Concessionaire's employees on the City's property (i.e., Fresno Yosemite International Airport's premises) shall conform to posted regulations and safe driving practices.

Aisles, passageways, alleyways, driveways, entrances or exits and access to fire protection equipment must be kept unobstructed at all times.

Concessionaire shall maintain clearance space around all electrical and mechanical panels and equipment as required by applicable City codes.

Concessionaire must take adequate measures to reasonably ensure the confidentiality of records, information and persons observed at City facilities (i.e., Fresno Yosemite International Airport). All employees must be trained by the Concessionaire regarding the rules and use of badge prior to assignment at Fresno Yosemite International Airport, and refresher training provided every year.

Concessionaire shall establish and maintain a comprehensive drug screening and monitoring program for all assigned employees. This program must include, at minimum:

- A. Mandatory pre-employment drug and substance abuse testing;
- B. A program of continuous observation and verification whenever employee substance abuse is suspected. This program should be consistent with all aspects of the City of Fresno's Policy on Drug and Substance Abuse (Administrative Order 2-25 of December 15, 2015; revised September 13, 2019) hereto attached as Appendix O, including specific guidelines on:
 - a. The need for drug and alcohol testing;
 - b. The circumstances under which testing may be required;

- c. The procedure for confirming an initial positive drug test result;
 - d. The consequences of refusing to undergo a drug and alcohol test;
 - e. Drug testing procedures and interpretive guidelines for positive/negative results (by substance);
 - f. Concessionaire employee training as part of a Drug Free Awareness Program;
 - g. Supervisory training in identification of drug and alcohol abuse which constitutes reasonable cause for drug testing;
- C. The availability of employee counseling for drug or alcohol abuse. This program will include mandatory pre-employment drug testing, as well as system of continuous observation and verification whenever employee substance abuse is suspected.

SECTION 6.08 EMPLOYEE PARKING

Concessionaire employees working at the Terminal Building shall have the right to the use of vehicular parking facilities in common with other employees. Such facilities shall be located in an area designated by City. City reserves the right to assess a reasonable charge to recover the costs of providing such space to such Concessionaire employees, in common with other Airport/tenant employees, for such parking facilities.

Concessionaires are encouraged to incentivize employees to utilize alternative, more environmentally friendly modes of transportation including mass transit, ride sharing, etc.

SECTION 6.09 POINT OF SALE (POS) TERMINALS

Concessionaire must install a Point of Sale (POS) Terminal(s) to accurately record all business transactions occurring in each Concession Location for accounting, reporting, and auditing purposes as set forth herein.

All POS Terminals used at the Airport must have at a minimum, the following features:

1. Multiple segregated category addresses to allow for accurate and complete reporting of Gross Receipts/Revenues by various goods and services categories.
2. The capability of recording transactions by sequential control number to an audit tape or computer file.
3. Mobile POS payment capabilities or other similar electronic devices.
4. The capability of recording any discounts that are applied to a transaction.
5. The capability of printing a transaction history to tape or computer file by category of goods or services, time of day, day, month, and year by category.
6. The capability of printing customer receipts showing the transaction amount, the amount tendered, the amount of change due to the customer, and the time and date of the transaction. Additionally, the customer receipt must show Concessionaire's contact information including name, phone number and email address for any customer concerns, complaints, or questions.
7. A fee display of sufficient size and legibility that is placed in a location visible to the customer during a transaction.

8. A secure transaction audit tape or ASCII transaction file on a removable storage device.
9. Such terminal will be non-re-settable.
10. The capability to capture passenger data and flight scanning boarding card on every transaction. This passenger/flight data should be associated/added to a transaction record.
11. The capability to capture basic survey information from passengers (i.e., measuring customer satisfaction from 1 to 5). This information should be associated/added to a transaction record.
12. The capability to generate log file for audit purposes including transaction creation, delete or modification. This log entry should be controlled by a sequential control number.
13. Concessionaire will ensure that POS terminals comply at all times with the requirements set forth within this Agreement and, if necessary to allow for a customer experience that meets or exceeds good industry practice and the customer service standards set forth in this Agreement, and that they are refreshed and modernized whenever refurbishments are required under this Agreement.
14. Concessionaire has confirmed in the Concessionaire's Response that it will meet the criteria specified herein. Failure to comply will become apparent through City not receiving all the required data and through the financial audits.

City shall have the right to: (a) examine during business hours the totals of any POS used on the Premises and to inspect such POS for compliance with this Section; (b) implement an hourly or daily reporting system with which Concessionaire shall comply; and (c) implement a common-use POS, in which event, Concessionaire must, at its cost, purchase and install the necessary equipment, train its employees, and thereafter use, such equipment to take part in such system. Additionally, Concessionaire shall ensure a capability within its mobile POS for the installation of Airport and Airport partner applications that can be integrated with Tenant's POS to exchange data and make possible future opportunities to support passengers and airlines with vouchers, coupons, and other mutually beneficial marketing programs.

SECTION 6.10 CASH HANDLING AND CREDIT CARD REQUIREMENTS

Concessionaire shall always observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to City. City may at any time during the Term request a copy of these procedures. City shall have the right to monitor and test all of Concessionaire's procedures and controls and require Concessionaire to make changes to its procedures.

Concessionaire must accept, but is not limited to, the following cash and non-cash payment options: US currency and at least three (3) major accepted credit cards. Concessionaire may also accept electronic payment options.

Concessionaire shall always comply with the most recent payment card industry data security standard requirements. No minimum credit card or debit card purchase amount

or charge for credit card purchases is allowed. Concessionaire's Independent CPA must yearly certify Concessionaire's operations are compliant with Payment Card Industry Data Security Standards. City reserves the right to receive reports required by the Payment Card Industry Security Standards Council. Concessionaire must report any breach of its payment card industry data to the City within 24 hours of its finding of the breach.

SECTION 6.11 ADVERTISED SALES OR PROMOTIONS

Concessionaire is required to participate in all advertised sales or promotions, by whatever media outlet, conducted by its parent corporation, its franchisor, or its selected operating brands. Concessionaire is not permitted to (a) use or permit the use of the Premises for the conduct of an outlet store or a second-hand store; or (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, closeouts of goods or services or going-out-of-business sales.

Concessionaire must make every reasonable effort to ensure that all corporate advertisements that list multiple locations will list the Airport as a participating location of the promotion or sales. If participation in a sale or promotion harms Concessionaire, Concessionaire may request, in advance of the sale or promotion, in writing to City to be exempted from participation.

Concessionaire may not advertise in the Airport, except with City's advertising Concessionaire who sells advertising at the Airport. Permission will not be granted to Concessionaire for any other advertising at the Airport. Concessionaire shall not use nor permit Premises to be used as a medium for third party paid advertising, including sponsorships or any advertising material, sign, fixture, or equipment, whether paid for in-kind, by cash, or by credit. Concessionaire shall not use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Premises (such as searchlights, barkers, or loudspeakers); distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising in the Airport; or engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business.

SECTION 6.12 COMPLAINTS

All customer complaints, written or oral, received directly or referred to Concessionaire by City must be responded to by Concessionaire within 48 hours of notice. Concessionaire shall make a good-faith attempt to explain, resolve or rectify the cause of the complaint. A written copy of Concessionaire's response shall be delivered to City within the 48-hour period.

If City establishes a toll-free customer complaint telephone number or online submission form for customer complaints, Concessionaire shall be required to participate and shall respond to complaints immediately. All other issues regarding the quality of service and/or prices raised on City's own initiative may be submitted to Concessionaire for response, which response shall be provided by Concessionaire to the Airport Director within 48 hours.

SECTION 6.13

OPERATING PROCEDURES AND STANDARDS

- A. **City Requirements.** The occupancy and use by Concessionaire of the Premises and the rights herein conferred upon Concessionaire shall be conditioned upon and subject to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, local and other governmental bodies of competent jurisdiction that apply in any manner to Concessionaire or Concessionaire's operations and activities under this Agreement as are now or may hereafter be prescribed by City through the lawful exercise of its powers. Concessionaire covenants to operate the Concession in accordance with the Tenant Handbook.
- B. **Health and Safety Standards.** Concessionaire shall comply with all health and sanitary regulations adopted by City, State of California, and any other governmental authority with jurisdiction. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Concessionaire shall provide City with copies of all inspection reports by other health and sanitary governing bodies within 48 hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.
- C. **Sustainability.** City is committed to incorporating sustainable practices into all aspects of Airport operations. Concessionaire shall operate in a manner consistent with any current or future sustainability policies and participate in any sustainability programs outlined in this Agreement at its own cost and expense.
- D. **Additional Compliance.** Concessionaire shall comply with all applicable governmental laws, ordinances, regulations, codes and permits in the conduct of its operations under this Agreement including, but not limited to, TSA regulations regarding products or procedures.
- E. **Concessionaire's Standards.** Concessionaire shall submit to City a copy of its standards, plans and manuals for customer service and operation, at least thirty (30) days prior to Commencement Date, and as updated during the Term. Concessionaire shall ensure continuous adherence to Concessionaire's own standards in addition to other standards as set forth herein.

SECTION 6.14

COMPREHENSIVE MANAGEMENT OPERATIONS PLAN AND MANUAL

Concessionaire shall, within thirty (30) days of the effective date of this Agreement, prepare and submit to Director or designee for approval a Comprehensive Management Operations Plan and Manual (Operations Manual) for meeting Concessionaire's responsibilities under this Agreement, to include performance targets, goals and measures. Concessionaire shall maintain such Operations Manual during the Term of this Agreement and any extensions thereof pursuant to the following conditions:

- A. The Operations Manual shall include, but not be limited to, an identification of each of Concessionaire's performance responsibilities as set forth by this Agreement,

and an identification of Concessionaire's other legal obligations, pursuant to applicable provisions of law and relevant to Concessionaire's performance at the Airport under this Agreement.

- B. The Operations Manual shall further include a comprehensive summary of the means, methods, procedures, and controls which Concessionaire will employ to satisfy its contractual obligations to City, as set forth in this Agreement, and to satisfy Concessionaire's other legal obligations, pursuant to applicable provisions of law and relevant to Concessionaire's performance at the Airport under this Agreement.
- C. The Operations Manual shall specifically include safety and emergency action plans for the employees of the Concessionaire's facilities.
- D. This Agreement shall take precedence over the Operations Manual where any provision or interpretation of the Operations Manual is in any way inconsistent with the terms of this Agreement.
- E. Concessionaire shall review the Operations Manual frequently and thoroughly for needed revisions in response to changing conditions or for operational improvements. Concessionaire shall revise the Operations Manual periodically, as necessary, to reflect current operating procedures as approved by Director or designee. Revisions of the Operations Manual must be approved in writing by Director or designee prior to implementation by Concessionaire.
- F. Concessionaire shall incorporate and issue any revisions to the Operations Manual as Director or designee may specify to Concessionaire from time to time in writing. Should Concessionaire consider any such revisions to be in conflict with the terms of this Agreement, Concessionaire shall promptly inform Director or designee in writing of the potential conflict. Concessionaire agrees that in such event, the instructions of Director or designee shall be implemented for a minimum of ten (10) business days while awaiting a response and resolution from Director or designee unless such action would hazard the health or safety of the public or of Concessionaire's employees, or result in Concessionaire's violation of applicable laws or ordinances. In such case Concessionaire shall include such notification of potential hazard or violation of the law when initially informing Director or designee of the conflict or as soon as it is determined that such potential may exist.
- G. Concessionaire shall ensure that a current, complete, and correct copy of the Operations Manual is continuously maintained on file with Director or designee.
- H. Copies of the Operations Manual shall be kept constantly available on-site by Concessionaire for Concessionaire and City's reference and use, and shall be accessible to Concessionaire's employees during the Term of this Agreement, and any extensions thereof. To the extent that portions of the Manual might compromise revenue control or relate to other sensitive matters, such portions may

be withheld from copies provided for general use of employees. The specific material to be withheld from copies provided for general employee use shall be submitted for approval by Director or designee prior to issue of those copies.

- I. Concessionaire shall conform all issued copies of the Operations Manual, including any revisions, with the exception of the withholding of material (related to revenue control or other sensitive areas) from copies provided for general employee use, as previously described in this Section.

SECTION 6.15 CLEANING AND ROUTINE MAINTENANCE

A. General Obligations

Concessionaire shall ensure that the Concession is maintained and operated in an optimal manner and that the Premises are kept in a safe, clean, orderly, and inviting condition always in a manner satisfactory to City. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises and its operations at the Airport.

B. Preventive and Routine Cleaning and Maintenance Program

Concessionaire shall be responsible for preventive and routine cleaning and maintenance of all assets within the Premises, whether built by Concessionaire or City, from the commencement date through the expiration of the Term. No less than thirty (30) days prior to the opening of any portion of the Premises, Concessionaire shall establish a preventive and routine cleaning and maintenance program for the Premises, including but not limited to the list of items below. This maintenance program must meet or exceed the cleaning and maintenance requirements of the manufacture's equipment manuals a copy of which shall be provided at the request of the airport within ten (10) business day of the request. The provisions of the program shall be subject to the initial written approval of and periodic review by City. Upon request by City, Concessionaire shall provide City a written schedule of Concessionaire's cleaning and maintenance program.

For Concessions with terms greater than five (5) years and or extended or held over, in the fifth year of operation, the concessionaire agrees to hire a third-party cleaning company and conduct a full-store cleaning either during the overnight hours or close the store for 24 hours during the lowest passenger period of the year, as outlined in the Tenant Handbook. The extent of the cleaning and certification of the cleaning must be provided and agreed to in writing by City.

1. **Janitorial Service.** Concessionaire, at its own cost and expense in all Concession Spaces and Support Space locations. Concessionaire shall ensure that the Premises and the Common Use Areas adjacent to the Premises are kept clean and free from all rubbish and refuse.
2. **Pest Control.** Concessionaire, at its own cost and expense, is responsible for pest control within the Premises. Concessionaire will contract with a professional pest control service to provide pest control services on a regular

basis and at any other times as needed. Concessionaire will coordinate its pest control service with third parties as directed by City. Upon request, Concessionaire must furnish City a copy of its pest control contract, monthly service schedule, and monthly service reports. Concessionaire agrees to coordinate with City and other concessionaires to provide the most effective pest control services for the Airport.

City, in its sole discretion, may elect to provide or contract for pest control services on Concessionaire's behalf. If City elects to provide or contract for pest control services on Concessionaire's behalf, Concessionaire covenants to pay its share of the cost of such services, in an amount determined by City. In such cases, Concessionaire must cooperate with City's chosen pest control contractor.

3. Plumbing. Concessionaire, at its own cost and expense, shall provide routine plumbing services for the Premises in accordance with the Tenant Handbook. Concessionaire shall ensure that activities within the Premises do not damage or harm the central water, plumbing, and sewer infrastructure at the Airport. Concessionaire shall properly maintain all water hook-ups within the Premises. Concessionaire must furnish City a copy of its plumbing contract, monthly service schedule, and monthly service reports, as directed by City. Concessionaire agrees to coordinate with City and other concessionaires to provide the most effective plumbing services for the Airport. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.

City, in its sole discretion, may elect to provide or contract for plumbing services on Concessionaire's behalf. If City elects to provide or contract for plumbing services on Concessionaire's behalf, Concessionaire covenants to pay its share of the cost of such services, in an amount determined by City. In such cases, Concessionaire must cooperate with City's chosen plumbing Contractor.

The plumbing facilities within the Premises and elsewhere in the Airport shall not be used for any purpose other than for the purposes for which they were constructed, and no foreign substance of any kind shall be thrown therein. The expense to repair any breakage, stoppage, or damage resulting from a violation of this paragraph, wherever the breakage, stoppage or damage occurs, shall be charged by City to Concessionaire, regardless of the cause.

4. Electricity. Concessionaire, at its own cost and expense, shall install and maintain an electric meter and a gas meter for each Concessions Location in accordance with the Tenant Handbook. Concessionaire, at its own cost and expense, shall install and maintain all power circuits and connections required for equipment and mechanical systems used within the Premises. Concessionaire shall ensure that activities within the Premises do not damage or harm the central electricity or natural gas infrastructure at the Airport.

Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.

5. HVAC. Concessionaire, at its own cost and expense, shall install and maintain any ductwork and other HVAC connections for the Premises in accordance with the Tenant Handbook. Should the concessionaire add equipment to the Concession Space which increases heat in the space beyond the design of the central HVAC system of the airport, Concessionaire is required to add HVAC to accommodate the change in condition at their own expense. Concessionaire agrees to properly maintain the ductwork and other connections within the Premises. Concessionaire shall ensure that activities within the Premises do not damage or harm the central HVAC infrastructure at the Airport. Subject to conditions beyond its control, City shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Concessionaire properly maintains the ductwork and other connections within or leading into the Premises and complies with the recommendations of City regarding reasonable occupancy and use of the Premises. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.
6. Grease Removal Systems. If Concessionaire installs grease removal systems in addition to those provided and maintained by City and used only by Concessionaire, Concessionaire shall, at its own expense, regularly, but not less than four (4) times per year, check and clean its grease removal systems, whether located within the Premises or elsewhere in the Airport. Concessionaire agrees to properly maintain all installed grease removal systems within the Premises. Concessionaire must maintain the grease traps in accordance with the manufacturer's specifications to allow for the optimal efficiency in removing fats, oils, and grease from the waste stream before it enters the systems provided by City. Concessionaire must also maintain its used cooking oil/liquefied grease collection systems in accordance with the manufacturer's specifications to allow for optimum efficiency in the recovery, transfer, containment, and collection of used cooking oil/liquefied grease suitable for reclaim. Concessionaire shall ensure that activities within the Premises do not damage or harm the central grease removal infrastructure at the Airport. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.
7. Trash, Waste, and Refuse. Concessionaire, at its own cost and expense, shall comply with any Airport-wide waste diversion programs, including but not limited to recycling, composting, or any future programs for removal and disposal of all trash, waste and other refuse caused because of performance of this Agreement. Concessionaire shall use designated locations, containers and transport routes for trash, waste and refuse removal and disposal as set forth in the Tenant Handbook. Concessionaire may not place or leave or permit to be placed or left in or upon any part of the common areas or corridors adjacent to the Premises any trash, waste, or refuse. Concessionaire shall

ensure that storage, transportation, and disposal of all trash, waste, and other refuse does not damage or harm any structures or infrastructure at the Airport.

8. Lighting. Concessionaire, at its own costs and expense, shall install and maintain all lighting fixtures and wiring for general illumination of the Premises in accordance with the Tenant Handbook. Concessionaire agrees to properly maintain the lighting fixtures wiring used for general illumination within the Premises. Concessionaire shall ensure that activities within the Premises do not damage or harm the central electricity infrastructure at the Airport. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.

C. Routine Refurbishment

On or about the commencement of each Agreement Year, representatives of City and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in optimal condition. Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and City cannot jointly agree upon the type and extent of routine refurbishment, City may determine, in its sole discretion, the routine refurbishment required for that Agreement Year. For purposes of this only, "routine refurbishment" shall mean the routine repainting or redecoration of public areas within the Premises, including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures or finishes. All Trade Fixtures, Leasehold Improvements, and furnishings that become worn, chipped, dented, or gouged, shall be repaired, or replaced by Concessionaire at Concessionaire's sole expense. The failure to timely undertake required refurbishment shall be grounds for the imposition of liquidated damages as provided in Article VII.

D. Maintenance Personnel and Program

Concessionaire covenants to employ or contract with sufficient personnel and provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition always pursuant to the maintenance requirements of this Agreement.

E. City Sole Judge of Maintenance

City shall be the sole and absolute judge of the quality of Concessionaire's maintenance of the Premises. City or its representative may at any time, without notice, enter the Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by City shall be conclusive evidence of satisfactory maintenance unless City determines that there is a present danger or safety hazard within the Premises. If City determines that maintenance is not satisfactory, City shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to City's satisfaction, within fifteen (15) days after receipt of written notice or City or its

representative shall have the right to enter upon the Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public and/or Airport's facilities, Concessionaire shall immediately perform the maintenance. Where City or its representative performs maintenance, Concessionaire agrees to promptly reimburse City for the cost thereof, plus an administrative fee of fifteen percent (15%) of the maintenance costs without prior quote.

F. Emergency Repairs

In the event of an emergency repair is required, Concessionaire shall notify City of the repair situation as soon as possible. Following such notice, City may inspect the repair work and require alterations if the repair is not satisfactory to City. In the event of an after-hours emergency repair, Concessionaire agrees City shall have the right to enter any affected portion of the Premises and preform the emergency repair. Concessionaire covenants to promptly pay to City the costs associated with any after-hours emergency repair. All emergency repairs requiring shutdown of any Airport system or utility require prior written approval of City. If any emergency repair affects other tenants at Airport, City may, at in its sole discretion, fix the problem immediately and invoice Concessionaire. Concessionaire covenants to promptly pay to City any proportional costs of emergency repairs completed by City, which Concessionaire may have contributed to the cause of the incident.

SECTION 6.16 COMMON MAINTENANCE

City shall be responsible for common maintenance of the following central systems located throughout Airport, except for assets, connections, or systems located within the Premises. Concessionaire waives all claims against City for performance of common maintenance at Airport.

A. Electricity Systems

City will furnish normal and reasonable quantities of electricity and gas to the Premises. Concessionaire covenants to pay to City, Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City. City will clean, maintain, and repair, for the benefit of Concessionaire, central electricity, and natural gas systems at Airport.

B. HVAC Systems

City will furnish normal and reasonable quantities of central air from the central HVAC system at Airport to the Premises and all necessary power and electricity for such central air circulation. City will maintain under normal conditions a temperature adequate for comfortable occupancy according to the season. City will clean, maintain, and repair, for the benefit of Concessionaire, central HVAC infrastructure and systems at Airport. Concessionaire covenants to pay to City Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City.

C. Life Safety Systems

City will maintain and repair, for the benefit of Concessionaire, life safety systems at Airport. Concessionaire covenants to pay to City Concessionaire's share of the costs of such maintenance and repair, in an amount determined by City.

D. Sanitary Sewer System

City will furnish water from the central water source to the Premises in reasonable quantities; provided that Concessionaire must comply with all water conservation programs in effect or as adopted. City will clean, maintain, and repair, for the benefit of Concessionaire, central water, plumbing, and sewer infrastructure and systems at Airport. Concessionaire covenants to pay to City, Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City.

E. Trash, Waste and Refuse

City reserves the right, if deemed to be in its best interests, to provide trash, waste and other refuse receptacles and pick up services. Concessionaire shall be solely responsible for removing all trash, waste, and recycling from each Premises location to the allotted area. Concessionaire covenants and agrees to participate in any Airport-wide trash, waste, and other refuse removal, disposal, or recycling program for any type of trash, waste, and refuse at its own cost. In the event, City elects to provide these services on behalf of Concessionaire, Concessionaire covenants to pay its share of the cost of such trash, waste and other refuse removal, disposal, and recycling services, in an amount determined by City.

F. Exterior Windows and Structures

City will clean, maintain, and repair, for the benefit of Concessionaire, exterior windows, and all structural parts of the Airport. City's maintenance shall include exterior glass, walls, and roof but specifically excludes Concessionaire Improvements and Trade Fixtures. Concessionaire covenants to pay to City Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City.

SECTION 6.17 PAGING, AUDIO, VIDEO SYSTEMS AND FREQUENCY PROTECTION

If Concessionaire installs, with City's approval, any type of radio transceiver or other wireless communications equipment, Concessionaire will provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. City requires Concessionaire to submit a completed FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and receive FAA approval prior to installation based upon the notice to file requirements under 14 CFR Part 77.

Frequency protection will also be provided for all other frequency bands operating in the vicinity of Concessionaire's equipment. If frequency interference occurs because of Concessionaire's installation, City reserves the right to shut down Concessionaire's

installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. The cost to remedy the frequency interference will be solely at Concessionaire's expense. Concessionaire acknowledges and accepts that any paging or audio systems installed by Concessionaire may be used by City to announce any notification or emergency at the Airport. City shall not be liable to Concessionaire for any use of the paging or audio systems installed by Concessionaire.

SECTION 6.18 PROHIBITED ACTS

Unless approved in writing in advance by City, in its sole discretion, Concessionaire shall not install or permit to be installed coin-operated vending machines on the Premises.

Concessionaire will not place excessive loads on the walls, ceilings, and floor or pavement areas of Airport and will repair any area damaged by excessive loading to the satisfaction of City.

Unless approved in writing in advance by City, in its sole discretion, Concessionaire will not permit the active display or operation on the Premises of any display that flies, flashes, or emits a noise or odor.

Unless approved in writing in advance by City, in its sole discretion, Concessionaire will not keep or display any merchandise on or within, or otherwise obstruct, any part of the Airport outside of the Premises. Concessionaire shall keep all service corridors, hallways, stairways, doorways, or loading docks leading to and from the Premises free and clear of all obstructions.

Concessionaire will not interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical or other systems installed or located from time to time at the Airport. Concessionaire will not do or permit to be done anything that may interfere with free access and passage on the Premises or the public areas adjacent thereto, or hinder police, firefighters, or other emergency personnel in the discharge of their duties. Further, Concessionaire shall not do or permit to be done anything that might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Premises, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto.

Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door in the Premises or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the portion of the Premises were furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by City are lost, Concessionaire shall pay City, on demand, the cost for replacement thereof.

Concessionaire will comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, local and other governmental bodies of competent jurisdiction that apply in any manner to

Concessionaire or Concessionaire's operations and activities under this Agreement. In the event Concessionaire fails to adhere to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, local and other governmental bodies of competent jurisdiction that apply in any manner to Concessionaire or Concessionaire's operations and activities under this Agreement or fails to prevent any other of the prohibited acts set forth in this Section, City may collect liquidated damages as set forth in this Agreement until such prohibited act is ended. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice. Moreover, if the prohibited act is not corrected as directed by City, City or its representative shall have the right to enter upon the Premises and take corrective action, and Concessionaire agrees to promptly reimburse City for any related costs, plus an administrative fee equal to fifteen percent (15%) of the corrective action costs.

ARTICLE VII. FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS

SECTION 7.01 VIOLATIONS

Concessionaire acknowledges City's objective to provide the public and air travelers with the level and quality of service as described herein. Accordingly, City has established a series of liquidated damages, as set forth in the Tenant Handbook that it may assess, in its sole discretion, as liquidated damages for various violations of the provisions of this Agreement, the Tenant Handbook, and/or City's Rules and Regulations. Concessionaire and City agree that the damages set forth herein are reasonable estimates of the significant but difficult to predict harm, and Concessionaire further agrees to pay to City such liquidated damages in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation or written demand by City. City will, in its sole discretion, determine the classification of each violation as per day or per occurrence. Concessionaire further acknowledges that the liquidated damages are not exclusive remedies and City may pursue other additional remedies as allowed for in this Agreement and/or at law, in City's sole discretion. City's waiver of any payment provided for in this Section shall not be construed as a waiver of the violation or Concessionaire's obligation to remedy the violation.

SECTION 7.02 MULTIPLE VIOLATIONS

Except for violations of requirements regarding construction, health and safety, delivery and vendor access infractions, liquidated damages for which shall accrue and be assessed immediately and without notice upon violation, all other liquidated damages shall accrue immediately and assessed as follows:

- A. For the first and second violation of a requirement during any twelve (12) month rolling year, City will provide notice to Concessionaire to correct the violation within thirty (30) days or other the time specified in the notice. After the time specified by City for cure, liquidated damages shall be assessed until the violation is corrected by Concessionaire. In the event, the violation is not corrected within thirty (30) days of the time specified by City for cure, then such violation will be treated as a breach

of this Agreement entitling City the right to seek any other remedies available under this Agreement including, but not limited to, termination.

- B. For the third and subsequent violations of the same requirement during any twelve (12) month rolling year commencing upon the first notice of violation, the liquidated damage shall be immediately assessed with no grace period.
- C. Further, after two (2) violations of the same requirement within any twelve (12) month rolling year, City reserves the right, in its sole discretion, to deem the repeated violations a material breach of this Agreement and to seek any other remedies available to it under this Agreement including, but not limited to, termination of this Agreement.
- D. For those violations where a plan is required to correct the violation, then Concessionaire and City shall develop such plan, including a time schedule under which resolution can be achieved.

SECTION 7.03 SECTION PAYMENT

Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.

ARTICLE VIII. FEDERAL AID REQUIREMENTS

SECTION 8.01 NON-DISCRIMINATION

Concessionaire covenants it will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are attached hereto and herein incorporated as Appendix D.

Concessionaire covenants, regarding the work performed under this Agreement, it 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. Concessionaire covenants it will not participate directly or indirectly in the discrimination prohibited by any federal acts and or regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

In all solicitations, either by competitive bidding, or negotiation made by Concessionaire 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 Concessionaire of the Contractor's obligations under this Agreement and the Federal Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

Concessionaire covenants it will provide all information and reports required by the Federal Acts, 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 City or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

In the event, of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, City will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- A. Withholding payments to Concessionaire under this Agreement until the Concessionaire complies.
- B. Cancelling, terminating, or suspending this Agreement, in whole or in part, and re-enter the Premises as if this Agreement had never been made or issued.

This provision will not be effective until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

Concessionaire covenants it will include the provisions of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Federal Acts, Regulations and directives issued pursuant thereto. Concessionaire covenants it will act with respect to any subcontract or procurement as City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request City to enter into any litigation to protect the interests of City. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

Further, in connection with the performance of work under this Agreement, Concessionaire agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder.

SECTION 8.02 CITY'S AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) POLICY

As a condition of eligibility for financial assistance from the FAA, City developed and implemented an Airport Concession Disadvantaged Business Enterprise (ACDBE) Policy and Program for the Airport. The ACDBE Program was developed and implemented in accordance with the U.S. Department of Transportation's (DOT) Final Rule 49 CFR Part 23.

Director or designee is responsible for compliance with all aspects of the ACDBE program. The City of Fresno, DBE Coordinator has established ACDBE program goals

for the Airport and may also establish ACDBE concession specific goals as a percentage of annual Gross Receipts/Revenues for this Agreement. The applicable concession specific ACDBE program's goal, if any, is stated in this Agreement. The stated goal was included in a competitive solicitation process in which Concessionaire was recommended to operate in the Premises. During that process, Concessionaire submitted its required Exhibit E to meet the ACDBE program's goal. The Airport found the required Exhibit E to be responsive and thus, required Exhibit E is attached to this Agreement. During the Term of this Agreement, Concessionaire agrees that it shall in good faith make every effort to meet the stated ACDBE program's goal.

To carry out its ACDBE program responsibilities as they are described in this Agreement and in the required Exhibit E, Concessionaire agrees to assign this responsibility to a high-level company official accountable directly to Concessionaire's chief executive officer. Concessionaire acknowledges that if its actions or failure to act violates its ACDBE program responsibilities under this Agreement or the ACDBE regulations of the DOT as they may be adopted or amended from time to time, such actions shall constitute a material breach by Concessionaire of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

SECTION 8.03 ACDBE NON-DISCRIMINATION

- A. Concessionaire and any subcontractor of Concessionaire will not discriminate based on race, color, national origin, or sex in performance of this Agreement. Concessionaire will carry out applicable requirements of 49 CFR Part 23 and 26 in the award and administration of agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- B. This Agreement is subject to the requirements of the DOT's regulations 49 CFR Part 23 and 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23 and 26.

Concessionaire agrees to include the statements in the above paragraphs in any subsequent concessions agreement or contracts covered by 49 CFR Part 23 and 26 that it enters and cause those businesses to similarly include the statements in further agreements.

SECTION 8.04 ACDBE PARTICIPATION AND COMPLIANCE

A. ACDBE Goal

Concessionaire agrees that it will provide for a level of ACDBE participation in this Agreement equal to or greater than {insert amount stated in Concessionaire's response} [] percent (_ %) of the total annual Gross Receipts/Revenues, or clearly

demonstrate in a manner acceptable to City its good faith efforts to do so. Concessionaire will contract with those ACDBEs as identified in Exhibit E for each ACDBE presented with Concessionaire's Response and approved by City, or such other ACDBEs certified with City and as may be approved by City. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable through direct ownership arrangements with ACDBEs.

Concessionaire shall not take any action during the Term of this Agreement that may have a materially negative impact upon the Concessionaire's ability to meet its stated ACDBE program goal.

B. ACDBE Termination and Substitution

Concessionaire will not terminate an ACDBE for convenience without City's prior written consent. If an ACDBE is terminated by Concessionaire with City's consent or, if an ACDBE fails to complete its work on this Agreement for any reason, Concessionaire must make good faith efforts, in accordance with the requirements of 49 CFR Part 23.25(e) (1) (iii) and (iv), to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation. Concessionaire shall forthwith submit to the Airport and to the Director or designee a modified ACDBE Good Faith Effort together with a written request for review and approval, setting forth the circumstances in sufficient detail and with appropriate documentation to explain the necessity for the change. In every case, Concessionaire shall substitute a City certified ACDBE, and if it cannot, then Concessionaire shall be required to document that it made good faith efforts to do so.

C. Reporting Requirements

No later than fifteen (15) days after the end of each calendar month during the Term, Concessionaire will submit to Airport, in Airport's online system or on Airport's monthly ACDBE Utilization Report form, a report of Concessionaire's total Gross Receipts/Revenues during the month and the total dollar value of Gross Receipts/Revenues earned by an ACDBE under this Agreement or the total dollar value of goods and services purchased or leased from each ACDBE during the month, in each case calculated in accordance with the requirements of 49 CFR Part 23. If any reported ACDBE participation is from the purchase and/or lease of goods and services, Concessionaire must submit to Airport, on Airport's monthly ACDBE Utilization Report form, a report of the total dollar value of goods and services procured by the Concessionaire from ACDBE and non-ACDBE (non-minority/woman-owned) firms. Whenever a Joint Venture is used to meet ACDBE program goals, Concessionaire shall submit to Airport an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Airport relevant to determining ACDBE program compliance. Concessionaire shall also disclose annually the ACDBE partner's management involvement and its role in decision making. The annual financial statement shall be on a form satisfactory to Airport and delivered to Airport no later than ninety (90) days of the following year. Concessionaire further agrees to submit any other report(s) or information that City is required by law or regulation to obtain from Concessionaire, or

which the Director of Aviation or designee may request relating to Concessionaire's operations.

D. Monitoring

Airport will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Concessionaire covenants to grant City and Airport access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE program participants, and other records pertaining to the ACDBE program participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Agreement. Concessionaire covenants to grant City and Airport site access to each Concession Location under this Agreement for purposes of Airport monitoring. The extent of ACDBE program participation will be reviewed prior to the exercise of any renewal, extension, or material amendment of this Agreement to consider whether an adjustment in the ACDBE program requirement is warranted. Without limiting the requirements of this Agreement, City reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.

E. Prompt Payment

Concessionaire agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City. This clause applies to both Minority/Women Business Enterprise / Small Business Enterprise (MWBE/SBE) and non-MWBE/SBE subcontractors.

F. Other Requirements

Concessionaire agrees to comply with Federal, State, and Local Disadvantaged Business Programs as fully set forth in Exhibit E. Concessionaire's failure to comply with Federal, State, and Local Disadvantaged Business Programs shall constitute a material breach by Concessionaire of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

G. Non-Compliance

In the event of Concessionaire's non-compliance with the ACDBE program or failure to meet the ACDBE program goal set forth in Section 8.03(A), or to demonstrate a good faith effort to do so, City may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Agreement in whole or in part; and/or suspend or debar Concessionaire from eligibility to contract with City in the future or to receive bid packages or request for proposal packages or other solicitations, unless Concessionaire

demonstrates, within a reasonable time as determined by City, its compliance with the terms of the ACDBE program or this Article or its good faith efforts to comply.

ARTICLE IX. CONSTRUCTION AND CAPITAL INVESTMENT

SECTION 9.01 CONSTRUCTION BY CONCESSIONAIRE

Concessionaire shall not make any improvements or modifications, do any construction work on the Premises, or alter, modify, or make additions, improvements, replacements, or repairs, except emergency repairs, to any structure now existing or built without prior written approval of City. Concessionaire shall not install any fixtures, other than Trade Fixtures, without the prior written approval of City. In the event, that any construction, improvement, alteration, modification, addition, repair, excluding emergency repairs, or replacement is made without City approval, or done in a manner other than as approved, City may, at its discretion, (i) terminate this Agreement in accordance with the provisions herein; or (ii) require Concessionaire to remove the same; or (iii) require Concessionaire to change the same to the satisfaction of City. In case of any failure on the part of Concessionaire to comply, City may, in addition to any other remedies available to it at law or in equity, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to City plus fifteen percent (15%) of the costs for administration.

SECTION 9.02 DESIGN AND CONSTRUCTION STANDARDS

In its design and construction work on the Premises, Concessionaire will fully comply with the standards and development guidelines in the Tenant Handbook. City reserves the right to amend Tenant Work Permit Handbook during the Term. Concessionaire covenants to comply with Tenant Work Permit Handbook in effect as of the date of any construction it undertakes.

SECTION 9.03 INITIAL CAPITAL INVESTMENT

As a valuable consideration for City entering into this Agreement, but not as a payment of rent or a form of consideration for the right to occupy space at the Airport, but rather to relieve City from making expenditures for Premises occupied by Concessionaire for the Term of this Agreement, Concessionaire's Capital Investment expended in the initial construction, furnishing and equipping of the Premises shall not be less than the Minimum Capital Investment set forth in the Response to the Request for Proposals, attached hereto and incorporated herein as Exhibit K. If the actual Capital Investment, as certified by the Concessionaire, is less than the Minimum Capital Investment, Concessionaire agrees to pay to City, within thirty (30) days of such determination, the difference between the actual Capital Investment and the Minimum Capital Investment. However, if the actual Capital Investment, as certified by Concessionaire, is less than the Minimum Capital Investment and Concessionaire delivers to City the initial construction, furnishings, and equipment of the Premises, as reflected in the Approved Project, City agrees to waive its right to the difference between the actual Capital Investment and Minimum Capital Investment. Any amounts paid to City because of this provision shall not be deemed a

Capital Investment for any purpose under this Agreement nor shall it be deemed payment of any rent or other fees due under this Agreement.

SECTION 9.04 DEVELOPMENT SCHEDULE

No later than seven (7) days after the Effective Date, or at such later date as City may designate, Concessionaire must submit to City, for its approval, a proposed schedule that sets forth the following for each of the Concession Locations:

- A. The anticipated date(s) of design submittals and reviews for each Concession Location.
- B. Concessionaire's plan for temporary concessions locations to optimally service passengers during development and construction.
- C. The anticipated Space Turnover Date(s) for each Concession Location.
- D. The anticipated date of Substantial Completion of each Approved Project.
- E. The anticipated opening date(s) for each Concession Location.
- F. The expected Premises Completion Date for the entire Premises.

Upon approval by City, the Development Schedule will be attached hereto as Exhibit D, Development Schedule, and will be confirmed by letter executed by the Director or designee, without need for formal amendment to this Agreement.

If for any reason City does not deliver possession of a Concession Location to Concessionaire on or after the approved Space Turnover Date, City shall not be subject to any liability therefor. Such failure to deliver possession of a Concessions Location by the time provided in the Development Schedule will not give rise to any claim for damages by Concessionaire against City or against City's contractor; nor shall such failure affect the validity of this Agreement or Concessionaire's obligations hereunder. Additionally, the Required Opening Date(s) and expected Premises Completion Date, as stated in the Development Schedule, shall be adjusted as appropriate, in City's sole discretion.

SECTION 9.05 SUBMITTAL AND APPROVAL OF PLANS

A. Submittal of Plans

Prior to Concessionaire's commencement of any construction activities on the Premises at any time during the Term, Concessionaire shall submit plans and specifications that conform to all the requirements of Tenant Handbook to City for review and approval. No construction work shall commence until City has approved the plans and specifications and has issued a Notice to Proceed.

Concessionaire shall submit plans and specifications, in the form and number identified in Tenant Handbook, for each of the Concession Locations and Support Spaces in accordance with the Development Schedule. City will review and respond to submittals of plans and specifications within ten (10) days or provide notice to Concessionaire that the review time has been extended. In the event of disapproval by City of any portion of any submittal of plans and specifications, Concessionaire shall promptly make modifications and revisions and re-submit for approval by City.

B. Disclaimer of Compliance with Laws or Codes

The approval by City of any plans and specifications refers to the conformity of such plans and specifications to City standards. Approval of any plans and specifications by City does not constitute its representation or warranty as to their conformity with applicable laws, statutes, codes, or permits and responsibility therefore always remains with Concessionaire.

C. Approvals Extend to Architectural and Aesthetic Matters

Required approval of City will extend to and include architectural and aesthetic matters. City reserves the right to reject any designs submitted by Concessionaire and to require Concessionaire, at Concessionaire's expense, to make modifications and revisions and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by City.

D. Design and Permitting

Concessionaire shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Premises and shall not commence any work with respect to an Approved Project until all governmental permits and approvals with respect to the Approved Project have been obtained. At no cost or liability to City, City shall cooperate in all reasonable respects with Concessionaire's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities for Concessionaire to apply for and obtain such permits and approvals.

SECTION 9.06 CONSTRUCTION

Concessionaire shall, at its own cost and expense, commence construction of an Approved Project within ten (10) days of the later to occur of: (i) the Space Turnover Date stated in the Notice to Proceed for such Approved Project; or (ii) receipt of all permits. Concessionaire agrees that all construction work to be performed, including all workmanship and materials, shall be of optimal quality and in accordance with the Approved Project and the Development Schedule. All construction shall be performed in accordance with the requirements of this Agreement, the Tenant Handbook, and all applicable laws, regulations, ordinances, codes and permits. City and its designees shall have the right from time to time to inspect each Approved Project.

Concessionaire must complete an Approved Project and open for business no later than the Required Opening Date, for initial construction, and the Required Completion Date for all other Approved Projects, as set forth in the Notice to Proceed for the Approved Project, subject to any extensions that may be approved by City. Concessionaire acknowledges that if it fails to open for business by the Required Opening Date or Required Completion Date, the delay may cause City to suffer substantial damages that are extremely difficult to ascertain or prove. Therefore, if Concessionaire fails to either complete the Approved Project or open the Concession Location for business by the Required Opening Date or Required Completion Date, the following will apply:

- A. Concessionaire shall pay liquidated damages to City, as set forth in Article VII, from the Required Completion Date until the date on which the Concession Location opens to the public for business.
- B. If the Concession Location is not open for business within thirty (30) days after the Required Completion Date, the failure is an Event of Default (as defined in Section 12.01) and City has the right to exercise all remedies herein, at law or in equity, including but not limited to, the option to terminate this Agreement or to remove the applicable Concession Location from the Premises. Notwithstanding the foregoing, the Parties agree that any delay in construction of any improvements due to force majeure or acts solely attributable to City shall extend the Required Opening Date and/or Required Completion Date for an Approved Project. Additionally, the initial Premises Completion Date, as stated in the Development Schedule, shall be extended if affected by such event, in City's sole discretion. City shall have no liability to Concessionaire for compensation or damages for any such delay.

SECTION 9.07 COMPLETION OF CONSTRUCTION

For each Approved Project, Concessionaire shall conform to project closeout activities set forth in Tenant Handbook. Concessionaire further agrees that it shall deliver to City within one hundred (120) days of the Premises Completion Date the following:

- A. As Built record documents (in a form(s) acceptable by the Airport) of the construction, additions and other modifications constructed by Concessionaire on the Premises. Any Airport maintained assets or systems shall be fully connected and include system and equipment loads on and all facility information. Concessionaire shall provide connections and service loads at the point of connection to all Airport systems. During the Term, Concessionaire shall keep said documents current, with all changes or modifications made by Concessionaire in or to the Premises or additions thereto. Documents shall be forwarded to Airport upon request within fourteen (14) calendar days.
- B. A statement certified by Concessionaire's chief financial officer specifying the final Capital Investment and final design related to each of the Approved Project(s) with the level of detail as requested by City. This includes an amortization schedule of the initial Capital Investment.
- C. A certification that construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations, and orders, including but not limited to City of Fresno, State of California.
- D. Certified proof demonstrating that no liens exist on the Premises, including but not limited to, a waiver of lien from all construction contractors and signed releases from all subcontractors that indicate receipt of payment in full for all work performed or Trade Fixtures delivered.

SECTION 9.08 TITLE TO IMPROVEMENTS

All leasehold improvements made to the Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, including approved changes and renovations that are affixed to the realty, shall become the property of City upon their completion and acceptance by City.

SECTION 9.09 SIGNAGE

Subject to the terms and conditions of Section 9.05, Concessionaire shall have the right to install and maintain signs on the Premises, provided that the design, installation, and maintenance of all signs shall be subject to the terms of this Section and comply with the Tenant Handbook. Concessionaire further acknowledges City's desire to maintain a high level of aesthetic quality in all concession facilities throughout the Airport. Therefore, Concessionaire covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to City, for its review and approval, the size, design, content, construction, or fabrication and intended location of each and every sign it proposes to install on or within the Premises. Concessionaire shall not install signs of any type on or within the Premises without prior written approval of City, which approval shall not be unreasonably withheld or denied if the proposal is in compliance with the Tenant Handbook and all other present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, local and other governmental bodies.

SECTION 9.10 ANNUAL REFURBISHMENT

In addition to the ongoing, routine maintenance described in Section 6.15, Concessionaire shall, at its sole cost and expense, commence Annual Refurbishment. Concessionaire shall expend a minimum of half of 1 percent (0.5%) of total Gross Revenues, commencing in the fourth year of the Term of this Agreement and occurring annually, for refurbishment of the Premises. Concessionaire shall submit to the City on January 1 of each of these Years of the Term, a schedule of refurbishments and improvements to be completed by Concessionaire in the Assigned Premises for the subsequent Year. Such refurbishment shall include painting and repair attributable to ordinary wear and tear, and replacement of furnishings and fixtures. Such refurbishment shall be required to be spent on those areas visible to and utilized by the customer (i.e.; "selling area"). Concessionaire, if applicable, shall provide documentation of such annual refurbishment and improvement expenditure to the City within thirty (30) calendar days of the earlier of (i) completion of such refurbishment or (ii) the end of the Year. In addition to the required Annual Refurbishment, Concessionaire shall refurbish the Assigned Premises promptly upon the observation of any damage or deterioration of the original materials/workmanship or as reasonably required by the Director. Failure to complete any required refurbishment within the time specified by the director shall be in default under this Agreement, and in addition to all other remedies available under this Agreement, Concessionaire shall pay, as Liquidated Damages, One Hundred and No Cents (\$100.00) per day until such required refurbishment is completed. Concessionaire agrees and acknowledges that the failure to refurbish is detrimental to the image of the Facilities and

results in lost percentage rent, the exact loss and injury is extremely difficult to fix. Therefore, the parties agree that the above-described amount represents a fair and reasonable estimate of the monetary losses and damages incurred by the City.

ARTICLE X. DISCLAIMER OF LIENS

The interest of City in the Premises will not be subject to liens for any work, labor, materials, or improvements made by or for Concessionaire to the Premises, whether the same is made or done in accordance with an agreement between City and Concessionaire. It is specifically understood and agreed by Concessionaire that in no event will City or the interest of City in the Premises be liable for or subject to any mechanic's, laborers or materialmen's liens for materials furnished, improvements, labor or work made by or for Concessionaire to the Premises. Concessionaire is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at the Airport or any interest in this Agreement without prior, written approval by City. Concessionaire is specifically prohibited from subjecting City's interest in the Premises to any mechanic's, materialmen's, or laborers' liens for improvements made by or for Concessionaire or for any materials, improvements or work for which Concessionaire is responsible for payment. Concessionaire will indemnify, defend, and hold City harmless for any expense or cost associated with any lien or claim of lien that may be filed against the Premises or City, including attorney fees incurred by City. Concessionaire will provide notice of this disclaimer of liens to all contractors or subcontractors providing any materials or making any improvements to the Premises.

In the event any construction, mechanic's, laborer's, materialmen's or other lien or notice of lien is filed against any portion of the Premises for any work, labor or materials furnished to the Premises, whether or not the same is made or done in accordance with an agreement between City and Concessionaire, Concessionaire will cause any such lien to be discharged of record within thirty (30) days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title company or other escrow agent acceptable to City, security satisfactory to City to secure payment of such lien, if requested by City, while Concessionaire contests to conclusion the claim giving rise to such lien.

ARTICLE XI. MAINTENANCE UTILITES AND REPAIRS

SECTION 11.01 CONcessionAIRE'S MAINTENANCE OBLIGATIONS

Except for such maintenance of the Premises as is to be provided by City hereunder, Concessionaire shall, at its own cost and expense, maintain the Premises and every part thereof, including Trade Fixtures and/or personal property, in good appearance and repair, in a safe and optimal condition, and in accordance with this Agreement. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all Leasehold Improvements within the lease lines of the Premises, including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by City. All the maintenance, repairs, finishing and replacements shall be of quality equal to or better than the original

in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of City.

Concessionaire's compliance obligations shall include, without limitation, the obligation to make substantial repairs and alterations to the Premises (including any initial capital improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Agreement, the length of the then remaining Term hereof, the relative benefit of the repairs to Concessionaire or City, the degree to which curative action may interfere with Concessionaire's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Concessionaire's particular use of the Premises.

If it is determined that the maintenance is not in compliance with this Agreement, City shall so notify Concessionaire in writing. If the maintenance required to be performed as provided in City's notice to Concessionaire is not commenced by Concessionaire within five (5) days after receipt of notice, or is thereafter not diligently executed to completion, City or its representative shall have the right to enter upon the Premises and perform the maintenance, and Concessionaire agrees to promptly reimburse City for the cost thereof, plus an administrative fee equal to fifteen percent (15%) of the maintenance costs.

Concessionaire covenants and agrees that nothing shall be done or kept in the Premises that might impair the value of City's property or that would constitute waste. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a verbal or written notice from City. At the sole discretion of City, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected.

Concessionaire covenants to comply with all present and future laws, orders, and regulations, including any rules, regulations and procedures promulgated by City regarding City provided maintenance within the Airport. When any system for City provided maintenance is put in place that can allocate to Concessionaire its proportional share of the cost, Concessionaire must pay its proportional share of the actual costs.

SECTION 11.02 CITY'S MAINTENANCE AND UTILITY OBLIGATIONS

City shall provide structural maintenance of the Airport and, except as provided below, maintain, and repair the exterior windows and walls of the Premises in the Airport. However, maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility. Further, if City establishes Common Maintenance Services at the Airport, including but not limited to those services identified in this Agreement, Concessionaire covenants to pay its proportionate share of the Common Maintenance Services provided by City.

City provides utility mains and lines throughout the Airport. Concessionaire, at its sole cost, shall tie into the utility mains and lines at the locations as specified by City. Supplemental heated or cooled air, electrical or other utilities required by Concessionaire

more than what is customarily available in the Airport will be, if approved by City, at the expense of Concessionaire.

City may, at City's sole discretion, maintain the utilities within the Premises and in doing so shall be permitted to enter upon the Premises at all times to make any repairs, replacements, and alterations when and as may, in the opinion of City, be deemed necessary. Furthermore, Concessionaire will permit City or its representatives' access to construct or install over, on, in, or under the Premises, new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that City shall exercise such right in a manner that minimizes interference with Concessionaire's operations. Moreover, during an emergency, City, or its agents, may enter the Premises forcibly, if necessary. No such reasonable entry by or on behalf of City shall constitute or cause a termination of this Agreement by Concessionaire.

City agrees that it will always maintain and keep utility mains and lines in good repair in the Airport and all appurtenances, facilities, and services now or hereafter connected therewith. Concessionaire understands, accepts, and agrees that City shall not be liable for Concessionaire's loss for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements or whenever by reason of strikes, lockouts, riots, acts of God, or any other happenings beyond the control of City and causes City to be unable to furnish such utility services. City shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release Concessionaire from any of its obligations hereunder.

SECTION 11.03 CITY'S PERFORMANCE OF CONCESSIONAIRE'S OPERATING OBLIGATIONS

City has determined, in consideration of Airport security, public safety, and operating efficiency, that it may be in City's best interest to perform Concessions Services. City reserves the right to establish a Concessions Services Fee based upon documented actual costs of providing Concessions Services.

City may, in its sole discretion, add to, delete from, or otherwise modify the Concessions Services during the Term. City will provide thirty (30) days written notice of the effective date of any modification to the Concessions Services to Concessionaire. Concessionaire agrees to cooperate with City in the implementation and performance of the Concessions Services.

Concessionaire agrees that City shall not be liable for Concessionaire's loss for failure to supply any Concessions or Common Maintenance Services. City reserves the right to temporarily discontinue any Concessions or Common Maintenance Services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements or whenever by reason of strikes, lockouts, riots, acts of God, or any other happenings beyond the control of City and causes City to be unable to furnish such services. City shall not be liable for damages to persons or property for any

such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release Concessionaire from any of its obligations hereunder, except as otherwise provided in this Agreement.

The Parties agree to modify to reflect modifications in the Concessions Services and Common Maintenance Services. Any such modification will be confirmed by side letter executed by the Director or designee, without need for formal amendment to this Agreement.

ARTICLE XII. DEFAULT, REMEDIES, AND TERMINATION RIGHTS

SECTION 12.01 EVENTS OF DEFAULT

Concessionaire will be deemed to be in default of this Agreement upon the occurrence of any of the following:

1. The failure or omission by Concessionaire to perform its obligations under this Agreement or the breach of any terms, conditions and covenants required herein.
2. The failure to pay, in full, to City within five (5) days of when due any fees, costs, expenses damages, or other charges applicable hereunder except where such failure is cured within (10) days after written notice by City of Concessionaire's failure to pay.
3. Concessionaire's default under any other agreement with City at the Airport.
4. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Concessionaire's assets.
5. The divestiture of Concessionaire's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
6. The insolvency of Concessionaire; or if Concessionaire will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Concessionaire of a voluntary petition of bankruptcy or the institution of proceedings against Concessionaire for the adjudication of Concessionaire as bankrupt pursuant thereto.
7. Concessionaire's cancellation of its Surety without City's prior written consent and does not reestablish it promptly after written notice by City.
8. An assignment, sublease, or transfers of Concessionaire's interest under this Agreement by reason of death, operation of law, assignment, sublease, sale in bulk of any of its assets, or otherwise to any other person or business entity other than in compliance with the provisions of this Agreement.

9. If Concessionaire abandons, deserts, vacates, or ceases operations under this Agreement for five (5) consecutive business days, unless undergoing repairs or renovations which have first been approved by City.
10. Concessionaire's failure to maintain any type of insurance or level of insurance coverage required hereunder (and in the event Concessionaire has failed to remedy such failure within ten (10) days after notice thereof from City, City may affect such coverage and recover the cost thereof immediately from the Surety or from Concessionaire).
11. Any lien or attachment to be filed against the Premises, the Airport, or other City property because of any act or omission of Concessionaire, and such lien or attachment is not discharged or contested by Concessionaire in good faith by proper legal proceedings within fifteen (15) days after receipt of notice thereof by Concessionaire.
12. Concessionaire use, permission to use, or failure to promptly prevent use of any portion of the Airport made available to Concessionaire for its use under this Agreement for any illegal purpose.
13. Concessionaire's license or franchise agreement related to the Concession it is authorized to operate at the Airport is terminated, expires, or is amended so that compliance with the amended provisions will cause Concessionaire to be in breach of its obligations under this Agreement.
14. Concessionaire's failure to pay any fees or charges required hereunder after the expiration of the (10) day cure period as proscribed hereunder.
15. The conduct of any business or performance of any acts at the Airport not specifically authorized in this Agreement or by any other agreement between City and Concessionaire, and Concessionaire's failure to discontinue that business or those acts within thirty (30) days of receipt by Concessionaire of City's written notice to cease said business or acts (which thirty [30] day notice and remedy period shall also satisfy the notice requirement of Section 12.02 below). Nothing in this Section 12.01 shall be construed to grant a right to Concessionaire to cure a default, which by its nature is not capable of being cured.

City reserves the right, in its sole discretion, to treat each Concessions Location individually for the purpose of declaring defaults and exercising remedies under this Agreement.

SECTION 12.02 CITY'S REMEDIES

In the event of any of the foregoing events of default of Concessionaire and following thirty (30) days' notice by City and Concessionaire's failure to remedy, City, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law. Unless the default, stated in such notice, is

by its nature curable and shall have been cured within such thirty (30) days. Nothing in this Section 12.02 shall be construed to grant a right to Concessionaire to cure a default, which by its nature is not capable of being cured. City remedies are as follows:

1. Allow this Agreement to continue in full force and effect and enforce City's right to collect compensation as it becomes due together with past due interest and draw upon the Surety in any amount necessary to satisfy the damages sustained or reasonably expected from Concessionaire's default.
2. Upon thirty (30) days' notice terminate Concessionaire's rights under this Agreement. This notice shall be final and shall at the option of City terminate all the rights hereunder of Concessionaire, and City may upon the date in the notice take possession of the Premises, and expel Concessionaire with or without process of law, without liability for trespass, and using such force as may be necessary, and without prejudice to any remedies for damages or breach. In doing so, City will not be deemed to have thereby accepted a surrender of the Premises, and Concessionaire will remain liable for all payments or other sums due under this Agreement up to and including the date of termination, and for all damages suffered by City because of Concessionaire's breach of any of the covenants of this Agreement, including but not limited to, all cost of reletting, reasonable attorney's fees, repairs, and improvements; or
3. Treat this Agreement as remaining in existence, and reenter and take possession of the Premises and expel Concessionaire and those claiming through or under Concessionaire and remove the effects of as may be necessary with or without process of law, without liability for trespass, using such force as may be necessary, and without prejudice to any remedies for damages or breach. No such reentry shall be construed as an election on City's part to terminate this Agreement. City reserves the right to terminate the Agreement at any time after reentry. Following reentry, City may relet the Premises, and make alterations, repairs, or improvements as City deems appropriate for reletting. City shall not be responsible for any failure to relet the Premises or any failure to collect compensation due for such reletting. City shall not be liable to Concessionaire for any claim for damages resulting from remedial action by City. Concessionaire shall continue to be liable for all amounts due as under this Agreement on the dates specified plus interest thereon at the Past Due Interest Rate together with such amounts as would be payable, including costs, attorney's fees, repairs, and improvements.

No delay, failure, or omission of City to re-enter the Premises or to exercise any right, power, privilege, or option arising from any default nor subsequent acceptance of fees or charges then or thereafter accrued will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment, or acquiescence of the Premises. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and that the exercise of one right, power, option, or remedy by City will not impair its rights to any other right, power, option, or remedy available under

this Agreement or provided by law. In the event, City terminates this Agreement or reclaims the Premises under this Section 12.02, City has no liability to Concessionaire for any Unamortized Investment.

ARTICLE XIII. INDEMNIFICATION AND RELEASE

To the furthest extent allowed by law, Concessionaire shall indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Concessionaire or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Concessionaire's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of the Airport, including use of any public airport facilities and improvements, upon which the Premises is located; or (iii) performance of, or failure to perform, this Agreement. Concessionaire's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City.

If Concessionaire should contract any work on the Premises or subcontract any of its obligations under this Agreement, Concessionaire shall require each consultant, contractor and subcontractor to enter into a Side Agreement, at the discretion of the City's Risk Manager or their designee, to indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

Concessionaire's occupancy, maintenance and use of the Premises shall be at Concessionaire's sole risk and expense. Concessionaire accepts all risk relating to Concessionaire's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of that Premises, including use of any public facilities and improvements, upon which the Premises is located; and (iii) the performance of, or failure to perform, this Agreement. City shall not be liable to Concessionaire or Concessionaire's insurer(s) for, and Concessionaire and its insurer(s) hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises including any public facilities and improvements, upon which the Premises is located, in any way related to the Concessionaire's operations and activities. Concessionaire shall immediately notify City of any occurrence on the Premises including any public facilities and improvements, upon which the Premises are located, resulting in injury or death to any person or damage to property of any person.

The provisions of this Section shall survive termination or expiration of this Agreement.

ARTICLE XIV. INSURANCE

SECTION 14.01 INSURANCE REQUIREMENTS

Throughout the life of this Agreement, Concessionaire shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than “A-VII” in the Best’s Insurance Rating Guide, or (ii) as may be authorized in writing by City’s Risk Manager or designee at any time and in its sole discretion. The City of Fresno and each of its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as “City”) requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

If at any time during the life of the Agreement or any extension, Concessionaire or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Concessionaire shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Concessionaire of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Concessionaire shall not be deemed to release or diminish the liability of Concessionaire, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Concessionaire. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Concessionaire, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-

owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

SECTION 14.02 MINIMUM LIMITS OF INSURANCE CONCESSIONAIRE

Concessionaire, or any party the Concessionaire subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than:
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.

4. **LIQUOR LIABILITY INSURANCE (if applicable)** for alcoholic beverages that are to be sold, served or furnished, Liquor Liability coverage is required with limits of liability of not less than:
 - (i) \$1,000,000 per occurrence;
 - (ii) \$2,000,000 aggregate for bodily injury and property damage;
5. **PROPERTY: (if operating within the airport)** Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Concessionaire's business property.

SECTION 14.03 UMBRELLA OR EXCESS INSURANCE

In the event Concessionaire purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City of Fresno and each of its officers, officials, employees, agents and volunteers.

SECTION 14.04 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Concessionaire shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Concessionaire shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
- (ii) Concessionaire shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

SECTION 14.05 OTHER INSURANCE PROVISIONS/ENDORSEMENTS

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to City, except ten (10) days for nonpayment of premium. Concessionaire is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Concessionaire shall furnish City with a new certificate and applicable endorsements for

such policy(ies). In the event any policy is due to expire during the work to be performed for City, Concessionaire shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The Commercial General, Liquor Liability and Automobile Liability policies of insurance shall be endorsed to name The City of Fresno and each of its officers, officials, employees, agents, and volunteers as additional insureds.

- A. Concessionaire shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 26, CG 20 11 or similar by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Forms CG 20 26 or CG 20 11.

The Commercial General, Liquor Liability and Automobile Liability policies of insurance shall be endorsed so Concessionaire's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to The City of Fresno and each of its officers, officials, employees, agents and volunteers. If Concessionaire maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Concessionaire.

- B. Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to The City of Fresno and each of its officers, officials, employees, agents and volunteers.

The property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. Full replacement value of any permanent improvements on the Premises, with the City named as a Loss Payee.
2. The coverage shall contain:
 - (i) No coinsurance penalty.
 - (ii) No limitations or exclusions for vacancy of any part of the Premises.
 - (iii) No special limitations on the scope of protection afforded to City.

SECTION 14.06 PROVIDING OF DOCUMENTS

Concessionaire shall furnish City with all certificates and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to City's**

execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Concessionaire shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Concessionaire shall also be required to provide all documents noted herein.

SECTION 14.07 MAINTENANCE OF COVERAGE

If at any time during the life of the Agreement or any extension, Concessionaire or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Concessionaire of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Concessionaire shall not be deemed to release or diminish the liability of Concessionaire, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Concessionaire. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Concessionaire, its principals, officers, agents, employees, persons under the supervision of Concessionaire, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SECTION 14.08 SUBCONTRACTORS

If Concessionaire should subcontract all or any portion of the services to be performed under this Agreement, Concessionaire shall require, at the discretion of the City, their subcontractor to enter into a separate Side Agreement in order to provide indemnification and insurance protection to City. Concessionaire shall verify that all subcontractors maintain insurance meeting all the requirements stated herein and Concessionaire shall ensure that City and each of their officers, officials, agents, employees and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Concessionaire and City prior to the commencement of any work by the subcontractor.

ARTICLE XV. SURETY FOR PERFORMANCE

SECTION 15.01 FORM OF SURETY

To secure payment for rents, fees, charges, and other payments required hereunder, Concessionaire will post with City a Surety. The Surety will be maintained throughout the Term of this Agreement and any holdover or extension and will be in an amount equal to three (3) times the monthly rental payment payable to City hereunder for a period of six (6) months. The Surety will be issued by a bank or surety provider acceptable to City and authorized to do business in the State of California and will be in a form and content satisfactory to City. The Surety may be issued for a one (1) year period, provided however, Concessionaire covenants and agrees that evidence of renewal or replacement of the Surety must be submitted annually by Concessionaire to City, without prompt, at least sixty (60) days prior to the expiration date of the instrument. The Surety shall contain language that the issuing financial institution shall notify City in writing within forty-five (45) days of a determination that the Surety is to be terminated and or is not going to be renewed.

Notwithstanding any provision herein to the contrary, if at any time during the Term City deems the amount of Surety insufficient to properly protect City from loss hereunder because Concessionaire is or has been in arrears with respect to such monetary obligations or because Concessionaire has, in the opinion of City, violated other terms of this Agreement, Concessionaire covenants that after receiving notice and an opportunity to remedy, it will increase the Surety to the amount required by City, provided however, the percentage increase shall not exceed the annual percentage increase that has occurred with respect to Concessionaire's rent, fees, and charges.

Concessionaire shall furnish the Surety within ten (10) days of the Effective Date as security for the full performance of every provision of this Agreement by Concessionaire. Failure to maintain the Surety as set forth herein shall be an event of default hereunder.

SECTION 15.02 APPLICATION OF SURETY

In the event Concessionaire fails to perform the payment terms and conditions of this Agreement, City, in addition to any other rights and remedies available by law or in equity, may, at any time, apply the Surety or any part thereof toward the payment of Concessionaire's obligations under this Agreement. In such an event, within thirty (30) days after notice, Concessionaire will restore the Surety to its original amount. City will not be required to pay Concessionaire any interest on the Surety. Concessionaire understands and agrees that failure to maintain or replenish the Surety shall constitute a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

SECTION 15.03 RELEASE OF SURETY

The release of the Surety will be subject to the satisfactory performance by Concessionaire of all terms, conditions, and covenants contained herein throughout the entire Term. Upon termination of this Agreement, the release of Surety will not occur until

all rents, fees, charges, and other payments due to City are satisfied and City has accepted the findings of Concessionaire's audit or has successfully conducted an audit in accordance with the provisions of this Agreement. In the event of a dispute as to the condition of the Premises, only the amount in dispute will be retained for remedy. City shall release the Surety without interest within thirty (30) days of meeting the above requirements.

ARTICLE XVI. PROPERTY DAMAGE

SECTION 16.01 COMPLETE DESTRUCTION

If Premises, the Terminal in which the Premises is located, or any portion thereof is destroyed or damaged to an extent that renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, Concessionaire's obligation to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. At its option, Concessionaire may then terminate this Agreement effective as of the date of such event.

If City elects to rebuild, Concessionaire must replace all Leasehold Improvements at its sole cost and in accordance with the Capital Investment, subject to increase for inflation. Such replacements must be in accordance with the performance standards set forth herein. City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage.

If during the last year of the Term the improvements on the Premises are partially destroyed or damaged, City may at City's option terminate this Lease as of the date of occurrence of such damage by giving written notice to Concessionaire of City's election to do so within thirty (30) days after the date of occurrence of such damage. In the event, City elects to terminate this Agreement pursuant hereto, Concessionaire shall have the right within ten (10) days after receipt of the required notice to notify City in writing of Concessionaire's intention to repair such damage at Concessionaire's expense, without reimbursement from City, in which event this Agreement shall continue in full force and effect and Concessionaire shall proceed to make such repairs as soon as reasonably possible.

SECTION 16.02 LIMITS OF CITY'S OBLIGATIONS DEFINED

City shall not be liable for the following: (i) any damage to property of Concessionaire or others located on the Premises or in the Airport; (ii) the loss of or damage to any property of Concessionaire or of others by theft or otherwise; (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow; (iv) leaks from any part of the Premises or the Airport; from the pipes, appliances, or plumbing works; from the roof, street, subsurface, or from any other place; or from dampness or by any other cause of whatsoever nature; (v) any such damage caused by

other Concessionaires, persons in the Premises, occupants of adjacent property, of the Airport, or of the public; (vi) damages caused by operations in construction of any private, public, or quasi-public work; (vii) any latent defect in the Premises or in the building of which they form a part; and (viii) all property of Concessionaire kept or stored on the Premises is at the risk of Concessionaire only.

Further, Concessionaire shall defend and hold City harmless from and hereby waives any claims arising out of damage to the same or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurance carrier. Concessionaire shall give immediate telephone notice to City in case of fire, casualty, or accidents in the Premises or in the building of which the Premises is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notice in writing.

Redecoration, replacement, and refurbishment of furniture, fixtures, equipment, and supplies will be the responsibility of and paid for by Concessionaire and will be of equivalent quality to that originally installed hereunder. City will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Premises regardless of the cause of damage.

SECTION 16.03 ALTERNATE SPACE

City will use its best efforts to provide Concessionaire with alternate areas acceptable to Concessionaire to continue its operation while City makes repairs to the Premises, in accordance with the terms of this Article, except for damages caused by Concessionaire's acts, omissions or negligence.

ARTICLE XVII. DAMAGING ACTIVITES

No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous (as defined below) or that may be offensive or cause harm to the public or cause damage to the Premises. Concessionaire is responsible for compliance and shall require its contractors to comply with all federal, state, and local environmental rules, regulations, and requirements. This includes compliance with all rules and regulations and Tenant Handbook incorporated hereto by reference. Concessionaire shall obtain all necessary federal, state, local, and Airport permits and comply with all permit requirements. Nothing will be done on the Premises other than as provided in this Agreement that will increase the rate of or suspend the insurance on the Premises or on any structure of City. No machinery or apparatus will be used or operated on the Premises that will damage the Premises or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Premises, with approval by City, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Agreement. Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the value of City's property or that would constitute waste.

The term "Hazardous" will mean:

- A. Any substance the presence of which requires or may later require notification, investigation, or remediation under any environmental law.
- B. Any substance that is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any federal, state, or local environmental law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resources Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and the associated regulations.
- C. Any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise harmful and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state.
- D. Any substance that contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds.
- E. Any substance that contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation.
- F. Any substance that contains or emits radioactive particles, waves, or materials, including, without limitation, radon gas.

Concessionaire agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance, or repairs made that might impair the structural soundness of the building; result in an overload of utility, plumbing, or HVAC systems serving the Terminals or interfere with electric, electronic, or other equipment at the Airport. In the event of violations hereof, Concessionaire agrees immediately to remedy the violation at Concessionaire's own cost and expense.

Concessionaire shall be responsible for any damage caused by Concessionaire to the Premises, Airport, any City property or operations, or the property of any other concessionaire, person, or entity, either by act, omission, or because of the operations of Concessionaire. In the event, of such damage, Concessionaire will give City immediate notice thereof, and Concessionaire will immediately make the necessary repairs at its own cost and expense. Concessionaire shall be required to comply with the obligations set forth in Article IX with respect to all work required to be performed in accordance with this Section. City reserves the right, if in the best interest of City, to perform the necessary repairs immediately itself. Concessionaire covenants to reimburse City, for the costs and expenses associated with necessary repairs plus an administrative fee of fifteen percent (15%). If the same type of damage is caused by Concessionaire more than once in a twelve (12) month period, such as a water leakage, electrical service interruption, or other damage, Concessionaire shall submit a Remediation Plan, as set forth in Section 6.01.C.

**ARTICLE XVIII. COMPLIANCE WITH LAWS, REGULATIONS,
ORDINANCES, AND RULES**

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with applicable federal, state, and local laws and regulations, present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, local and other governmental bodies,, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or City including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of the Airport. Concessionaire's failure to keep and observe said laws, regulations, ordinances, and rules shall constitute a material breach of the terms of this Agreement in the manner as if the same were contained herein as covenants.

SECTION 18.01 MINIMUM COMPENSATION / LIVING WAGE

Concessionaire agrees to comply fully with and be bound by all present or future minimum compensation regulations, as set forth by City or the State of California.

ARTICLE XIX. AIRPORT SECURITY

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Concessionaire or City by the FAA or TSA. If Concessionaire, its officers, authorized officials, employees, agents, subcontractors or those under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Concessionaire covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Concessionaire within fifteen (15) days from the date of the invoice or written notice.

Concessionaire understands and acknowledges that its ability to remain open and conduct operations under this Agreement is subject to changes in alert status as determined by TSA, which is subject to change without notice. If the security status of the Airport changes at any time during the Term of this Agreement, Concessionaire shall take immediate steps to comply and assist its employees, agents, independent Contractors, invitees, successors, and assigns in complying with security modifications that occur because of the changed status. At any time, Concessionaire may obtain current information from the Airport's Public Safety Office regarding the Airport's security status in relation to Concessionaire's operations at the Airport.

ARTICLE XX. AMERICANS WITH DISABILITIES ACT

Concessionaire will comply with the applicable requirements of the Americans with Disabilities Act (ADA) 42 USC § 12000 et seq. and any similar or successor laws,

ordinances, rules, standards, codes, guidelines, and regulations and will cooperate with City concerning the same subject matter. If compliance cannot be achieved, Concessionaire shall proceed formally to the federal, state, or local agency having jurisdiction for a waiver of compliance.

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the Concessionaire from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the Concessionaire, if requested by the Concessionaire. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

ARTICLE XXI. FAA APPROVAL

This Agreement may be subject to approval of the FAA. If the FAA disapproves this Agreement, it will become null and void, and both Parties will bear their own expenses relative to this Agreement, up to the date of disapproval.

ARTICLE XXII. RIGHT OF FLIGHT

Concessionaire's right to use the Premises for the purposes set forth in this Agreement shall be secondary and subordinate to the operation of the Airport. Concessionaire acknowledges that because of the location of the Premises at the Airport, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) will be caused by Airport operations. Concessionaire hereby waives all rights or remedies against City arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of the Airport. City specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of the Airport. Additionally, City reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft. Concessionaire expressly agrees for itself, its successors and assigns, to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

ARTICLE XXIII. FEDERAL RIGHT TO RECLAIM

In the event, a United States governmental agency demands and takes over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes, for a period more than ninety (90) consecutive days, then this Agreement will terminate and City will be released and fully discharged from all liability hereunder. In the event, of such termination, Concessionaire's obligation to pay rent will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

ARTICLE XXIV. PROPERTY RIGHTS RESERVED

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between City and the United States, when the execution of such agreements has been or may be required as a condition precedent to the transfer of federal rights or property to City for Airport purposes and the expenditure of federal funds for the extension, expansion, or development of the Airport. The provisions of the attached Appendix E and Appendix F are incorporated herein by reference and if the FAA or its successors requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise. Concessionaire understands, accepts, and 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 satisfy the FAA requirements.

ARTICLE XXV. ASSIGNMENT AND SUBCONTRACT

Concessionaire may not assign, subcontract and/or sublease its rights, interests or obligations in whole or in part under this Agreement without the prior written consent of City, in City's sole and absolute discretion. Concessionaire shall not grant any license or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Premises without first obtaining written consent of City, in City's sole and absolute discretion. Any attempt by Concessionaire to in any way directly transfer all or part of its interest in this Agreement (including any attempt to transfer ownership of the equity or voting interest in the stock of Concessionaire if Concessionaire is a corporate entity or the ownership interest in such other entity or control of Concessionaire or Concessionaire's operations through sale, exchange, merger, consolidation, or other such transfer) without prior written consent of City shall, at the option of the Director or designee, automatically terminate this Agreement and all rights of Concessionaire hereunder. Subject to the terms and conditions set forth in this Section, and only after it has received City's written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises. City's consent to one assignment/subcontract/sublease shall not be deemed a consent to subsequent assignments/subcontracts/subleases.

Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification, or other agreement relating to any such subcontract, must be approved in advance by City. The subcontract must contain substantially the same business terms and conditions as those found in this Agreement, and the subcontract must acknowledge the existence of this Agreement and that the subcontracting parties are jointly bound by the terms and conditions of this Agreement, and state that the subcontracting parties shall comply with and satisfy the requirements and obligations of Concessionaire hereunder. All rent, fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-up by Concessionaire. Sub-lessees must independently operate any subcontracted premises and adhere to and comply with all the terms, conditions, requirements, restrictions, obligations, and standards set forth herein,

including without limitation, all audit standards incorporated herein. Subleasing parties shall be jointly bound by the terms and conditions of this Agreement, and the subcontracting parties shall comply with the requirements and obligations of Concessionaire hereunder.

ARTICLE XXVI. CORPORATE TENANCY

If Concessionaire is a corporation, partnership, or limited liability business organization, the undersigned officer of Concessionaire hereby warrants and certifies to City that Concessionaire is a corporation in good standing, is authorized to do business in the State of California, and the undersigned officer is authorized and empowered to bind the corporation to the terms of this Agreement by his or her signature thereto.

Further, If Concessionaire is a partnership or other business organization, each member shall be deemed to be jointly and severally liable if such members are subject to personal liability.

No director, officer, or employee of City shall be held personally liable under this Agreement because of its good faith execution or attempted execution.

ARTICLE XXVII. RIGHT TO DEVELOP AIRPORT

Concessionaire acknowledges City's responsibility to the public to prudently operate, maintain and develop the City's facilities. In executing this responsibility, City shall have the right to undertake developments, renewals, and replacements which the City deems prudent or necessary. Such right shall include the right of City to terminate this Agreement early in the event that Concessionaire's possession of the Premises conflicts with, limits or interferes with proposed City development, renewal, replacement or expansion of City properties or operation of the Airport, subject to the notice requirements contained in Section 2.04.

ARTICLE XXVIII. ATTORNEY'S FEES AND COSTS

In the event legal action is required by City to enforce this Agreement, City will be entitled to recover costs and attorneys' fees, including in-house attorney time (fees) and appellate fees.

ARTICLE XXIX. RIGHT TO AMEND

If the FAA or its successors requires amendments, modifications, revisions, supplements, or deletions in 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 to this Agreement as may be required to obtain such funds.

ARTICLE XXXI. NOTICES AND COMMUNICATIONS

All notices or communication, whether to City or to Concessionaire pursuant hereto, will be deemed validly given, served, or delivered upon receipt by the Party by hand delivery, or three (3) days after depositing such notice or communication in a postal receptacle, return receipt requested, or one (1) day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

Concessionaire

City of Fresno, Airports Department
Attn. Director of Aviation
4995 E. Clinton Way
Fresno, CA 93727

or to such other address or parties within the State of California as either party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article. If the notice is sent through a mail system, a verifiable tracking documentation, such as a certified return receipt or overnight mail tracking receipt, is encouraged. Either Party may, however, designate a different address from time to time by providing written notice thereof.

ARTICLE XXXII. BOND ORDINANCES

This Agreement is in all respects subject and subordinate to any City bond ordinances applicable to the Airport, and to any other bond ordinances, which should amend, supplement, or replace such bond ordinances. The Parties to this Agreement acknowledge and agree that all property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds is owned by City. Concessionaire agrees not to take any action that would impair or omit to take any action required to confirm the treatment of such property as owned by City for purposes of §142(b) of the Internal Revenue Code of 1986, as amended. Concessionaire agrees to make and hereby makes an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds.

Concessionaire shall execute such forms and take such other action as City may request to implement such election.

ARTICLE XXXIII. FORCE MAJEURE

Neither Party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants, understandings, or conditions of this Agreement due to causes beyond the control of that Party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which such Party is not responsible or which is not in its power to control (collectively referred to as "Force Majeure"). A lack of funds, however, will never be deemed beyond a Party's power to control, and in no event shall this paragraph be construed to allow Concessionaire to reduce or abate its obligation to pay any obligation due herein.

This relief is not applicable unless the affected Party does the following:

- A. Uses due diligence to remove the Force Majeure as quickly as possible.
- B. Provides the other Party with prompt written notice of the cause and its anticipated effect.
- C. Provides the other Party with written notice describing the actual delay or non-performance incurred within seven days after the Force Majeure ceases.

ARTICLE XXXIV. RELATIONSHIP OF THE PARTIES

Concessionaire is and will be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and City will in no way be responsible, therefore. Nothing contained in this Agreement shall be deemed or construed by the City or Concessionaire, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the City and Concessionaire. It is understood and agreed that neither the method of computation of Rent or any other payments, nor any other provision contained in this Agreement, nor any acts of the City or Concessionaire creates a relationship other than the relationship of the City and Concessionaire as described in this Lease.

ARTICLE XXXV. CITY APPROVALS

Except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given or received by City, it is understood that the Director or designee, is hereby empowered to act on behalf of City. Further, except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given by the Director or designee, it is understood that the Director or designee may further delegate such authority through the Tenant Handbook.

ARTICLE XXXVI. INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Agreement will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Agreement will be valid and enforced to the fullest extent permitted by law, provided that such invalidity does not materially prejudice either Concessionaire or the City in their respective rights and obligations contained in the valid terms, covenants, or conditions hereof.

ARTICLE XXXVII. TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

ARTICLE XXXVIII. TAXES

Concessionaire will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and possessory interest taxes of any kind, against Concessionaire's Premises, the real property and any improvements thereto, Trade Fixtures and other personal property used in the performance of the Concession or estate which are created herein, or which result from Concessionaire's occupancy or use of the Premises or assessed on any payments made by Concessionaire hereunder, whether levied against Concessionaire or City. Concessionaire will also pay any other taxes, fees, or assessments against the Premises or estate created herein. Concessionaire will pay the taxes, fees, or assessments reflected in a notice Concessionaire receives from City within thirty (30) days after Concessionaire's receipt of that notice or within the time period prescribed in the tax bill. City will attempt to cause the taxing authority to send the applicable tax bills directly to Concessionaire and Concessionaire will remit payment directly to the taxing authority, in such instance. Concessionaire may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to City of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of City. Concessionaire shall pay to City, with each payment of Concessions Space Rent, Support Space Rent, and Percentage Rent and all other fees to City, all sales or other taxes which may be due with respect to such payments, and upon receipt, City shall remit such taxes to the applicable taxing authorities.¹

ARTICLE XXXIX. PATENTS AND TRADEMARKS

Concessionaire covenants, warrants, and represents that it is the owner of or fully authorized to use any services, processes, machines, articles, marks, names, or slogans used by it in its operations under this Agreement. Concessionaire will not utilize any

¹ Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (City) is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Concessionaire under this Agreement, Concessionaire, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to executing this Agreement, Concessionaire either took a copy of this Agreement to the office of the Fresno County Tax Assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Concessionaire's full and complete satisfaction, how much Concessionaire will be taxed, if at all.

protected patent, trademark, or copyright, including any patents, trademarks, or copyrights owned by City, in its operations under this Agreement, unless it has obtained prior proper permission, all releases, and other necessary documents. Concessionaire agrees to indemnify, defend, and hold harmless City, its officers, employees, agents, and representatives from any loss, liability, expense, suit, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under this Agreement.

ARTICLE XL. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Concessionaire is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Concessionaire does designate the Secretary of State, State of California, as its agent for the purpose of service of process in any court action between it and City arising out of or based upon this Agreement, and the service will be made as provided by the laws of the State of California for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Concessionaire does not have a duly noted resident agent for service of process, as an alternative method of service of process, Concessionaire may be personally served with such process out of this State, by the registered mailing of such complaint and process to Concessionaire at the address set out in this Agreement. Such service will constitute valid service upon Concessionaire as of the date of mailing. Concessionaire will have thirty (30) days from date of mailing to respond thereto. It is further expressly understood that Concessionaire hereby agrees to the process so served, submits to the jurisdiction of the court, and waives all obligation and protest thereto, any laws to the contrary notwithstanding.

ARTICLE XLI. COMPLIANCE WITH PUBLIC RECORDS LAW

SECTION 41.01 AGREEMENT SUBJECT TO CALIFORNIA PUBLIC RECORDS ACT

Concessionaire acknowledges, understands, and accepts that City is subject to the provisions of the California Public Records Act (CPRA), California Government Code Section 6250 et. seq. Concessionaire acknowledges that all documents prepared or provided by Concessionaire under this Agreement may be subject to the provisions of the CPRA. Any other provision of this Agreement notwithstanding, including Exhibits, Attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by Concessionaire to City shall be considered confidential by City only to the extent provided in the CPRA, and Concessionaire agrees that any disclosure of information by City consistent with the provisions of the CPRA shall result in no liability of City. Concessionaire agrees to defend, indemnify, hold harmless, and fully cooperate with City in the event of a request for disclosure or a lawsuit arising under such act for the disclosure of any documents or information, which Concessionaire asserts is confidential and exempt from disclosure.

SECTION 41.02 INDEMNIFICATION IN EVENT OF INTERVENTION

In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Concessionaire of such request to give Concessionaire the opportunity to object to the disclosure of any material Concessionaire may consider confidential, proprietary, or otherwise exempt from disclosure. In the event of the filing of a lawsuit to compel disclosure, City will tender all such material to the court for judicial determination of the issue of disclosure. Concessionaire agrees it will either waive any claim of privilege or confidentiality or intervene in such lawsuit to protect materials Concessionaire does not wish disclosed. If Concessionaire chooses to intervene in such a lawsuit and oppose disclosure of any materials, Concessionaire agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Concessionaire's intervention including prompt reimbursement to City of all reasonable attorney fees, costs, and damages that City may incur directly or may be ordered to pay by such court.

ARTICLE XLII. DATA SECURITY

Concessionaire will establish and maintain safeguards against the destruction, loss, or alteration of City data or third-party data that Concessionaire may gain access to or be in possession of in the performance of this Agreement. Concessionaire will not attempt to access, and will not allow its personnel access to, City data or third-party data that is not require for the performance of the services of this Agreement by such personnel.

Concessionaire will adhere to and abide by the security measures and procedures established by City. In the event, Concessionaire or Concessionaire's subcontractor (if any) discovers or is notified of a breach or potential breach of security relating to City data or third party data, Concessionaire will promptly: (i) notify City of such breach or potential breach; and ii) if the applicable City data or third party data was in the possession of Concessionaire at the time of such breach or potential breach, Concessionaire will investigate and cure the breach or potential breach.

ARTICLE XLIII. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS

Concessionaire, its officers, agents, and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and State of California, County and City of Fresno laws and statutes, or any successor thereto, concerning the use, possession, or sale of alcohol or drugs. Except as may be otherwise authorized by this Agreement, Concessionaire shall prohibit consumption of alcohol within those areas that are not covered by Concessionaire's California Department of Alcoholic Beverage Control Type 47 (On Sale General Eating Place) License. Violation of these provisions or refusal to cooperate with implementing this alcohol and drug policy can result in City barring Concessionaire from City facilities or participating in City operations.

ARTICLE XLIV. HAZARDOUS SUBSTANCES AND OSHA COMPLIANCE

No goods, merchandise or material will be kept or stored by Concessionaire at Airport which are explosive or hazardous; and no offensive or dangerous trade, business or occupation will be carried on therein or thereon. Nothing will be done in the performance of this Agreement which will increase the rate of or suspend any insurance policy or coverage of City and/or Airport.

Concessionaire covenants that all materials, equipment, and all other items used in the performance of this Agreement are in compliance with Occupational Safety and Health Administration (OSHA).

ARTICLE XLV. CITY'S SMOKING/VAPING POLICY

Concessionaire agrees that it will prohibit smoking/vaping by its employees and the public in the Premises. Concessionaire further agrees to not sell or advertise tobacco products. Concessionaire acknowledges that smoking/vaping is not permitted in the Airport's buildings and facilities except for designated areas. Concessionaire and its officers, agents, and employees shall cooperate and comply with the provisions of State of California and City of Fresno laws and statutes. See Appendix P (City's Smoking/Vaping Policy) for further details.

ARTICLE XLVI. WAIVERS

No waiver by City at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure, or omission of City to exercise any right, power, privilege or option arising from any default nor subsequent payment of charges then or thereafter accrued, will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein. No notice by City will be required to restore or revive time as being of the essence hereof after waiver by City or default in one or more instances. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all the rights, powers, options, or remedies given to City by this Agreement are cumulative and no one of them will be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by City will not impair its rights to any other right, power, option or remedy.

ARTICLE XLVII. COMPLETE AGREEMENT

This Agreement represents the complete understanding between the Parties, and any prior agreements or representations, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Agreement.

ARTICLE XLVIII. ORDER PRECEDENCE

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Terms and Conditions as contained in this Agreement.
- B. RFP No. 12300507
- C. Concessionaire’s Response to RFP No. 12300507, and any subsequent information submitted by Concessionaire during the evaluation process, as modified and accepted by City.

ARTICLE XLIX. BROKER'S COMMISSION

Concessionaire represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees in connection with the execution of this Agreement. Concessionaire shall defend, indemnify, and hold City harmless against all liabilities arising from any such claims caused or incurred by it (including the cost of attorney fees in connection therewith).

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any Third Party or parties (except parties to whom the Concessionaire may assign this Agreement in accordance with the terms hereof, and except any successor to City) any right to claim damages or to bring any suit, action or other proceeding against either City or Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

ARTICLE L. NO LIMIT ON CITY’S POWERS

Nothing in this Agreement shall limit in any way the power and right of City to exercise its governmental rights and powers, including its powers of eminent domain.

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ARTICLE LI. SIGNATURES

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. This Agreement is expressly subject to and shall not be or become effective or binding on City until approved by City, if so required, and fully executed by all signatories of City. This Agreement may be signed electronically by the Parties in the manner specified by City.

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

(CONCESSIONAIRE)
A Corp/LLC

By: _____
Henry Thompson, A.A.E., IAP
Director of Aviation

By: _____]

(Printed Name)

APPROVED AS TO FORM:
RINA GONZALES
Interim City Attorney

Title: _____]
(If corporation or LLC., Board
Chair, Pres. or Vice Pres.)

By: _____
Brandon M. Collet, Date
Supervising Deputy City Attorney

By: _____]

(Printed Name)

ATTEST:
TODD STERMER, CMC
City Clerk

Title: _____]
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

By: _____
Deputy

Address for Notice:

Address for Notice:
City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

Exhibits and Attachments: