



LEASE AND CONCESSION CONTRACT

MAA-LC-2X-XXX

BETWEEN

MARYLAND AVIATION ADMINISTRATION

AND

**FOR THE NON-EXCLUSIVE RIGHT
TO REDEVELOP, RENOVATE, LEASE & MANAGE THE
RETAIL, RESTAURANT & COMMERCIAL SERVICES
AT
BALTIMORE/WASHINGTON INTERNATIONAL
THURGOOD MARSHALL AIRPORT**

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EXHIBITS

- Lessee’s Assigned Office Space
- Leased Premises: Concession Area, Concession Storage
- Sublease Form
- Direct Recognition Agreement
- Concession Maintenance Responsibility Matrix
- Administration’s Concession Design Criteria

ATTACHMENTS

1. Lease and/or Concession Contracts General Provisions for BWI Marshall Airport, dated 08/2019
2. Contract Affidavit Form
3. Tenant Directive 003.1 – Trash Disposal and Recycling at BWI Marshall International Airport, dated July 27, 2009
4. Tenant Directive 401.1 - Standard Rates and Fees at Baltimore/Washington Thurgood Marshall International Airport, dated December 23, 2019

5. Tenant Directive 502.1 – Airport Fuel/Oil and Hazardous Material Spill Procedures and Legal Reporting Responsibilities, dated _____
6. Maryland Aviation Administration’s Permit Information Guide, dated 2021
7. Tenant Guide for Trash and Cardboard Disposal at BWI Marshall Airport, dated
8. Guidance Documents for Waste Management/Environmental Compliance [need from Dana/Darline]
9. Food Waste Composting Program [need from Dana]
10. Maryland Public Ethics Law Affidavit
11. Nondiscrimination Provisions
12. Request for Proposals No. MDOT MAA-RFP-2X-XXX
 - RFP-2X-XXX dated January X, 20XX
 - No. 6a - Addendum No. 1 dated March X, 20XX
 - No. 6b - Addendum No. 2 dated June X, 20XX
13. Lessee [NAME] Proposal
 - Initial Technical Proposal submitted March X, 20XX
 - No. 7a - Revised Technical Proposal submitted June X, 20XX
 - No. 7b - Financial Proposal submitted July X, 20XXX
14. Tenant Design Standards
 - A. Information Package for Contractors & Construction
 - B. Tenant Design Standard for Retail and Commercial Services Tenants
 - C. Tenant Design Standard for Restaurant & Food Court Tenants

**MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND AVIATION ADMINISTRATION**

LEASE AND CONCESSION CONTRACT

**FOR THE NON-EXCLUSIVE RIGHT
TO REDEVELOP, RENOVATE, LEASE & MANAGE THE
RETAIL, RESTAURANT & COMMERCIAL SERVICES
AT
BALTIMORE/WASHINGTON INTERNATIONAL
THURGOOD MARSHALL AIRPORT**

This Lease and Concession Contract (“Contract”) is made as of the _____ day of _____, 20XX by and between the Maryland Department of Transportation Maryland Aviation Administration (“Administration”), located at P.O. Box 8766, Third Floor, Airport Terminal Building, Baltimore/Washington International Thurgood Marshall Airport, Maryland 21240-0766, and LESSEE [NAME] (“Lessee”), whose principal place of business is located at LESSEE [ADDRESS].

WITNESSETH:

WHEREAS, the State of Maryland owns and operates Baltimore/Washington International Thurgood Marshall Airport (hereinafter referred to as “Airport” or “BWI Marshall Airport”) located in Anne Arundel County, State of Maryland; and

WHEREAS, the Administration operates and manages the Airport for the promotion, accommodation, and development of air commerce and air transportation between the Washington/Baltimore metropolitan areas and other cities of the United States and cities of other nations of the world; and

WHEREAS, it is the intent and desire of the Administration to enhance traveler experience through extensive amenities, facility efficiency, convenience and high-quality services; and

WHEREAS, the Administration issued a Request for Proposal No. MDOT MAA-RFP-22-001 to select a Concession Developer for the non-exclusive right to redevelop, renovate, lease and manage the retail, restaurant and commercial services at BWI Marshall Airport and associated support facilities on State-owned property; and

CONTRACT NO. MAA-LC-2X-XXX

WHEREAS, Lessee has submitted a Technical Proposal in response to the Administration’s Request For Proposals No. MDOT MAA-RFP-2X-XXX dated January X, 20XX, Addendum No. 1, dated March X, 20XX, and Addendum No. 2, dated June X, 20XX, to provide such redevelopment, renovation, leasing and management services and Administration has accepted Lessee’s Proposal to do so; and

WHEREAS, Lessee has been determined to be fully qualified, ready, willing and able to provide the requested services; and

WHEREAS, Administration desires to enter into this Contract with Lessee on the terms and conditions set forth herein;

WHEREAS, this is a revenue-producing Contract at a transportation facility and was procured under State Finance and Procurement Article § 11-202(3); COMAR 21.01.03.03 and is outside of the scope of State Procurement Law.

NOW THEREFORE, the parties hereto, for and in consideration of the charges, fees, covenants, terms and conditions contained in this Contract, agree as follows:

ARTICLE I - RECITALS

The recitals set forth above are hereby incorporated and made a part of this Contract.

ARTICLE II - INCORPORATION OF LESSEE’S PROPOSAL

Administration’s Request for Proposals No. MAA-RFP-22-001, For The Non-Exclusive Right To Redevelop, Renovate, Lease and Manage the Retail, Restaurant and Commercial Services at BWI Marshall Airport dated January X, 20XX, Addendum No. 1 dated March X, 20XX, Addendum No. 2 dated June X, 20XX, and Lessee’s Technical Proposal submitted on March X, 20XX, including its Revised Technical Proposal submission dated June X, 20XX, and its Financial Proposal submitted on July X, 20XX (collectively hereinafter referred to as “the Proposal”), are incorporated and made a part of this Contract. Lessee shall be obligated to meet all specifications described in its Proposal, as applicable. However, where an express provision of this Contract is in conflict with any provisions of the Proposal, this Contract shall control,

unless the Administration deems that the provision in the Proposal describes a higher level of service than indicated in the Contract provision.

ARTICLE III - DEFINITIONS

In addition to the other initial capitalized terms defined in this Lease and Concession Contract, the following terms and expressions when used in this Lease and Concession Contract shall have the following meaning:

“A/B Expansion” means the areas within the Airport Terminal Building between Concourse A and Concourse B, currently under construction, and scheduled for opening in spring, 2026, that include five (5) airline gates and hold rooms, as well as related concession and support areas.

Airport Concession Disadvantaged Business Enterprise (“ACBDE”) means a concession that is a for-profit small business concern— (1) That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Addendum” means written or graphic instrument issued prior to Proposal opening that clarifies, corrects, or changes the RFP and related materials or the Contract documents.

“Acknowledgement” means a sworn statement that accompanies all required submissions (operating reports, financial reports, etc.) to the Administration that is signed by an authorized representative of the Lessee that states: “I certify that I have conducted a thorough examination and assessment of the information submitted, including a review of the relevant data, documents and electronically generated reports, inquiry of those individuals responsible for the day-to-day oversight of the retail, restaurant and commercial services at the Airport, **sublessees**, and those persons responsible for tabulating and assembling the information. Based upon such assessment, I further certify that such information is true, accurate and complete, to the best of my knowledge, information and belief formed after reasonable inquiry.”

“Additional Payment” means all amounts (other than the Monthly Payments), liabilities and obligations that Lessee is required to pay to the Administration under and pursuant to this Lease and Concession Contract including all interest, administrative fees and fines.

“Additional Work” means work which was not required or provided for in the original Contract.

“Administration” means the Maryland Department of Transportation Maryland Aviation Administration.

“Affiliate” means an entity that is related to another entity by shareholdings or other means or control, a subsidiary, parent or sibling entity.

“Airport” means Baltimore/Washington International Thurgood Marshall Airport.

“Airport Concession Emergency Continuity Plan” means Lessee’s Plan as approved by the Administration that addresses a variety of potential emergencies including, but not limited to, biological, fire, hostage situation, pandemic, or shutdown.

“Airport Terminal Building” means the interconnected facilities at the Airport, existing or under construction, as of the date of this Contract, known individually as Concourse A, Concourse B, A/B Core, Concourse C, Concourse D, D/E Core, Concourse E, North Terminal Landside and South Terminal Landside, along with all user movement areas, public areas and baggage claim areas therein and interconnecting the facilities, and all future expansions thereto.

“Airside” means the ramp/airfield, as well as all portions of the Terminal, as designated from time to time, to which the public does not have access without passing through security checkpoints.

“Back-of-House” means areas and equipment that are necessary for the operation of some or all concessions, but that are not generally accessible by the public. Examples of this include kitchen prep and cooking areas, trash/recycling rooms, or equipment rooms.

“Base Building Work” means the sub-floor, structural elements, demising walls at the exterior of the Sublessee Premises, utilities infrastructure and other base building improvements, structures and fixtures that the Administration installs at the Leased Premises. Base Building Work includes preparation of portions of the Leased Premises designated for concession activities in Shell Condition.

“BPW” means the Board of Public Works of the State of Maryland.

“Build-out” means all work to improve or renovate the Leased Premises, other than the Base Building Work, to prepare these areas to be used for their intended purposes in accordance with this Contract.

“Business Day(s)” means Monday through Friday, excluding federal and State holidays.

“Capital Improvements” means the improvements, structures, and fixtures installed by Lessee or Sublessees. Capital Improvements may include, but are not limited to, finish-out work on floors, ceilings, demising walls and store facades, storefront signage, the panel box and hook-ups to utilities, wires and conduits infrastructure, decorations, furniture, equipment, shelves, counters, cash wraps, lighting and interior design and construction work necessary in general to accommodate the operation of the Leased Premises.

“Capital Investment” means the total funding invested in the Project by the Lessee or Sublessee, initially and during the midterm refurbishment.

“CPI-U Change” means the cumulative change from the base period as established in this Contract, in the Consumer Price index for All Items in Washington—Arlington—Alexandria, DC-VA-MD-WV, Urban Wage Earners and Clerical Workers, Not Seasonally Adjusted. The Bureau of Labor Statistics Series ID for this index is CWURS35ASA0. If the Bureau of Labor Statistics ceases to publish this index, a similar index will be used.

“Catering Services” means sales of food and beverage items by a Sublessee, delivered in areas other than the Sublessee’s Leased Premises.

“Commercial Services” means retail business that focuses on intangibles and personal service which may include, but are not limited to, health services, shoeshine shops, nail salons, massage services, medical center, exercise facilities, barber shop/hair dresser/beauty salon, baggage carts, business services and clubs/lounges, etc.

“Common Area(s)” means the areas of the Leased Premises that is generally accessible to all occupants of the Airport. Such areas may include areas leased by the Lessee from the Administration but are not leased by the Lessee to a specific Sublessee or utilized by the Lessee for its own purposes, e.g. office space. These may include, but are not limited to, public seating areas, walkways through food courts, and back-room maintenance facilities.

“Common Area Maintenance” (CAM) means maintenance and service of the Leased Premises and other designated Common Areas of the Concessions Program, including, but not limited to: general custodial services, pest control, fire extinguishers, grease traps and grease exhaust maintenances, tenant trash removal services, glass/window cleaning or maintenance, and repair and replacement of food court tables, chairs and other furniture and services as directed by the Administration.

“Common Area Maintenance Fee” means an amount to be invoiced as a separate line item and collected from Sublessees by Lessee for the purpose of reimbursing, at cost, all of Lessee’s actual out-of-pocket expenses incurred to provide Common Area Maintenance services. CAM Fees shall be excluded from Lessee’s Gross Revenues.

“Community Outreach” means the obligation of the Lessee, in connection with the leasing, construction and implementation of the improvements and operation of the retail, restaurant and commercial services at the Airport, to develop and maintain an outreach plan subject to the Administration’s review and written approval that will be implemented by Lessee after this Lease and Concession Contract is executed by the parties hereto, to solicit municipal and community concerns for consideration in developing constructive solutions and operating improvements.

“Community Outreach Plan” means a plan for public engagement with residents and businesses located near the Airport, as well as people traveling through or working in the Airport prepared by Lessee in accordance with Article VIII.B.2.f of this Contract. The Community Outreach Plan must be revised periodically as needed over the Contract Term.

“Conceptual Plans” are plans for the development of the Leased Premises and/or Concession Area, required of both the Lessee and its Sublessees as applicable, and shall include a color board with samples of finish materials and colors, and cut sheets of furniture and decorative fixtures

“Concession Area” means the Sublessee Premises and Common Areas or Leased Premises. The Concession Area excludes Concession Storage.

“Concession Location” means an individual location within the Concession Area.

“Concessions Program” means the Airport Concession Master Plan as defined in Article VIII.B.2 of this Contract

“Construction Schedule” means the schedule submitted by Lessee and consented to by the Administration with respect to the timetable for construction or renovation at any area within the Leased Premises.

“Concession Storage” means any area that supports the operation of a sublessee and its permitted use. Concession Storage includes all areas in the Airport Terminal Building and related facilities as shown in Exhibit_____.

“Concessions Developer” means the entity(ies) identified as the Lessee, responsible for all aspects of implementing the Concessions Program.

“Construction Costs” means the sums Lessee will spend or require Sublessees to spend on the construction of improvements to Sublessee Premises, with the approval of the Administration, as specified in Article X, Construction of the Concessions Program & Capital Improvements of this Contract.

"Construction Representative" means the entity retained by the Lessee to manage the construction of Leased Premises or Subleased Premises at the Airport.

“Construction Permit” means an authorizing document permitting certain construction and/or installation work to be performed at the specified portion of the Leased Premises in accordance with the terms thereof.

“Contract Term” means all three phases of this Contract, as identified in Article VI of this Contract.

"Contract Year" means each twelve (12) calendar month period commencing on the start date of the Operational Management Period, January 1, 2027.

“Convenience Retail” shall mean the offering for sale of merchandise commonly found in newsstands, including, but not limited to newspapers, candy, gum, snacks, magazines, paperback books and souvenirs.

“Date of Beneficial Occupancy” or “DBO” means the date of receipt by a tenant (including Lessee, Sublessee, or airline) at the Airport of its Certificate of Occupancy or Temporary Certificate of Occupancy from the Airport’s Fire and Rescue Department, or other authorized approval from the Administration or its designee(s), to commence the use of space for its intended purpose.

“Day” means a calendar day of 24 hours measured from midnight to the next midnight unless otherwise provided.

“Depreciation Schedule” means a schedule reflecting the monthly depreciation of the Eligible Costs for Capital Improvements installed or midterm Renovations made by Lessee or Sublessee in the Concession Area, which schedule is subject to approval by the Administration and shall reflect depreciation on a straight-line basis over the remaining Contract Term or Sublease term, respectively, unless otherwise approved by the Administration in writing. Any schedule submitted by Lessee or Sublessees for this purpose shall not be deemed a “Depreciation

Schedule” until such schedule is approved by the Administration, which approval shall not be unreasonably withheld.

“**Development Phase**” means the period of time that shall begin as of the date that this Contract is executed by the Lessee and the Administration, with the approval of the Executive Director of the Maryland Aviation Administration, the Secretary of Transportation, and the Board of Public Works of Maryland, and shall expire at 11:59 p.m. on March 31, 2024.

“**Delivery & Distribution Services**” means product acceptance, storage and delivery services provided by the Administration’s designated third-party on-Airport provider.

“**Delivery & Distribution Service Charge**” means an amount to be collected from Sublessees by Lessee for the purpose of reimbursing Lessee’s actual out-of-pocket expenses incurred to provide Distribution Services and in maintaining the centralized distribution facility. Delivery & Distribution Service Charges shall be excluded from Lessee’s Gross Revenues.

“**Effective Date**” means the date that the Contract is executed by Lessee and the Administration, with the approval of the Executive Director of the Maryland Aviation Administration, the Maryland Secretary of Transportation, and the BPW.

“**Eligible Costs**” means, with respect to any expenditures made by Lessee or its Sublessees in Capital Improvements or midterm Renovations, the following: (i) construction costs, (ii) architectural and engineering fees, construction management fees and the cost to obtain the applicable permits, which amounts under this clause shall not exceed fifteen percent (15%) of the contracted construction costs, unless otherwise approved by the Administration in writing, (iii) cost of permanent fixtures, (iv) any funds, up to \$1,000,000 expended by Lessee, to assist Sublessees to establish one or more Concession Location(s) at the Airport, that is not repaid to the Lessee by the recipient, and (v) with the approval of the Administration, any funds in excess of the \$1,000,000 in (vi) above, expended by Lessee to assist Sublessees to establish one or more Concession Location(s) at the Airport, that is not repaid to the Lessee by the recipient.

Notwithstanding the foregoing, the definition of Eligible Costs shall not include: (a) costs for Base Building Work incurred by the Administration, (b) costs in excess of one hundred fifty percent (150%) of the estimated costs of Capital Improvements provided by Lessee to and approved in writing by the Administration at the time preliminary approval is sought unless otherwise specifically approved by the Administration in writing, (c) any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees or any non-construction-related

cost) in connection with said Capital Improvements, or (d) amounts paid to any Affiliate of Lessee or Sublessee, unless otherwise specifically approved by the Administration in writing. In addition, to qualify as Eligible Costs, documentary evidence of payment as described in Article XII must be provided.

“Enplaned Passenger” means any passenger, except the flight crew, boarding an aircraft at the Airport, even if such passenger previously disembarked from another aircraft of the same or a different Air Transportation Company.

“EPA” means the United States Environmental Protection Agency, and any successor agency, office or department thereto.

“Expiration Date” means the last day of the Operational & Management Period.

“FAA” means the United States Federal Aviation Administration, and any successor agency, office or department thereof.

“Facility Opening Date” means the date that an individual Sublessee Premises is (or shall be) opened for business as established in the Sublease. No facility will be allowed to open without obtaining a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) issued by the Administration’s Fire and Rescue Department or other authorized approval from the Administration or its designee(s), to commence the use of space for its intended purpose.

“First Class Manner” means the manner of operation of the concessions such that the standards for cleanliness, customer service, and customer experience meet those of upscale shopping district and similar high-quality airport and non-airport retail/food and beverage facilities.

“Food Court Area” means areas within the Concession Areas or Leased Premises, including both Sublessee Premises and Food Court Common Areas that are characterized as having multiple food-service type Sublessee operations that share a common seating area.

“Food Vending Machine” means an automated machine that dispenses small articles of food and beverages.

“Full-Service Restaurant” (“FSR”) means sit down eatery where food/beverages are served directly to the customers’ table. These establishments may sell alcoholic beverages, takeout, and/or provide delivery.

“Generally Accepted Accounting Principles” or “GAAP” means the conventions, rules, and procedures that define approved accounting practices at a particular time. These principles are issued by the Financial Accounting Standards Board for use by accountants in

preparing financial statements. The principles include not only broad guidelines of general application, but also detailed practices and procedures.

“General Manager” means the person charged by the Lessee with the responsibility to manage and oversee the day-to-day operations and management of the Concession Area, as further explained in Article VIII.A.2 of the Contract.

“Gross Receipts/Gross Sales” - For the purposes of this Contract, means and includes all monies paid or payable to each and every Sublessee whether in cash, credit or otherwise, for sales made or services rendered at or from the Airport regardless of when or where the order is received, or outside the Airport if the order is received at the Airport, including, without limitation:

- Proceeds from the sale of gift and merchandise certificates (but only when such certificates are treated as a sale from Sublessee Premises pursuant to a Sublessee's record keeping system);
- Mail order sales arising out of preliminary contacts made at Airport facilities;
- Catalogue sales (catalogues displayed in Sublessee Premises must include a tracking number unique to the Sublessee Premises that allows for an auditable method for tracking such sales);
- Internet sales for delivery at the Airport or when merchandise to fill such orders is taken from Airport locations;
- Other electronic or mobile orders received or filled at the Airport;
- Deposits not refunded to purchasers;
- Orders taken at the Concession Area (although such orders may be filled elsewhere);
- Catering sales;
- Sales through vending machines or other devices;
- State or Federal Government grant funding awarded to Lessee; and
- All insurance proceeds received due to loss of gross earnings under any Sublessee's business interruption insurance coverage.

A "sale" shall be treated as consummated for the purposes of this definition or service deemed rendered, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for

cash, credit or otherwise, and not at the time of payment. No deduction shall be allowed for uncollected or uncollectable credit accounts or "bad" checks.

Gross Receipts shall not include:

- Any sums collected for any federal, State, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise or services but only if separately stated from the sales price and only to the extent paid by Sublessees to any duly constituted governmental/taxing authority;
- The exchange of merchandise between the stores or warehouses owned by or affiliated with any Sublessee, if any, where such exchanges of goods or merchandise are made solely for the convenient operation of the business of such Sublessee and not for the purpose of consummating a sale which has theretofore been made at, in, from or upon the Concession Area nor for the purpose of decreasing payments otherwise due the Administration hereunder which otherwise would be made at, in, from or upon the Concession Area;
- The amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by a purchaser and accepted by the Sublessee to which it is returned;
- Sale of fixtures, equipment or other items of property that are not stock in trade and not in the ordinary course of any Sublessee's business;
- Any receipts of a Sublessee that arise from its operations under any other contract with the Airport and are subject to a percentage fee or percentage rent under that contract;
- Shipping and delivery, charges if provided at the cost of such shipping or delivery and such services are merely an accommodation to customers;
- Receipts in the form of refunds from or the value of merchandise, services, supplies or equipment returned to vendors, shippers, suppliers or manufacturers including volume discounts received from a Sublessee's vendors, suppliers or manufacturers;
- Customary discounts given by a Sublessee on sales of merchandise or services to its own employees, if separately stated, and limited in total amount to not more than one

- percent (1%) of its Gross Receipts per month, unless otherwise agreed to by the Administration;
- Discounts, if separately stated, given by Sublessees on sales of merchandise or services to employees of Lessee, Administration, other airline lessees in the Terminal, and other persons employed at the Airport who are in possession of a valid Administration or Airline issued badge;
 - Gratuities for services performed by employees of a Sublessee that are paid by a Sublessee or its customers to such employees, except to the extent Sublessee may be entitled to receive a portion of such gratuities;
 - The sale or transfer in bulk of the inventory of a Sublessee to a purchaser of all or substantially all of the assets of such Sublessee in a transaction not in the ordinary course of such Sublessee's business;
 - Amounts given as discounts to customers redeeming coupons issued either by the specific Sublessee or through the catalog which may be prepared by Lessee as part of the joint marketing effort for the Airport Terminal Building; and
 - Except with respect to insurance proceeds received due to loss of gross earnings under any Sublessee's business interruption insurance coverage as provided above and/or insurance proceeds that may be payable to Administration under such coverage, receipts from all other insurance proceeds received by a Sublessee as a result of a loss or casualty.

“Guaranty Bond” means a surety bond or irrevocable letter-of-credit given to secure both payment and performance.

"In-Line Store" means the Concession Areas, other than Kiosks, that are permanently affixed to the Airport Terminal Building.

“Initial Improvements” means the initial demolition, construction and renovation work to be completed by or at the direction of Lessee as generally described in the Conceptual Plans and as to be more particularly described in the Airport Concession Master Plan which shall be submitted to the Administration as revised from time to time.

“Joint Concession Marketing Fund” means the accumulations of funds contributed by Sublessees to Lessee, to be spent by Lessee on the marketing and promotion of the overall Concessions Program at the Airport Terminal Building or related facility or on any item or

service that may enhance the overall passenger experience at the Airport Terminal Building or related facility that's related to concessions, all in accordance with the approved Concessions Program and its annual marketing plan component, and as approved by the Administration.

“Joint Concession Marketing Fund Fee” means Sublessee contributions to the Joint Concession Marketing Fund, payable monthly, in an amount not to exceed three quarters of one percent (0.75%) of all Gross Receipts of each Sublessee.

“Key Performance Indicators” (“KPI”) means quantifiable measures that evaluate the success or progress toward goals of the overall program.

"Kiosk" or “Retail Merchandising Unit” (“RMU”) means a site within the Concession Area that is a free-standing temporary facility not affixed to the Terminal, mobile or non-mobile, whether completely free-standing or located against the wall, that is used as a selling location for food, beverage, retail or commercial services.

“Landside” means all parts of the Airport Terminal Building not located on the Airside, as defined herein.

“Leased Premises,” means all areas in the Terminal to which Lessee is granted rights under this Contract as shown in Exhibit_____.

“Lessee” means the entity, duly organized, and qualified to do business in the State of Maryland, or any successor thereto or assignee thereof permitted by the Contract, which develops, leases and manages operations (but not individual operating units) that sell goods or services for a profit at the Airport under the rights granted in the Contract. “Lessee” has the same meaning as “Contractor” or “Developer” in RFP No. MDOT MAA-RFP-21-001, this Contract and in the General Provisions.

“Lessee’s Architect/Engineer” means the licensed firm or firms engaged by Lessee and approved by the Administration, to design and prepare the plans and specifications for the improvements to Leased Premises.

“Lines of Business” means Restaurant, Convenience Retail, Specialty Retail, and Commercial Services concessions.

“MDOT” means the Maryland Department of Transportation or its successor.

“Minimum Monthly Guarantee” means the minimum amount payable by the Lessee to the Administration on a monthly basis.

“Operating Expenses” means all costs incurred by the Lessee in the day-to-day operation of the Concessions Program. Such costs include both costs reimbursed by Sublessees (e.g., CAM, marketing program expenses, costs for delivery and distribution activities, fiber optic or wireless backbone fees), as well as Lessee’s expenses for its operations.

“Operation & Management Period” means the period of time commencing at the end of the Renovation Phase on December 31, 2026, and lasting for twenty (20) years, unless sooner terminated pursuant to Article XXXVI, Default & Rights & Remedies Upon Default, of the Contract.

“Preferred Environmental Maintenance & Service Provider” means an entity from a list of preferred providers who provide pest control, grease trap cleaning, removal of cooking oils and generated waste oils, kitchen grease exhaust cleaning and/or other services at Sublessee Premises and Common Areas of the Leased Premises that is selected by the Lessee and approved by the Administration. The level of service provided must meet or exceed the Administration’s minimum requirements.

“Plans” means the completed set of architectural working plans, drawings and specifications and engineering drawings and specifications prepared by the Lessee’s and/or Sublessee’s Architect/Engineer of record for the construction of Capital Improvements or Mid-term Renovations.

“Point of Sale Data” shall mean sales data reflecting the amount of each sales transaction, items sold per transaction, time and date of the transaction, and specifying the sales category applicable to each item sold.

“Quick-Service Restaurant” (“QSR”) means food and/or specialty beverages sold in a restaurant or store with frozen, preheated, or precooked ingredients, and served to customers in a packaged form for take-out/take-away (fast food establishments such as Jamba Juice, McDonald’s, Starbucks, etc.).

“Recyclables” (or variation thereof) means material or objects that can be reused, reprocessed, remanufactured, reclaimed, or recycled arising out of the construction, renovation, occupancy, operation, and maintenance of the retail, restaurant and commercial services at the Airport or the Leased Premises as mandated by the Administration and/or the State.

“Refurbishments” means the repair, maintenance (e.g., painting), replacement or upgrade of the Concession Area.

“Restaurant” means a concession serving food and beverages. This includes Full Service Restaurants (FSR) and Quick Service Restaurants (QSR).

“Renovations” means the remodeling, refreshment, or re-concepting of the Concession Area.

“Renovation Phase” means the period of time commencing at the end of the Development Phase on March 31, 2024, and, unless sooner terminated pursuant to Article XXXVI, Default & Rights & Remedies Upon Default, shall expire at 11:59 p.m. on December 31, 2026.

“Rental” or “Rents” means the payment for the letting of the Leased Premises commencing at the beginning of the Interim Phase and continuing throughout the term of this Contract until the expiration or other termination of this Contract that Lessee shall pay to the Administration.

“Retail” includes Convenience Retail and Specialty Retail concession categories.

“Retail Merchandising Unit (RMU)” See Kiosk.

“RFP” means specifically Request for Proposals No. MAA-RFP-22-001, issued by the Administration.

“Rules and Regulations” means those rules and regulations promulgated by the Administration in the Code of Maryland Regulations, Volume XII, Title II, Transportation pursuant to the Administrative Procedure Act (as opposed to Tenant Directives) for the orderly use of the Airport, as the same may be amended, modified or supplemented from time to time.

“Service/Merchandise Vending Machine” means an automated machine that dispenses small non-food articles that may include, but are not limited to, cosmetics, healthcare accessories, entertainment, education, technology, or communication services or products.

“Shell Condition” means smooth concrete floors, demising studs and walls, and utility services (conduits, lines, pipes) of typical commercial capacity and size located at the lease lines of each of Sublessee Premises or in reasonable proximity thereto.

“Solid Waste” means unwanted or discarded materials, debris and other waste materials (other than Recyclables or Hazardous Materials) arising out of the construction, renovation, occupancy, operation, and maintenance of the Leased Premises.

“Specialty Retail” means retail uses, other than those defined as Convenience Retail. These may include retail stores that focuses on specific product categories (e.g. specialized

athleisure wear stores, duty free stores, consumer electronics stores, accessory stores, music stores).

“State” means the State of Maryland acting through its authorized representative.

“Street Pricing” means the price for a good or service charged at an off-Airport comparable location, as set forth in Article VIII.C.4.

“Street Pricing Policy” means the policy established for this contract that requires charges, fees or prices of any goods or services offered to the public at the Airport is “Street Priced,” without escalation or other consideration that may increase, enhance or raise the range of prices above three comparable businesses within the Washington-Baltimore Region.

“Sublease” means a lease executed by the Lessee and its Sublessee and approved by the Administration conveying to the Sublessee a portion of the Leased Premises for a specified term and obligation.

“Sublessee” and **“Sublessees”** means any sole proprietor(s) or other business entity(ies) having the right to sublease and occupy any portion of the Concession Area under a Sublease with Lessee.

“Sublessee Rents” or **“Sublessee Rentals”** means the amounts paid by Sublessees to the Lessee for the rental of a portion of Concession Area within the Terminal.

“Sublessee Premises” means the areas subleased, or available to be subleased, through rights granted in the Contract.

“Support Space” means the areas within the Leased Premises for use by Lessee for food preparation, maintenance, or offices as approved by the Administration, as amended from time to time.

“Tenant Design Standards” means standards, established by Lessee and Lessee’s Architect as approved by the Administration, as amended from time to time, to specify the aesthetic qualities required of Concessions Area/Location in the Airport Terminal Building.

“TSA” means the United States Transportation Security Administration, and any successor agency, office or department thereof.

“Turnover Date” means the date on which possession of any Concession Location is delivered to Lessee after the Administration has certified to the Lessee that the Base Building Work for such area has been completed and that such space is available for Build-out, in the case

of newly constructed Leased Premises, or the date of the Sublease in the case of existing Leased Premises to be redeveloped.

“Unit Pro-Forma Statement” means a statement in U.S. Dollars of the concession unit’s projected gross revenues and expenses for the first three (3) years of the proposed Sublease term. The statement shall include:

- a. A comprehensive narrative of each source of projected operating revenues by category;
- b. Projected annual gross revenues from operation of the concession;
- c. Projected annual operating expenses. Projected payments to the Lessee are to be included on the pro-forma;
- d. Data submitted shall include the sublessee’s working capital required for the venture and sources of cash to provide for the payment of sublessee’s fixed and variable expenses and working capital; and
- e. A description of sublessee’s funding strategy, including sources.

“Vending” includes Food Vending Machines and Service/Merchandise Vending Machines.

“Washington-Baltimore Region” means and is composed primarily of two major Metropolitan Statistical Areas (MSAs): The Washington-Arlington-Alexandria MSA and the Baltimore-Columbia-Towson, Maryland MSA. The specific markets for the purposes of this contract, the specific markets included in the Washington-Baltimore Region include:

Washington-Arlington-Alexandria Metropolitan Area

Washington, District of Columbia; Calvert County, Maryland; Charles County, Maryland; Prince George's County, Maryland; Arlington County, Virginia; Fairfax County, Virginia; Woodbridge, Virginia; Alexandria, Virginia; Fairfax, Virginia; Falls Church, Virginia; Manassas, Virginia; Manassas Park, Virginia; Jefferson County, West Virginia.

Baltimore Metropolitan Area

Baltimore City; Anne Arundel County; Baltimore County; Carroll County; Harford County; Howard County; and Queen Anne's County.

“Work” means all of the administrative, financing, design, engineering, utility support services, procurement, legal, professional, manufacturing, supply, installation, construction,

supervision, management, testing, verification, labor, materials, equipment, operations, maintenance, documentation, and other duties and services to be furnished and provided by the Lessee as required by this Lease and Concession Contract, except for those efforts which this Lease and Concession Contract specify will be performed by the Administration or other persons.

ARTICLE IV - SCOPE OF SERVICES

A general description of the Scope of Services is set forth in the Administration's RFP attached hereto and incorporated herein. Lessee's Proposal, incorporated by reference, obligates Lessee to provide the category and manner of services as Lessee specifically describes and outline in its Proposal. Except as expressly provided in this Lease and Concession Contract as the responsibility of others, Lessee shall perform all financing, design, engineering, construction, operation, maintenance, and capital improvement and replacement services and provide all material, equipment, tools and labor necessary to perform the Work as described herein and or cause such Work described herein to be performed by its Sublessees and as reasonably inferred from and in accordance with the terms specified in this Lease and Concession Contract. The Administration reserves the right, at any time during the progress of the Work, to alter the Scope of Services, or omit any portion of the Work as it deems reasonably necessary for the public interest.

Lessee, through its Sublessees, shall provide a curated variety of first-class retail, restaurant and commercial service concessions to serve Airport users within the Airport Terminal Building and associated Airport facilities. Lessee shall create a tenant mix that includes, at minimum, well-known national/international branded concepts, well-known local/regional branded concepts, and well-known newsstand brands, such as might be found at other airports in the United States, Europe, and/or Canada. Generic shops, such as "Snack Shop" or "News/Gift" are not permitted. Lessee shall provide, and recognize as integral to creating a passenger experience, regional cuisine, products and shops featuring the products of the State of Maryland and the Washington-Baltimore region as an integral part of the Concessions Program. With the exception of those products and services noted in Article V, as well as any uses or products or services of which may be prohibited by law, and subject to the approval of the Administration. Lessee shall

develop the Leased Premises causing its Sublessees to sell retail merchandise and commercial services, as well as provide restaurant offerings with a wide variety of food and beverage products. Lessee and/or its Sublessees are responsible for securing all licenses and permits necessary for sales of any merchandise or food service product they wish to offer, including liquor licenses.

Lessee, through its Sublessees, shall provide a minimum of four (4) Concession Locations for personal point of contact sales of the full line of Maryland State Lottery tickets, and install and service at least four (4) "Instant" (customer self-service) Maryland State Lottery vending machines in Concession Locations in the Terminal at all times, unless otherwise approved by the Administration. All lottery sales must be conducted in accordance with Maryland State Lottery laws, regulations, rules and procedures. The commissions received by the lottery agent(s) from the Maryland State Lottery are to be included in Gross Receipts.

As approved on a case-by-case basis by the Administration, Lessee may provide, through its Sublessees short-term use quiet haven/pod-based rest areas in the Terminal. The short-term use quiet haven/pod-based rest areas should offer a first-class private space for passengers and customers to work, be entertained or sit back and relax in comfort.

ARTICLE V - CONCESSION RIGHTS AND PROHIBITED USES

For the entire Contract Term, the Administration grants to Lessee the right to perform all financing, design, engineering, construction, operation, maintenance, capital improvement and replacement services and provide all material, equipment, tools and labor necessary to redevelop, renovate, lease and manage the retail, restaurant and commercial services at the Airport and for no other uses or purposes.

- A.** Lessee understands and agrees that the following products or services are not permitted to be sold under this Contract in or from the Concession Area or Leased Premises:
- 1.** Insurance of any kind;
 - 2.** Commercial advertising services, signage, and displays;
 - 3.** Telephone facilities;

4. Lockers for immediate storage of baggage;
5. Ground transportation and parking services;
6. Hotel/motel accommodations, excluding short-term use quiet havens/pod-based rest areas, as approved on a case-by-case basis by Administration;
7. In-flight catering;
8. Sale of airline tickets;
9. Travel agency activities; and
10. Sale of bottled alcoholic beverages for consumption outside of Sublessee's Leased Premises, unless Sublessee has obtained all required off-premises licenses and is approved by the Administration.

B. Lessee shall not use or knowingly permit the Leased Premises to be used or occupied for any of the following uses or purposes (collectively, "Prohibited Uses"):

1. Any unlawful or illegal business, use, or purpose;
2. In any manner to constitute a nuisance of any kind;
3. Any use or purpose in violation of this Lease and Concession Contract or any Rules and Regulations; and
4. Any other use that is restricted by the Administration, in its sole discretion.

ARTICLE VI - TERM

The term of this Contract shall include a Development Phase, a Renovation Phase, and an Operation & Management Period, as defined herein. The Development Phase of the Contract shall begin as of the Effective Date of this Contract. The Effective Date is the date that the Contract is executed by Lessee and the Administration, with the approval of the Maryland Secretary of Transportation and the BPW.

A. Development Phase

During the Development Phase, Lessee shall (i) obtain all necessary approvals and permits from the appropriate federal, State and local government agencies, including but not limited to the Administration's Permit Committee; (ii) submit

to the Administration its proposed Airport Concession Master Plan in accordance with Article VIII.B.2 herein; and (iii) submit in writing to the Administration various preventive maintenance plans, safety and security plans, including an Airport Concession Emergency Continuity Plan for the Administration's review and approval. The Development Phase shall commence as of the Effective Date and expire at 11:59 p.m. on March 31, 2024.

B. Renovation Phase

The "Renovation Phase" of the Contract shall commence on April 1, 2024 and expire on December 31, 2026 at 11:59 p.m. During the Renovation Phase:

1. Lessee shall obtain all necessary approvals and permits from the appropriate federal, State and local government agencies, including but not limited to the Administration's Permit Committee and the Federal Aviation Administration (FAA), to begin renovation and construction work at the Airport.

In the event the Renovation Phase is delayed or is otherwise not completed by December 31, 2026, by causes or circumstances beyond the control of the Lessee and the delay could not be prevented by reasonable efforts and by reasonable expense on the part of the Lessee, the Lessee shall provide written justification of the delay to the Administration. Should the Administration agree in its sole and absolute discretion that the delay was beyond the control of the Lessee and the delay could not be prevented by reasonable efforts and by reasonable expense on the part of the Lessee, the expiration date of the Renovation Phase shall be extended in writing by the Administration for a period equivalent to the period of the justified delay. The Administration shall have no liability for any delay in renovation or construction caused by the FAA or any other government agency of any proposed or planned project at the Airport, including but not limited to any project contained in the Airport's proposed or approved Airport Layout Plan ("ALP") or Airport Master Plan or any amendment

thereto, or any proposed or planned project, or for any delay caused by any other occurrence.

2. During the Renovation Phase, Lessee and its Sublessees, agents, servants, employees, and contractors shall be permitted entry and access to other areas of the Airport as approved by the Administration and to the Leased Premises at all reasonable times for the purpose of performing and completing all work necessary to make the Leased Premises ready for its intended use.
3. Lessee and/or its Sublessees, agents, servants, employees, and contractors shall be provided access to the Leased Premises and to other areas of the Airport as approved by the Administration in order to complete renovation and construction work to the required specifications and to make necessary utility connections (e.g., electric, gas, water, sewer, and telecommunications). Planned improvements must conform to the general specifications in the Administration's Concession Design Criteria (included as Exhibit_____) and Concession Tenant Design Standards developed by Lessee (Attachment_____) and submitted in accordance with Administration's Permit Information Guide (Attachment_____).
4. Lessee and/or its Sublessees its agents, servants, employees, and contractors shall pay for all utility services used or consumed by them during the work of construction to the provider of such utility services, whether to a public utility company, the Administration, or another party, as applicable.
5. Lessee and/or its Sublessees agents, servants, employees, and contractors shall observe all federal and State rules and regulations, including but not limited to those contained in Title 11 of the Code of Maryland Regulations ("COMAR"), and all tenant advisories and directives imposed by the Administration at the Airport, where applicable, as to the conduct of their Work and shall keep and maintain all of their equipment, material,

supplies, tools, work trailers, and the like upon the Leased Premises, and/or such other area(s) at the Airport as may be approved in writing and in advance by the Administration.

6. Lessee or its Sublessees shall promptly repair any damage to the Airport or to the property of the Administration or any tenant of the Administration caused by Lessee, its Sublessees or their respective agents, servants, employees and/or contractors.
7. In the event during the Renovation Phase, Lessee or its Sublessees do not complete their work by December 31, 2026 or as otherwise approved by the Administration, the Administration shall exercise its right to increase the percentage concession fee in accordance with Article XIII herein an additional three (3) percentage points for the first nine months of the Operation & Management Period. Notwithstanding the above, in the event Lessee completes all scheduled and approved Renovation and Construction Work, leasing and commencement of Sublessee operations before December 31, 2026, then the Administration shall reduce the percentage concession fee in accordance with Article XIII herein by one and one half (1.5%) percentage points for the first twelve months of the Operation & Management Period of the Contract Term.

C. Operation & Management Period

The “Operation & Management Period” of the Contract shall commence on January 1, 2027 or upon the end of the Renovation Phase, and will run for a period of twenty (20) years subject to earlier termination as specified herein.

D. Surrender of Possession

No notice to quit possession at the expiration date of this Contract shall be necessary. Lessee agrees that, at the expiration date of the term of the Contract or at the earlier termination thereof, it shall peaceably surrender possession of the Leased Premises in good condition, other than normal wear and tear or acts of God or other casualties beyond its control and recognized by the Administration,

the Administration will have the right to take possession of the Leased Premises at that time with or without due process of law.

ARTICLE VII - LEASED PREMISES

The Administration leases the Leased Premises to Lessee and Lessee hereby leases the Leased Premises from the Administration for the purpose of financing, designing, constructing, leasing, operating and maintaining the Leased Premises, in accordance with the terms of this Lease and Concession Contract, and for no other purpose or use. As of the effective date of this Contract, Lessee shall maintain approximately 191,462 square feet of Leased Premises as depicted in Exhibit_____.

The Administration makes no representation or warranty as to the physical and legal condition of the Leased Premises. Lessee agrees to accept possession of the Leased Premises in “As-Is” and “Where-Is” condition with absolutely no warranties as to condition or suitability for use being given by the Administration.

Upon DBO of the Administration’s A/B Expansion Project, the Administration through a written amendment to this Lease and Concession Contract shall revise the total Leased Premises leased under this Contract.

In the event of additional changes to the Leased Premises, this Contract shall be amended to reflect any additions, deletions or modifications. It shall be the Lessee’s responsibility to maintain a consistent unit numbering system provided by the Administration. If a retail store, restaurant, or commercial service concession is relocated, it shall be designated as having the new unit number from the day of the commencement of operations at the new location, and shall be treated as a completely new operation.

Any relocation, expansion or reduction required of the Lessee under this section will not affect Lessee’s payment obligation pursuant to the terms of this Lease and Concession Contract.

A. Expansion/Right of First Refusal

If, at any time after the effective date of this Contract, the Administration identifies any additional space for concessions within the existing Airport

Terminal Building or expansions thereto, including newly constructed Concourses or associated Airport facilities, the Administration will offer the right of first refusal to develop such space to the Lessee prior to offering such space to any other party. The Administration may specify in its offer the type of use it envisions for such space. If Lessee declines to accept the Administration's offer in writing within thirty (30) days or does not act upon the offer within said time frame, then the Administration may offer it to any third party for other purposes or to develop, operate and/or manage concessions from such location(s) under a separate contract. The Build Out and finish of the space shall be the responsibility of the Lessee and/or Sublessee.

B. Deletion/Reduction

The Administration reserves the right, at its sole discretion, to delete or reduce any of the Leased Premises due to Airport development/construction, operational necessity, security, or safety considerations. In the event of such deletion or reduction, Lessee shall be given no less than thirty (30) days written notice unless circumstances beyond the control of the Administration occur (e.g., because of a direct or indirect requirement by the TSA, FAA, or any other governmental authority). The Administration will attempt to provide reasonably comparable space for relocation within the Airport Terminal Building but makes no guarantee of such availability. Lessee shall accomplish any such relocation, expansion or reduction expeditiously.

The Administration agrees to reimburse Lessee for the reasonable and proper moving costs of the existing movable furniture, equipment, appliances, carpeting, decorations, special finishing work, signs, trade fixtures and other items as well as the undepreciated value of the book value of Lessee and/or Sublessee's Capital Improvements and midterm Renovations that are not replaced or relocated, using straight-line depreciation over the Lessee's or Sublessee's Contract Term ("Depreciation Schedule"), associated with any relocation or reduction in size of the concession premises. Lessee and/or Sublessee shall be required within one hundred twenty (120) days following the completion of Lessee's and/or

Sublessee's Capital Improvements including any Midterm Renovation, to submit to the Administration written evidence of the "Cost of Construction" of Lessee's and/or Sublessee's Capital Improvements. Failure to submit and provide such "Costs of Capital Improvement" for any Capital Improvement and/or Midterm Renovations as required herein shall void any buyout or reimbursement of the undepreciated book value of Lessee's and/or Sublessee's Capital Improvements.

To clarify the definition of "reasonable and proper moving costs," the parties agree that the Administration will either directly pay for, or will reimburse, Lessee for items such as the following: moving of furniture, equipment, appliances, carpeting, decorations, special finishing work, signs, trade fixtures and other items into the new space; moving and reinstallation of telephone lines and computer equipment and connections; and reasonable expenses associated with reinstalling electrical connections and other utilities (if any).

If a modification to Sublessee Premises results in an area no longer commercially viable for the existing Sublessee, as determined by the Administration, in its sole judgement, based on information to be provided by Lessee, then the Administration will reimburse the Lessee, and the Lessee shall reimburse the Sublessee for the remaining undepreciated portion of Sublessee's Capital Improvements and midterm Renovations based on the Depreciation Schedule.

If the Administration exercises its right to delete or reduce space, the portion of the Leased Premises to be reduced shall cease to be leased to Lessee and shall no longer be subject to the terms of this Contract.

In addition, if the Administration requires deletion or reduction of the Leased Premises, the Administration shall not be held liable to Lessee for any damages including but not limited to damages for any inconvenience or loss of business as a result of the deletion or reduction of any Leased Premises except for the buyout of the undepreciated costs pursuant to Article X.N and the other costs expressly set forth in this Section.

C. Concession Administrative Offices

The Administration will provide Lessee with, at no additional cost throughout the term of this Contract, as part of the aforementioned Leased Premises, an office space for Lessee as shown in Exhibit_____. The Leased Premises will be provided by the Administration at no additional cost to Lessee in exchange for services.

The Administration reserves the right to relocate such office space, at its expense, upon thirty (30) day advance written notice to Lessee or to reduce the amount of office space available to Lessee. No adjustments in rental payments shall be made as a result of reduction or relocation of such office space. Such spaces are considered to be part of Leased Premises, but shall not be accessible to the public, except in cases where offices are provided on the Landside.

Lessee may request additional office space, which, if available, will be subject to standard Airport rental rates as set forth in Attachment_____, BWI Marshall Tenant Directive 401.1, *Standard Rates and Fees at Baltimore/Washington International Thurgood Marshall Airport*, and all future revisions thereto (incorporated by reference) for the period that this Contract is in effect.

D. Employee Parking

Employees of Lessee and Sublessees will be permitted to park their personal vehicles in the employee parking area, subject to the same terms and conditions of use as are applicable to employees of other tenants and air carriers using the employee parking lots of the Airport. No parking will be provided to Lessee or Sublessees in the Administration's Hourly Public Parking Garage.

E. Concession Storage

At the commencement of the Development Phase of the Contract Term, the Administration shall provide Lessee at no additional cost, 42,581 square feet of unfinished concession storage space in various locations throughout the Airport Terminal Building, as identified in Exhibit_____. Any charges and fees for concession storage space leased to Sublessees during the Development and

Renovation Phases of the Contract Term, shall be separately stated and separately invoiced to Sublessees and subject to a fifty-five percent (55%) concession fee payable to the Administration.

Commencing at the expiration of the Renovation Phase, Lessee shall be assigned and required to lease all of the then available concession storage space and pay the Administration at the standard rental rate set forth in the Administration's BWI Marshall Tenant Directive 401.1, *Standard Rates and Fees at Baltimore/Washington International Thurgood Marshall Airport*, and any future revisions thereto for the period that this Contract is in effect. Lessee may charge Sublessees a rate not higher than twenty percent (20%) of the standard rental rate set forth in the BWI Marshall Tenant Directive 401.1. Concession storage space shall be separately stated as additional rent. All rents collected by Lessee above the Administration's standard rental rate set forth in the BWI Marshall Tenant Directive 401.1 shall not be subject to the Percentage Concession Fee in accordance with Article XIII.A.2 herein.

F. Vacant Premises

Upon the expiration or early termination of a Sublease, Lessee may leave such location vacant on an interim basis, but in any event, a new Sublease for the location must be signed and work begun on any required renovations within ninety (90) days of the termination of the previous Sublease, and the location must re-open for business within one hundred eighty (180) days of the termination of the previous Sublease. Any barricades installed must conform to Administration's design criteria and/or Lessee's design standards. Any variations or exceptions to this Section must be requested and approved in writing by the Administration. The Lessee's failure to sublease any vacant spaces will not result in a reduction of the MMG owed to the Administration. Lessee's failure to meet the specified deadlines shall result in the assessment of fines, as specified in Article XXXVIII. Additionally, if the location has not reopened for business within one hundred eighty (180) days, and no exception has been granted by the Administration, then the Administration will reclaim the space, removing it from

the Leased Premises, and such action will not result in a reduction to the MMG. Reduction of the MMG will only result pursuant to Article XIII.B herein. Space so vacated may be offered to others to develop, lease, operate, or manage, at the Administration's discretion and prior written approval. Lessee's right of first refusal, pursuant to Article VII.A herein, does not extend to vacant subleased space that Lessee failed to relet on a timely basis.

G. Sublessee Premises Numbering

Each individual Sublessee Premises shall be assigned a unique unit number. Such unit number is assigned to the location, not the concept, so that if a shop should change operator, the unit number remains with the location. Each kiosk will also be assigned a unique unit number. The assigned unique unit number shall be in accordance with the Administration's location numbering system.

H. Subleasing Limitations

The maximum aggregate amount of the Leased Premises that may be subleased to a Sublessee by Lessee is 3% of the Concession Area. This limitation extends to any subsidiary of a Sublessee and to any joint-venture or partnership formation by a Sublessee and to any ownership or ownership interest a Sublessee may have in a business entity.

I. Ingress and Egress

Subject to security restrictions, Lessee and Sublessees (via approved Subleases), and their respective officers, employees, customers, patrons, invitees, contractors, subcontractors, suppliers of products and materials and furnishers of services shall have the right of ingress to and egress from the Leased Premises, as reasonably required to carry on permitted activities as described herein.

ARTICLE VIII - LESSEE'S OBLIGATIONS

Subject to and on the terms and conditions of this Contract, Lessee shall, at its own cost and expense, procure, finance and undertake the redevelopment, renovation, leasing and management of the Leased Premises, and manage its Sublessees so as to provide high quality, first class concessions within the Airport Terminal Building and associated facilities to accommodate the

traveling public and other Airport users. The redevelopment, renovation, leasing and management of the retail, restaurant and commercial services within the Concession Area designated herein shall be the responsibility of the Lessee, except such concession activities as noted in Article V of this Contract.

Lessee shall perform the following duties in addition to and not in derogation of its obligations outlined in Lessee's Proposal and Lessee's Airport Concession Master Plan as approved by the Administration, and all other provisions and attachments of this Contract:

A. Concession Management

1. Personnel Policies

Lessee shall implement, and cause its Sublessees to implement, personnel policies that will provide that personnel of the incumbent lessee and its sublessees, as of the date of Contract Award, be given first preference in hiring as personnel of Lessee and its Sublessees, subject to reasonable hiring standards, in the event that the incumbent lessee and sublessees do not succeed themselves.

2. Lessee's Key Personnel

Lessee shall select and appoint a full-time on-site General Manager, who shall be in complete charge of Lessee's BWI Marshall's Concessions Program, and whose sole and full-time duties shall be as General Manager of Lessee's Concessions Program at BWI Marshall Airport. Such person shall be a highly qualified and experienced manager, with at least five (5) years of experience as the overall manager of a retail shopping center, airport concessions program or retail center with over 60,000 square feet of gross leasable area, and shall be vested with the full power and authority with respect to Lessee's operation hereunder, including the authority to take all necessary actions where a prompt response is required without obtaining Lessee headquarters' approval of such actions.

The General Manager shall be available during regular business hours, and at times the General Manager is absent, an equally authorized Operations

Manager shall be in charge and available. The Operations Manager shall have at least three (3) years of retail operations experience as the overall retail operations manager at a retail shopping center, commercial building, airport concessions program or retail center.

Prior to commencement of this Contract, Lessee shall submit to the Administration, for the Administration's approval prior to their assignment, complete and comprehensive resumes of the persons who Lessee proposes to designate as the General Manager and Operations Manager together with the principal assistants and other key personnel, as described in Lessee's Proposal.

In the event that Lessee plans to replace the General Manager and/or Operations Manager for any reason, or if the General Manager and/or Operations Manager tenders his/her resignation, Lessee shall notify the Administration immediately and, in writing within forty-eight (48) hours of its plan to replace the General Manager and/or Operations Manager and the reason(s) for replacing such manager(s), or of such tendering of resignation(s). Lessee shall submit to the Administration, for the Administration's written approval prior to the replacement's assignment, a complete and comprehensive resume of the person whom Lessee proposes as the replacement.

The Administration reserves the right to require Lessee to remove and replace any General Manager or Operations Manager who, in Administration's reasonable judgment, does not perform up to the standards consistent with the fulfilment of Lessee's obligations under this Contract.

In addition to the foregoing, Lessee shall employ one person dedicated to the role of managing the issuance, renewal, and collection of Airport Security badges for the Concessions Program. In the event that the Badging Coordinator leaves Lessee's employment, a replacement must be

identified immediately. Lessee shall also employ or subcontract the services of a Concession Tenant Construction Coordinator. The Concession Tenant Construction Coordinator will be the primary liaison between the Administration, Lessee and Sublessee and their respective architects and general contractors on the matters of design, building permits, and construction of Sublessees' Premises. The Concession Tenant Construction Coordinator shall have at least five (5) years of relevant experience in construction, tenant coordination, architectural, engineering or related profession.

3. **Business Review Meetings & Key Performance Indicators (KPIs)**

During the Development Phase and Renovation Phase of the Contract Term, Lessee shall participate in bi-weekly meetings with the Administration's representatives to review and discuss the development and operational issues relating to the redevelopment, renovation, leasing, and management of the retail, restaurant, and commercial services at the Airport and its related facilities. During the Operation & Management Period of the Contract Term, such meetings shall be held monthly, unless otherwise agreed to by the Administration, to review and evaluate KPIs, economic and concession financial data, marketing, delivery and distribution, preventive maintenance, and capital expenditure planning. In addition, the meetings identified are to ensure that the Concessions Program (i) provides a positive customer experience, enhances the passenger journey, and continues to meet the needs of the traveling public and (ii) is operated in a first class and excellent manner in keeping with the goals of the Administration.

Lessee shall organize the Business Review Meetings which includes scheduling, setting and circulating a draft agenda with input and approval by the Administration. The metrics for the KPIs shall be as follows:

- A competitive KPI that compares the Airport's quarterly ranking based on the Administration's customize

benchmark panel of Airports in accordance with Airport Council International-North America's Airport Service Quality (ASQ) Report.

- An internal KPI based benchmark comparing the annual performance of the Concessions Program's sales per enplaned passengers deflated/inflated by CPI.
- An internal KPI benchmark measuring the annual sales of in-line retail stores and commercial services to how much of their in-store traffic actually converts into sales.
- A generic KPI benchmark that measures the Administration's quarterly customer satisfaction scores for retail and restaurants based on the Administration's passenger intercept surveys.

B. Concession Development

1. Concession Transition

Within ninety (90) days of approval of this Contract by BPW, Lessee shall submit to the Administration for its approval, a complete and comprehensive Concession Transition Plan that ensures the efficient commencement of this Contract and optimizes the passenger experience during the transition from the existing concessions program to Lessee's Airport Concession Master Plan. This Concession Transition Plan shall:

- a. Ensure a high level of customer service and satisfaction during the Development and Renovation Phases of the Contract Term;
- b. Ensure that Airport users are provided with a variety of offerings and a continuation of services both general and essential;
- c. Establish a barricade signage program for any unoccupied or undeveloped concession spaces. The designs for the barricades will be subject to the Administration's written approval. Barricades may provide information concerning other concession location within reasonable walking distance, Sublessee's branding, as well as "coming soon" information, as it is available.

- d. Specify which existing concession spaces, if any, will continue to function in the same capacity during the transition phase and for how long such operations shall continue.

2. **Airport Concessions Master Plan**

Within ninety (90) days of approval of this Contract by BPW, Lessee shall submit to the Administration for its approval, a complete and comprehensive Airport Concessions Master Plan. The Airport Concessions Master Plan shall be a finalized version of the various plans Lessee submitted in Lessee's Proposal in response to Section IX.B.TABS 21-25 and 28-33 of the RFP and shall contain all aspects required therein and in compliance with Article IV, Scope of Services, of this Contract. The Airport Concessions Master Plan shall include:

- a. Lessee's concluding analysis and assessment of the existing concessions program and key areas of Lessee's focused improvements. Lessee's concluding analysis shall address areas of opportunity and identify concession categories to target and improve;
- b. Lessee's complete and comprehensive concession tenant mix and merchandising mix plan, communicating Lessee's Leasing Plan with brand concepts and its concession space allocation plan including banking/ATM and vending machine placement;
- c. Lessee's prospective Sublessees for each concession location by assigned unit number;
- d. Lessee's phasing schedule in Gantt Format (in days) for the Leased Premises to be redeveloped, renovated, leased and constructed;
- e. Lessee's specific plan to include ACDBEs as Sublessees;
- f. Lessee's specific plan for Community Outreach (i.e. local Chambers of Commerce, entrepreneur academies, colleges and universities, business associations) and its plan to incorporate small and incubator businesses into the Concessions Program;

- g. Lessee's specific quality assurance and performance evaluation program;
- h. Lessee's specific Operations & Maintenance Plan;
- i. Lessee's Airport specific tenant handbook.
- j. Lessee's specific Concession Marketing Plan to be placed in effect as of the first day of this Contract's Development Phase or Operation & Management Period;
- k. Lessee's complete and comprehensive Concession Tenant Design Standards which shall be published in three (3) separate and distinct packages including:
 - i. an Information Package for Contractors & Construction
 - ii. a Tenant Design Standard for Retail and Commercial Services Tenants;
 - iii. a Tenant Design Standard for Restaurant & Food Court Tenants;
- l. Lessee's structure and initial budget for Common Area Maintenance Fees, Joint Concession Marketing Fund Fees, and Delivery & Distribution Charges to be charged to Sublessees;
- m. Lessee's Airport Concession Emergency Continuity Plan; and
- n. Lessee's list of Preferred Environmental Maintenance & Service Providers and their service agreements for the Administration's review and written approval;
- o. Such other information as the Administration may reasonably deem appropriate.

On the anniversary of the tenth (10th) Contract Year of the Operation & Management Period, Lessee shall provide to the Administration a complete and comprehensive revised Airport Concessions Master Plan to be in effect to the expiration or early termination of the Contract Term which shall at minimum include all planned midterm improvements, food court seating replacement, etc.

3. **General Development**

Lessee shall perform the following duties, subject to the terms and conditions imposed by Lessee's approved Airport Concessions Master Plan and all other provisions of this Contract. Lessee shall:

- a. Ensure compliance with the provisions of any and all present and future laws, rules, regulations, requirements, orders and directives that may pertain and apply to its operations for the use and occupancy of the Leased Premises by Lessee or its Sublessees, including, without limitation, all health, environmental, security and safety requirements and all FAA and airport safety and security regulations. Lessee shall monitor and enforce compliance with such laws, rules, regulations, requirements, orders and directives by Sublessees by means of appropriate obligations and remedies under the Subleases.
- b. Select, engage, employ, pay, supervise, direct and discharge all employees or independent contractors reasonably necessary or appropriate for the proper and safe operation and maintenance of the Leased Premises; obtain required insurance, as delineated in Article XXVI, covering Lessee's employees, as well as ensuring that Lessee's independent contractors have adequate insurance coverage as specified herein; ensure that Sublessees carry required insurance, as delineated in Article XXVI; and use reasonable care in the selection, supervision and discharge of such employees or independent contractors. Lessee shall comply with all laws and regulations and collective bargaining contracts, if any, affecting such employment.
- c. Prepare Plans as required in Article VIII.B of this Contract. These Plans and all Subleases are subject to prior written approval by the Administration. The Lessee is not under a specific obligation to provide any prospective concession operator with a concession location if a mutually agreeable Sublease cannot be reached.

- d. Enter into Subleases for retail, restaurant, and commercial services as designated based on the approved Airport Concession Master Plan with the approval of the Administration and all necessary Anne Arundel County and State approvals. Lessee will coordinate its leasing, management, marketing and all other activities with the Administration's Office of Commercial Management (or successor Administration Office, Division or other entity). New Subleases or any sublease amendments thereto relating to new concepts or concept changes must be submitted to the Administration with supporting documentation, including: (1) a complete and comprehensive history and experience of the proposed Sublessee; (2) a written discussion as to how proposed Sublessee and concept enhances the Concessions Program and optimize the passenger's journey and experience; (3) the proposed draft of Sublease and/or Sublease Supplement; (4) acknowledgment if any controlling owners or principals have been involved in any bankruptcy; (5) a certificate of good standing and evidence of being authorized to do business in the State of Maryland; (6) a Unit Pro-Forma Statement as defined in this Contract; (7) an executed copy of the Direct Recognition Agreement, in the form provided as Attachment_____ to this Contract; and proposed Sublessee's list of products and services and associated prices in accordance with Article IV.B.2 herein.

The proposed concept plans must be submitted to the Administration at least forty-five (45) days (and approved) before submitting capital improvement plans and specifications to the Administration's Permit approval process in accordance with Administration's Permit Information Guide (Attachment_____). Fully executed Sublease agreement and/or Sublease Supplement must be submitted to the Administration at

least ten (10) business days before, the Sublessee begins to build out its space.

The Lessee will not operate any Concession Locations with its own employees. It will be permitted to sublease the Leased Premises to an Affiliate only with the Administration's prior written agreement. All subleases shall contain similar enforcement clauses to this Contract, including all default and penalty clauses. All Subleases shall follow the same basic format as the Sublease pursuant to Article VIII.C of this Contract. In the event a potential sublessee would not agree to the terms and conditions of the Sublease, the Administration shall decide whether to accept or reject the potential sublessee.

All Subleases are subject to the prior written approval of the Administration. Subleases for Specialty Retail operations may have a term no longer than five (5) years, unless otherwise approved by the Administration. Subleases for Convenience Retail operations may have a term no longer than ten (10) years, unless otherwise approved by the Administration. Subleases for Food Service operations may have a term no longer than the remaining term of this Contract, unless otherwise approved by the Administration.

Notwithstanding the above, Subleases may not extend beyond the term of this Contract, without the Administration's and the BPW's prior written approval. All subleases are subject to the annual Refurbishment requirements established herein. All subleases of greater than five (5) years are subject to the midterm Renovation requirements established herein.

- e. Have the right, but not the obligation, to finance the development of any retail, restaurant or commercial service concessions as designated. Such financing arrangements are between Lessee and its Sublessees, and the Administration is not a party to such

agreements. Notwithstanding the above, the Administration has the right to review and approve all such financing agreements before their implementation. The Administration will not receive any revenues that result from financial transactions of this nature between Lessee and Sublessees; neither does it accept any risk therefrom. If Lessee considers financing a Sublessee's construction costs or undertaking Capital Improvements (if approved by the Administration), the Lessee will not be entitled to reimbursement or other repayment for any costs or expenses it incurs in connection with any such financing or undertakings from any rent or other revenues to be derived or to be otherwise payable to the Administration (e.g., through chargebacks or otherwise), nor may Lessee agree or arrange to tie-in or otherwise condition such Sublessee financing or undertakings on any other rights, privileges, allowances, or business terms and conditions granted to a Sublessee. Lessee shall not waive any right to receive rents, fees, charges, or other revenues that may be paid or payable by any Sublessee, user, or occupant under its Sublease, without the prior written consent of the Administration, and shall not grant any rent abatements, extensions, or other modifications without the prior written consent and approval of the Administration.

- f. Serve as the project manager and provide the management, administration and coordination of all design and construction associated with the maintenance, repair and/or subleasing of the Leased Premises. This will include, without limitation, all Capital Improvements and/or Refurbishments to be constructed in or on the Leased Premises, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the Leased Premises or future construction and alterations and including cleaning and maintenance of external design elements installed as directed within Lessee's Concession Tenant Design

Standards, in Attachment_____. Lessee shall be responsible for the supervision and coordination, subject to the prior written approval of the Administration, of the design of any Sublessee's Premises to the extent contemplated in such Sublease, including, without limitation, the design of such Sublessee's store front and the specifications of such Sublessee's equipment. Lessee shall ensure that all proposed modifications to Leased Premises obtain all required permits prior to the commencement of any work on such modifications.

- g. Design, coordinate and build-out the interior finishes of the Food Court Area, including all Food Court Common Area seating, tables, fixtures, signage, as well as demising partitions, Back-of-House facilities including temporary trash storage locations. Lessee also will provide the necessary Back-of-House common use equipment including, but not limited to: multi-compartment sinks, recycling and trash bins. Sublessees will be responsible for designing and finishing their respective subleased spaces, including, by way of example; mechanical, electrical, plumbing, exhaust systems, shelving, counters, interior finishes, cooking equipment, freezers, interior seating and hook-ups to the central utilities and services provided. Notwithstanding the foregoing, however, Lessee has the obligation to ensure that all Sublessee Premises are open and operating in a First-Class Manner as defined herein on the facility opening date(s). Any obligation not designated a Sublessee requirement will be the responsibility of Lessee and not the Administration.
- h. Answer, or cause Sublessees to answer, all written customer complaints within five (5) days after receipt of such complaints. The General Manager shall provide, or cause Sublessees to provide, copies of the complaints and answers to Administration by the final day of each calendar month.

- i. Not divert any business from the Airport or cause or allow Sublessees to do so.
- j. Bill and collect all amounts payable by Sublessees under Subleases.
- k. Meet all additional requirements of Section IV of the RFP.

C. Concession Operational Standards

The Lessee shall redevelop, renovate, lease and manage the Leased Premises, and manage its Sublessees so as to provide high quality concessions within the Airport Terminal Building and associated facilities to accommodate the traveling public and other Airport users. The redevelopment, renovation, leasing and management of the retail, restaurant and commercial services within the Concession Area designated herein shall be the responsibility of the Lessee, except such concession activities as noted in Article V of this Contract.

1. Administration's Rules & Regulations

The Administration shall have the right to adopt and enforce reasonable and lawful Rules and Regulations and operating performance standards with respect to the use of the Leased Premises and related facilities. Such Rules and Regulations and operating performance standards may be amended from time to time by the Administration upon reasonable prior written notice, including, without limitation, any "Lessee Rules and Regulations" that may be promulgated from time to time.

From time to time, the Administration may issue Tenant Directives or Tenant Advisories, which provide information to all Airport tenants regarding issues that impact operations at the Airport. Lessee will be responsible for distributing copies of such Directives or Advisories to its Sublessees on a timely basis to ensure that Sublessees are able to make adjustments or comply with directives, or be aware of changes to traffic patterns or access.

Lessee is responsible for compliance and for ensuring Sublessee compliance with the Administration's Airport Security Plan.

2. **Hours of Service**

Lessee shall cause Sublessees to operate seven days a week, 365 days a year, unless otherwise agreed to by the Administration in writing, and in a manner otherwise consistent with the requirements prescribed by the Administration in its sole discretion in accordance with the actual aviation operations at the Airport. Generally, concessions on the airside shall be open from one and one-half (1½) hours before the first scheduled departure of the day from that concourse to one-half (1/2) hour after the last actual departure of the day on that concourse. Landside Convenience Retail and Restaurant concessions on the upper (departures) level of the Airport Terminal Building shall be open from 4:30 a.m. until 11:00 p.m. unless the specific Concession Location is designated as a 24-hour facility by the Administration. Specialty Retail and incubator business concessions on the Landside will be open from 6:00 a.m. until 8:00 p.m. Landside Convenience Retail and food service concessions on the lower (arrivals) level of the Terminal shall be open from 6:00 a.m. until 1 hour after the last arrival of the day by any airline which regularly uses the baggage carrousel most closely located to the Concession. Specific requests for exceptions to these operating hours for holidays and other reasons (e.g., refurbishments) must be submitted to the Administration at least sixty (60) days before the proposed change, and Administration shall provide its approval or disapproval of the request, in part or total, within thirty (30) days of receipt of such request. Fines, as provided for in Article XXXVIII, may be imposed upon the Lessee for failure of Sublessees to meet the required hours. The Administration reserves the right to modify the aforementioned hours of operation based on flight schedule and/or customer demand. Lessee and its Sublessees shall not unilaterally modify shop hours.

In times of irregular operations (e.g., delayed flights, weather), the Administration reserves the right to direct Lessee to direct select Concession Locations to remain open beyond the designated operating hours. The Lessee shall work with its Sublessees to establish reasonable procedures for adjusting concession opening and closing times based on daily flight schedules and incorporating those schedules into shift schedules for Sublessees' staff, as well as for receiving and disseminating schedule changes, weather or maintenance delays or other flight information that will require adjustments in Sublessees' operations. Such requirements for operating hours and flexibility shall be included in all Subleases.

Lessee will work with its Sublessees to ensure that they are aware of what the peak hours are for each location and they will staff the Concession Locations appropriately to provide excellent customer service and avoid lengthy service lines. Concession staffing levels must reflect both the hourly, daily, and seasonal fluctuations in passenger traffic.

3. **Knowledge of the Airport**

Lessee shall cause Sublessee's employees in all Concession Areas to be able to assist Airport users with wayfinding within the Airport. As such, the Lessee, and/or its Sublessees, are expected to ensure that such employees are provided with information regarding the locations of other Concessions, restrooms, elevators, airlines, gates, information desks, and other information about the Airport, and that such information is provided upon request and with all due courtesy and dispatch. Also, Lessee is expected to provide each of its Sublessee locations with a list of emergency and other important numbers, as well as with ways that store employees can respond to customers' requests for information. The Administration will supply such information to Lessee.

4. **Concession Pricing Policy**

Lessee shall cause Sublessees prices for the sale of food, beverage, retail and commercial services to be "Street Priced." Lessee shall ensure retail,

restaurant, commercial services offered at the Airport be comparable to the quality, portion or kind offered at similar locations or other comparable establishments in the Washington-Baltimore Region and that such pricing is based on and conforms to the Administration's Street Pricing Policy. Where an item has a pre-marked or suggested retail price established by the manufacture or distributor, Lessee shall ensure Sublessee not charge a price higher than such pre-marked or suggested retail price (tax not included).

Without exception, prices charged by Sublessees shall not exceed the range of prices from three separate non-Airport businesses, of comparable nature, ambiance, product and service lines, within the Washington-Baltimore Region, as selected by the Sublessee and approved by Lessee and the Administration.

Notwithstanding the above, the Street Price for a good or service shall be determined as follows:

- a.** If an entity is a newly formed entity and does not operate a business within the Washington-Baltimore Region, the Street Price shall be the price within the range of prices for the good or service from three comparable non-Airport business or from three separate non-Airport businesses for each available good or service if not available from any one comparable business having comparable quality, portion or kind as submitted by the Sublessee and accepted and approved by Lessee and the Administration.
- b.** If an entity of the same business, franchise or trade name as a Sublessee, operates in a non-Airport location, within the Washington-Baltimore Region, the Street Price shall be the price of the good or service comparable to three separate businesses, submitted by the Sublessee, having the same

name or franchise as the Sublessee and accepted and approved by Lessee and the Administration.

- c.** If an entity of the same business, franchise or trade name as a Sublessee does not operate within the Washington-Baltimore Region, the Street Price shall be the price within the range of prices for the good or service from three comparable businesses or from three separate businesses for each available good or service having comparable quality, portion or kind, as submitted by the Sublessee and approved by the Lessee and the Administration.
- d.** If a good or service is not available from an entity of the same business, franchise or trade name, the Street Price shall be within a range of the regular prices of three (3) separate businesses, of comparable nature, ambiance and product and service lines, within the Washington-Baltimore Region.

At least forty-five (45) calendar days prior to DBO of Sublessee Premises, Lessee shall cause its Sublessee(s) to provide for the Administration's final review and written approval, a final product list or service list and pricing confirming the menu of items to be offered for sale and prices to be charged for each item. Sublessee shall not in any manner misrepresent to its customers the quality, grade, point of origin, or the size, weight or portion, or utilize false or deceptive merchandising terms or advertising.

If the Administration deems the prices charged for the sale of food, beverage, retail and/or commercial services to be non-conforming to the Street Pricing Policy, the Administration will notify Lessee in writing of its failure to be in full compliance with the requirements of this Contract. Sublessee shall be given ten (10) business days to bring all products into compliance with the Street Pricing Policy. Failure to bring pricing into compliance with the Street Pricing Policy within ten (10) business days

will incur fines of two hundred fifty dollars (\$250) per calendar day, in accordance with Article XXXVIII.F. Failure to cure within thirty (30) calendar days of Administration's written notice is a default, pursuant to Article XXXVI.A.26.

Sublessees shall be permitted, but not required, to offer discounted prices to Airport employees and other Administration-badged facility users. The exact types and amounts of discount may vary by Sublessee, but must be submitted by Sublessees to Lessee and the Administration, and approved by the Administration prior to Sublessee Premises opening, and in the event any changes from the initial discount program are made in the future. Discounts, once offered, may not be removed, without notice to the Administration.

Lessee shall require Sublessees to honor airline meal vouchers or other concession-related vouchers provided to passengers and Airport or airline employees during disruptions to travel.

Three (3) times per year, Lessee shall conduct an audit concerning Sublessee compliance with respect to current products available and price levels at the Airport. The audit shall compare the price levels of current products available at the Airport with prices, quality, portion and kind offered in accordance with the Administration's Street Pricing Policy.

5. **Concession Signage Policy & Advertising**

Except with the prior written approval of the Administration, Lessee and Sublessees shall not erect, maintain or display any signs or any advertising at or on the exterior parts of the Concession Area or in the interior of the Concession Area outside of Sublessee Premises with the exception of properly approved blade signs as specified in the Administration's Design Criteria and Lessee's Tenant Design Standards. This prohibition specifically includes the placement of stanchion signs, floor-standing sandwich boards, or other such moveable signage outside the Leased Premises. Under no circumstances shall any handwritten or temporary

signs or displays be posted or used by Sublessees, including but not limited to any price lists, specials or employment opportunity signs in Sublessee Premises. Notwithstanding forgoing, the Administration may approve handwritten menu boards that reflect daily specials, and handwritten signs which change on a daily basis. Such approve shall be on a case by case basis and at the sole discretion of the Administration. The Administration may require the removal of any signs or advertising in the interior of the Sublessee Premises (whether or not in the interior of the space occupied by a Sublessee or visible from any other portion of the Airport), which, in the Administration's reasonable judgment, is considered unacceptable or improper.

Lessee shall be required to use and employ the Administration's Airport Commercial Advertising Contractor in accordance with the Airport Advertising Master Plan, in common areas of the Airport Terminal Building. Lessee shall not use nor permit the Leased Premises to be used as a medium for third party paid advertising including sponsorships or any advertising material, signs, fixtures or equipment whether paid for, in-kind or by cash or credit. Lessee's direct costs for promoting and advertising the Concessions Program with the Airport's Commercial Advertising Contractor may be charged against the Joint Concession Marketing Fund as referenced in Article VIII.G herein.

Unless otherwise directed by the Administration, Lessee shall design, fabricate, locate, install, operate and maintain on a regular basis, digital touchscreen directory signs in the Concession Area and in the Airport Terminal Building, subject to prior written approval of the Administration. The identification and digital directory signage shall, among other things, indicate the locations of all concessions and services as well as other related information as the Administration may direct. Such signage must be updated within a reasonable time after a Concession Location noted on the signs is changed or deleted, or an additional space added. Placement of

permanent signage is subject to the Airport's review or permitting process. Such directory signage may be funded and maintained through the Joint Concession Marketing Fund.

Upon the expiration or early termination of this Contract, Lessee shall remove, obliterate or paint out, as the Administration may direct and to the Administration's reasonable satisfaction, any and all signs and advertising in the Concession Area or elsewhere at the Airport installed by or on behalf of Lessee. Lessee shall restore the portion of the Concession Area and the Airport affected by such signs or advertising to the same condition as existing prior to the installation of such signs and advertising. In the event of a failure on the part of Lessee so to remove, obliterate or paint out each and every such sign or advertising and so to restore the Concession Area and the Airport, the Administration may perform the necessary work and Lessee shall pay the actual and reasonable cost thereof along with a 50% administrative fee to the Administration on demand.

6. **Waste Disposal and Recycling**

Lessee shall be responsible for gathering, sorting, and transporting all solid waste, compostable materials, and recyclable materials from Common Areas and Sublessee Premises to the Administration's designated receptacles (e.g., compactors, dumpsters) at holding areas designated in Administration's Guide to Waste Management (Attachment_____) along routes established by the Administration and in a manner that eliminates spillage and/or contamination and avoids damage to the Airport Terminal Building.

Lessee shall provide for the complete, proper, and adequate sanitary handling and disposal of all solid waste. Lessee shall ensure Sublessees do not pile boxes, wooden pallets, broken equipment, cartons, crates, drums or the like on the outside of any Sublessee Premises or areaways of the Airport Terminal Building, including chute rooms.

Lessee shall participate in the Administration's Airport-wide trash disposal and recycling program pursuant to the Administration's Tenant Directive 003.1 and the Administration's Airport Community Tenant Guide for Trash and Cardboard Disposal (Attachment_____, respectively, incorporated by reference). In addition, Lessee shall cause all Sublessees that generate food waste to participate in the Administration's Food Waste Composting Program (Attachment_____). Restaurants and all other food waste generating Sublessees shall source-separate their food waste from other refuse and recyclable materials for collection and transport to appropriate receptacles by Lessee or its service provider. "Source-separation" for the purposes of this section shall mean the separation of waste into categories at the generation stage.

Lessee shall ensure that the following materials are not deposited in the Administration's cardboard compactors or compost containers: (i) Hazardous Substances, (ii) cans or other containers used to store paint, oil, solvents, cleaning fluids, or other Hazardous Substances; (iii) un-clean paper, including paper that is soiled with food, paper with plastic covers and wax coated paper; and (iv) plastic, glass, or other materials commonly considered "recyclables." No hazardous waste is accepted in Administration's waste stream; Lessee is responsible to ensure that all batteries, light bulbs, or other hazardous materials are disposed in full compliance with all applicable environmental laws, regulations, requirements and Administration policies. In addition, the Administration may establish other requirements concerning the storage and transport of waste and recyclables in the Administration's rules and regulations.

7. **Kitchen Exhaust & Grease Trap Systems**

Lessee shall select and maintain a list of certified professional entities (Preferred Environmental Maintenance & Service Providers) approved by the Administration and cause Sublessees to contract with such Preferred

Environmental Maintenance & Service Providers to clean, and maintain and keep in good service and repair, kitchen exhaust and grease trap systems and associated systems including rooftop grease containment systems, kitchen exhaust filters, exhaust systems and related makeup air. As shall be specified in Lessees' Operations & Maintenance Plan, Sublessees shall be prohibited from inappropriately disposing of any cooking oils or generated waste oils in any floor drains, mop sinks, or floor sinks. Lessee shall also ensure that all removable cooking oils and generated waste oils from Sublessee Premises are removed and transported to designated receptacles in a manner that eliminates spillage and/or contamination and avoids damage to the Airport Terminal Building. Transport shall occur along routes established by the Administration between operational space and Administration-designated disposal locations.

Notwithstanding the above, with approval of the Administration, Lessee may contract with a Preferred Environmental Maintenance & Service Provider to preform maintenance and pest control at Sublessee's Premises and charge such Sublessee(s) for cost of maintenance as part of the Common Area Maintenance charges set forth in Article VIII.D below.

Restaurants and other food service Sublessees must keep their grease traps, rooftop grease containment systems, kitchen exhaust hoods, exhaust systems and related makeup air in good working condition and in full compliance with all laws, rules, regulations, requirements, orders and directives. As part of its Operations & Maintenance Plan, Lessee shall develop preventive maintenance schedules for all Sublessees with kitchen exhaust and grease trap systems. Lessee shall be required to inspect its restaurant and food service Sublessees to ensure that the required level of maintenance is being provided. Lessee shall cause its Sublessees to provide a copy of all service reports, including but not limited to invoices and receipts of service from Sublessee's Preferred Environmental

Maintenance & Service Provider(s). Lessee shall provide the Administration with a quarterly summary as services are provided, including proof of service (e.g., invoices and service reports) at Administration's request.

The Administration shall at any and all times be entitled to enter and inspect Lessee's restaurant and other food service Sublessees to ensure compliance and the adequate maintenance of the Leased Premises. If a problem develops due to a clogged or under-maintained grease trap or grease exhaust system or their associated systems, Lessee will repair, or cause to be repaired, all damages caused by any system malfunction.

Lessee shall immediately report and cause its Sublessees to report to the Administration and cause to be cleaned-up all cooking oils and generated waste oil spills or other forms of contamination resulting from Lessees' or Sublessee's operation in accordance with Tenant Directive 502.1 (Attachment_____, incorporated by reference). Lessee, in accordance with Tenant Directive 502.1 shall be required to maintain a Spill Prevention, Control, and Countermeasure Plan (SPCC) prepared by an independent third-party in conformance with the federal and State of Maryland requirements for control of oil pollution and hazardous substances.

Any failure by Lessee for any failure of Sublessee(s) to meet the required standards of the Operations & Maintenance Plan, or to be in full compliance with laws, rules, regulations, requirements, orders or directives shall be the basis for immediate assessment of a fine in accordance with Article XXXVIII herein.

8. Housekeeping, Maintenance, & Repairs

Lessee shall maintain or cause to maintain the Leased Premises in a neat, clean, sanitary, and litter-free condition and keep public and common areas around the Leased Premises free from hazardous conditions

originating from Lessee and/or Sublessee's operations. Lessee shall, at all times maintain Food Court Common Areas, storage areas and support spaces in a first-class condition, in good repair, ordinary wear and tear excepted, and keep such areas in a clean and orderly condition and appearance, including but not limited to improvements, repairs and replacement of damaged or worn wall areas, furnishings and equipment.

Unless otherwise indicated in the Operations & Maintenance Responsibility Matrix in Exhibit_____, which is incorporated by reference, Lessee agrees to contract with the Administration's floor care terrazzo maintenance provider based on the specialty hard floor cleaning specifications as required by the Administration. At minimum, Lessee shall be required to contract with the Administration's floor care terrazzo maintenance provider at Food Court Common Areas and where terrazzo flooring may exist within the Leased Premises as referenced in Article VII, herein.

9. **Operational Management**

Lessee shall manage the Concessions Program including, but not limited to the following:

- a. Lessee shall monitor the sales activity, pricing, customer service, hours of operation, merchandise, sales reporting, and payment of rent.
- b. Lessee is responsible for cleaning, maintenance, service and repair of the Food Court Common Areas and other designated Common Areas of the Leased Premises (whether by employees of Lessee or through independent contractors) in a first-class manner, including all machinery, equipment and other items whether leased or provided by Lessee in accordance with this Contract. The Administration is responsible for the costs of repair and maintenance items affecting Base Building Work, unless the need for such repair or maintenance results from the actions or inactions of Lessee or its Sublessees. The cost of Common Area

Maintenance may be passed on by Lessee to Sublessees, with no mark up, by separately stating such fees and charges on a monthly invoice, or by separately invoicing for these expenses on a monthly basis.

- c. Lessee shall ensure and oversee Sublessee compliance with all maintenance and performance standards.
- d. Lessee shall establish performance standards jointly with the Administration and working with the Administration in the event of failure of Sublessees to meet such performance standards.
- e. Lessee is responsible for keeping current with customer experience and passenger journey trends, concession technology integration and deployment, the Airport's demographic and psychographic trends, passenger satisfaction and other surveys. On the first day of March, in the third year of the Operation & Management Period of the Contract Term and every three (3) years thereafter, Lessee shall submit to the Administration a Concession Trend Analysis that summarizes the individual category of trends listed above and how Lessee or its Sublessees may or will incorporate such trends into the Concessions Program and report how Sublessees rate and fair on independent passenger satisfaction surveys.
- f. Lessee shall courteously respond and cause its Sublessees to courteously respond to customer complaints regarding the Concessions Program. Lessee or its Sublessee shall, within five (5) days of the date that a written complaint is first received by the Lessee, make an appropriate response to the customer, which, if further action on the complaint is required, may consist of an acknowledgement of the complaint and a statement of further action, if any, to be taken by Lessee. Lessee shall forward to the Administration a copy of each complaint wherein BWI Marshall Airport is specifically identified as the site of the problem, and the

written response at the same time such response is mailed or delivered to the customer.

- g. Lessee shall direct, coordinate and monitor procedures and practices for deliveries of Sublessee's goods, products, materials, equipment, and supplies from any designated on or off-airport loading or storage area. Subject to TSA and/or Administration directives, all Sublessees will be required to supply their Sublessee Premises from the airfield rather than bringing merchandise through the security checkpoints used by passengers, to the greatest extent possible, which will require both airfield approved vehicles and airfield approved drivers.
- h. Lessee shall provide quality control audits and reports covering compliance with Contract requirements, cleanliness of the facility, timeliness of service, and quality of the product. The Administration and Lessee will establish standards for customer service for the Airport.
- i. Lessee shall provide to Sublessees a list of Preferred Environmental Maintenance & Service Providers. Sublessees shall be required to use Preferred Environmental Maintenance & Service Providers in the manner and scope as approved by Lessee and the Administration in maintaining the Leased Premises including Sublessee's Premises. Sublessees shall also be required to provide a copy of all service reports to Lessee within 24 hours of service to the subleased premises.
- j. Lessee is responsible for ensuring and overseeing Sublessee compliance with all delivery and distribution rules and regulations including proper use of designated freight elevators and adherence to the Administration's predetermined locations for inventory deliveries for the Concessions Program, as shown in Exhibit_____.

- k. Lessee and its Sublessees' personnel policies shall provide for fair and non-discriminatory selection of all personnel in accordance with federal and State laws.
- l. Lessee is obligated to ensure that grease traps are installed and checked/cleaned on at least a monthly basis in all food service units. If a problem develops due to a clogged or under-maintained grease trap, Lessee will repair, or cause to be repaired, all damages caused by malfunctioning grease traps. The Administration may assess a fine for repeated instances of overflowing or malfunctioning grease traps (See Article XXXVIII).
Notwithstanding the above, the Administration shall have the right to invoice Lessee for any costs or expenses the Administration incurs in connection with any damages caused by malfunctioning or unmaintained grease trap systems.
- m. Lessee shall cause the Sublessees to cooperate in a timely manner with the Administration's Fire/Rescue Department in the testing of all safety systems as required by the Office of the Fire Marshal.
- n. Lessee shall be responsible for ensuring that Administration's signage standards are enforced.
- o. Subject to review and approval by Administration, Lessee shall design, compile, maintain, and publish a comprehensive tenant handbook to communicate operational policies, rules, regulations, and requirements of Lessee and tenant directives, safety and security policies of the Administration. Lessee shall establish a tenant on-boarding program and handbook. Such tenant handbook shall be provided to each Sublessee as part of Lessee's Tenant on-Boarding Program.
- p. Lessee shall design, develop and continuously deploy an electronic, digital and/or web-based survey for the purposes of customer feedback, suggestions, etc. The electronic, digital and/or web-based survey design and content shall be subject to the

Administration's prior written approval. Lessee may establish a schedule for intercept surveys to augment the aforementioned electronic survey findings.

- q. Lessee shall provide for a toll-free "800" service for purposes of providing customer service and information relating to the Airport Concessions Program.
- r. Lessee shall cause the Sublessees to participate in annual training of personnel with programs pertinent to their positions, including environmental awareness, foodservice and food safety training, or hospitality and customer service training. Annual training may be done concurrently with annual employee badge renewals.
- s. Lessee shall exercise, and cause Sublessees to exercise, a high degree of compliance to make certain the return of Airport security badges when an individual no longer requires access to Airport Operations Area, Restricted or Secured Areas, resigns, is terminated, retires, is laid-off, or on strike.
- t. Lessee shall develop and maintain an Airport Emergency and Concession Continuity Plan (Plan) to maintain optimal passenger experience during Airport security events and crisis in facility operations. At minimum, Lessee shall communicate how the Concessions Program will reduce the potential impact of an incident and address a variety of potential emergencies including: (1) Loss of IT/Data; (2) Loss of Key Staff; (3) Loss of Utilities (electricity, water, gas); (4) Disruption due to severe weather; (5) Disruption due to security event; (6) and biological outbreak. At a minimum, the Plan must include a crisis communications strategy, a means for ensuring customer safety and comfort, a means for reporting emergencies, a description of employee responsibilities during emergencies, a list of evacuation procedures and emergency escape routes, a description of procedures for employees to follow who must temporarily assist with critical facility operations prior

to evacuation, a narrative of rescue and medical duties for employees, an explanation of recommended training and drills, and a business continuity approach. The Plan will be subject to the review and approval of the Administration's Office of the Fire Marshal and any other applicable office. The Administration reserves the right to request Lessee to revise the Plan from time to time, as may be necessary or desirable, to coincide with the Airport's Emergency Plan.

- u. Lessee shall cause each Sublease to include provisions requiring the Sublessees to maintain an adequate sales and work force at all times, including, without limitation, sales, cashiers, management and supervisory personnel on-site to fully meet customer needs at all times and use skill and diligence in the conduct of business. Lessee and the Sublessees shall cause their respective employees to be courteous and helpful to the public at all times.
- v. Lessee shall exercise, and cause Sublessees to exercise, a high degree of safety and care in the operation of the Leased Premises, not creating any hazardous conditions on or about the Leased Premises, Terminal or Airport, and shall cause Sublessees under this Contract to operate, use and maintain the Concession Area in accordance with high standards and in such manner as to minimize emissions of all types, noises or noxious odors from the Concession Areas;
- w. Lessee shall not allow music or other audio merchandising or background to be audible outside of Sublessee Premises. All music within Leased Premises shall be kept to reasonable levels and must be turned off and remain off at the request of the Administration.

D. Common Area Maintenance (CAM) Charges

During the term of this Contract, and any extension, or expansion thereof, Lessee shall be responsible for providing custodial services for the complete and

adequate pick-up and sanitary disposal of all solid waste, compostable materials, recyclable materials, cooking oils and other generated waste oils in accordance with Article VIII.C.6 and Article VIII.C.7, herein. In order to recover the direct costs of such custodial services, Lessee shall assess reasonable fees to each Sublessee for CAM charges as well as charges that may be associated with such services as approved by the Administration. CAM charges shall recover direct costs for all expenses, costs and disbursements of every kind and nature incurred in connection with the maintenance, repair, replacement and operation of the common areas equipment, furniture, fixtures, and components of the Leased Premises, including but not limited to: (1) cost of wages and salaries of all employees engaged in the operation and maintenance of the common areas of the Leased Premises, including but not limited to payroll taxes, insurance and benefits; (2) cost of all supplies and materials used; (3) costs incurred under all maintenance and service agreements for the common areas of the Leased Premises, including but not limited to any solid waste disposal, and the disposal of compostable materials, recyclable materials, cooking oils or other generated waste oils; (4) cost of pest control; (5) cost of repairs and general maintenance to the common areas of the Leased Premises; (6) costs of repairs, replacements and general maintenance to furniture and fixtures in the common areas of the Leased Premises.

For purposes of this provision, CAM charges shall not include (a) the cost of capital improvements (except as expressly provided above), (b) the costs of tenant improvements, maintenance and repairs within tenant spaces, (c) debt service, (d) depreciation, or (e) leasing commissions.

The CAM charges shall be maintained by Lessee in a separate account to be established for this purpose, and not commingled with any other funds. Lessee shall have the annual obligation to report on income and expenditures of the prior year's CAM charges to both the Administration and to its Sublessees no later than ninety (90) days following the end of each Contract Year. The annual report submitted to the Administration shall have a full and complete accounting of all

CAM charges collected and spent, with detailed documentation of actual expenditures (including invoices, cancelled checks, or other detailed documentation). The Administration may audit all CAM charge expenditures or require Lessee to provide an unqualified written statement from an independent CPA that the collection and use of the CAM charges complies with the terms of this Contract.

Lessee agrees that on an annual basis, no later than sixty (60) days prior to the commencement of the upcoming Contract Year, Lessee shall consult with the Administration to set the upcoming Contract year's CAM charges for each Sublessee.

In the event there are funds remaining in the CAM charges account, then the CAM charges for the next year for every Sublessee may be reduced by the proportional share of the remaining funds. Funds remaining in the CAM charges account in excess of seventy-five thousand (\$75,000) dollars shall be returned to Sublessees on a proportional share basis no later than one hundred twenty (120) days after the end of the Contract year, including any interest. If there is a shortage in any year, it shall be the responsibility of Lessee to recover such shortage, without markup, in the upcoming Contract Year.

Any misuse of the CAM charges or intentional or failure of Lessee to maintain accurate and accessible records as to its proper use shall be an event of default under this Contract.

E. Quality Assurance & Performance Audits

Lessee shall cause all Sublessees to keep and maintain their Sublessee Premises in a first-class appearance. Sublessees shall be required by Lessee to maintain the Sublessee Premises in a clean, neat, sanitary and safe condition in accordance with the operating standards as referenced herein, and all applicable health, fire and building inspector requirements. Lessee, through periodic daily walk-through inspections and meetings with Sublessees, shall work with the Sublessees to achieve and maintain compliance with such requirements.

Lessee shall conduct formal quality assurance performance audits for each concession unit on a quarterly basis to ensure that all of the operational, safety, hygiene, sanitation and facility conditions are consistently met and that patrons of the Airport receive the quality of service, customer experience, and professionalism as desired by the Administration and Lessee. Such audits are conducted by Lessee's on-site staff or through the use of third-party consultants. The Administration reserves the right to participate in such quality assurance performance audits at its discretion.

The form of the quality assurance performance evaluation document, to include the establishment of operating standards that will support the maintenance of high quality customer service and customer experience, shall be submitted by Lessee for approval by the Administration in the Development Phase of this Contract, allowing the Administration a minimum of 45 days to review and approve the document prior to the Renovation Phase of the Contract. The operating standards to be used for these operational audits shall address the areas of:

1. Façade Arrangement;
2. Merchandise Presentation;
3. Staffing Levels, Conduct, and Appearance;
4. Signage, Pricing Displays and/or Menu Boards; and
5. Appearance and general upkeep including common areas, Sublessee Interiors and Sublessee's kitchen systems.

In addition, the quality assurance performance audit will include a set of minimum performance standards in each of the five previously detailed. If these minimum standards in any one area are not met, regardless of the overall evaluation score, Lessee will be subject to fines as specified in Article XXXVIII.

As it relates to Sublessee kitchen systems, Lessee shall retain a third-party kitchen system's inspector with experience in kitchen exhaust systems, grease trap maintenance, and grease containment systems to evaluate operational safety, and cleanliness of Sublessee facilities on a quarterly basis. Lessee shall provide

the inspectors complete and comprehensive report to the Administration on the 20th day of each four-month period in each calendar year. That is, Lessee shall provide the kitchen inspection report on the 20th day of April, August, and December in each calendar year during the Contract Term. The direct costs of the independent kitchen systems inspector may be charged against the CAM charges.

Lessee shall cause Sublessees to correct any deficiencies within the grace periods as specified in Article XXXVIII. For those Sublessees that fail to correct the deficiencies within the grace periods specified in Article XXXVIII, Lessee shall notify the Administration and impose fines to be collected by the Lessee from the involved Sublessee(s) and remitted to the Administration, which shall continue to accrue on a daily basis until the deficiencies are corrected.

In addition to the above, Lessee shall conduct “The Secret Shopper Experience Program” to evaluate Sublessee’s customer service and customer experience performance levels and develop constructive recommendations to improve Airport users’ perception and valuation of the Airport’s Concessions Program. The

Secret Shopper Experience Program audits at minimum shall address the following areas:

1. General conditions of store or restaurant;
2. Product presentation;
3. Efficiency and proficiency of service; and
4. Sales techniques.

The purpose of the Secret Shopper Experience Program is to ensure consistent performance. Administration may require audits to evaluate an increased number of units and/or be conducted more frequently if Administration determines that the schedule established by Lessee is not providing an adequate overview of the program. In order to ensure that improvements in performance continue and are not just “spot” fixes, a rolling twelve (12) month cycle will be utilized in

determining 2nd, 3rd or more incidents of failure to meet standards. Fines for second and third violations will be imposed if the violation occurs within a twelve (12) month period of the first violation. A Sublessee will have a clean slate if it does not repeat the violation for a period of twelve (12) months. The amount of the fine shall increase every 5 years in accordance with Article XXXVIII.E.

If the Administration reasonably determines that a Sublessee has consistently failed to correct deficiencies, if any, Lessee shall provide the Administration with a plan, in writing as to the steps to be taken to correct the deficiencies and Lessee shall thereafter pursue any and all other appropriate remedies as provided in the Sublease.

Repeated violations and deficiencies in performance audits may subject the Lessee to termination of this Contract, or the Administration may direct the Lessee to terminate one or more Sublease(s).

F. Small Business & Business Incubator Programs

At no cost to the Administration, Lessee shall develop and maintain a micro and incubator business program using kiosks and freestanding retail merchandising units within the Concession Area to promote temporary, inexpensive, low-risk entrepreneurship. Lessee shall in coordination with the Administration and with the Administration's written approval, create an effective brand strategy with a brand name identity, logo and comprehensive marketing and promotion plan. At the Administration's option, the branding identity of this program shall remain with the Administration upon the expiration or termination of this Contract.

Lessee shall also provide comprehensive business counseling and management to coordinate and accept program applicants including providing access to business planning and financial assistance to program participants.

G. Marketing Strategy & Joint Concession Marketing Fund

Lessee shall develop and maintain an effective marketing strategy with the creativity, quality, and responsiveness to increase the commercial activity of the Concessions Program. Lessee shall market, advertise, promote and publicize the

Concessions Program as “The Airport Shops at BWI Marshall” or another title approved by the Administration. Within sixty (60) days to the transition from the previous lease and concession contract, Lessee shall set forth all of Lessee’s intended marketing, promotional and advertisement activities with respect to its overall marketing strategy and its proposed Joint Concession Marketing Fee for the initial Contract Year or remainder thereof for the Administration’s written approval. Lessee shall require each Sublessee to contribute to the approved Joint Concession Marketing Fund on a monthly basis, in an amount not to exceed three quarters of one percent (0.75%) of all Gross Receipts of each Sublessee (Joint Concession Marketing Fee). The Administration shall have the right to receive Joint Concession Marketing Funds from Lessee to recover or cover cost of Administration developed signage and/or other promotional materials and programs included on Airport technology platforms or services.

Lessee agrees that on an annual basis, no later than ninety (90) days prior to the commencement of the upcoming Contract Year, Lessee shall consult with the Administration to develop the annual marketing strategy and set the upcoming year’s Joint Concession Marketing Fee for each Sublessee. Lessee shall have the annual obligation to report on income and expenditures of the prior year’s Joint Concession Marketing Fund monies to both the Administration and to its Sublessees no later than sixty (60) days following the end of each Contract Year. The annual report submitted to the Administration shall have a full and complete accounting of all marketing funds collected and spent, with detailed documentation of actual expenditures (including invoices, cancelled checks, or other detailed documentation). The Administration may audit these marketing expenditures or require Lessee to provide an unqualified written statement from an independent CPA that in the CPA’s opinion the collection and use of the Joint Concession Marketing Fund complies with the terms of this Contract.

The Joint Concession Marketing Fund shall be maintained by Lessee in a separate account to be established for this purpose, and not commingled with any other funds. If Sublessee’s actual Gross Receipts are not known at the time the

Concession Marketing Fee is due, Sublessee shall pay contributions based upon an estimate of its monthly Gross Receipts, and Subleases shall include a provision adjusting the amount paid within thirty (30) days after the end of each six (6) month period during the Contract Year so that the Sublessee's payment into the Joint Concession Marketing Fund is based on its actual Gross Receipts for that six (6) month period.

In the event there are funds remaining in the Joint Concession Marketing Fund, those funds can rollover into the following year and allowing the marketing fund charge for the next year for every Sublessee to be reduced by the proportional share of the remaining funds. Any funds remaining in the Joint Concession Marketing Fund in excess of seventy-five (\$75, 000.00) thousand dollars shall be returned to Sublessees on a proportional share basis no later than one hundred twenty (120) days after the Contract Year, including any interest. If there is a shortage in any year, it shall be the responsibility of Lessee to cover the shortage and recover such shortage, without markup, in the upcoming Contract Year.

As part of the marketing strategy, Lessee must establish a barricade signage program for any unoccupied or incomplete concessions spaces. The designs for the barricades will be subject to the Administration's permitting process and must complement the interior design and finish of the terminal building. Such barricades may provide information on similar locations within reasonable walking distance, as well as "coming soon" information, as it is available.

Also, as part of the marketing strategy, Lessee must establish digital directories and wayfinding systems in collaboration with the Administration's Airport Wireless Service Provider at locations within the Airport Terminal Building and associated facilities as approved by the Administration. In addition, Lessee shall cause Sublessees to use and employ the Administration's Airport Wireless Service Provider for their wireless services at their sublease premises.

Notwithstanding the foregoing and requirements outlined in this Contract, other types of expenses that may be paid out of the Joint Concession Marketing Fund may include, without limitation:

1. Direct costs associated with developing and posting advertising at locations under the Airport Advertising Master Plan with the Administration's commercial advertising contractor;
2. Costs for the use of an independent professional retail merchandiser overseen by the Lessee to assist any retailer with display design and product merchandising;
3. Costs associated with the development and management of an Airport concession loyalty program, if applicable;
4. Costs incurred for customer service and customer experience training for Sublessee employees (see Article VIII.C.9.r);
5. Costs associated with Airport market research including focus group sessions, demographic and psychographic trend analysis, independent passenger satisfaction surveys, intercept interviews with passengers and the secret shopper experience quality assurance analysis;
6. Direct costs associated with marketing and promotion activities (including, but not limited to, costs incurred for the purchase of marketing program creative materials; costs for special events; and/or paid media);
7. Costs associated with marketing program development and day-to-day coordination;
8. Sales/service incentive rewards for Sublessee employees, and
9. Any other expenses associated with Lessee's programs relating to customer service and satisfaction.

Any misuse of the Joint Concession Marketing Fund or failure of Lessee to maintain accurate and accessible records as to its proper use shall be an event of default under this Contract.

Lessee shall submit all press releases related to its operations at BWI Marshall Airport under this Contract to the Administration for its review and approval prior to publication.

H. Delivery & Distribution

Lessee shall be required to select and employ a qualified logistics provider for the delivery & distribution of concession inventories from the on-Airport centralized receiving and distribution facility. Lessee shall work closely with the selected logistics provider to develop operating guideless and procedures for Lessee's Concessions Program to meet the logistical and storage requirements of the Concessions Program. Any contract between the Lessee and its selected logistics provider shall be non-exclusive. The Lessor reserves the right to contract with and allow other tenants of the Airport to utilize the services of the logistics provider. In addition to the operating agreement between the Selected Proponent and its logistics provider, the logistics provider shall be required to enter into a lease and concession contract with for the space and facilities directly with the Lessor, subject to approval by the Maryland Board of Public Works.

All delivery inventories shall be packaged within sealed containers and transported in a manner that eliminates spillage and avoids damage to the Airport Terminal Building. Lessee shall cause the logistics provider and its Sublessees to use only those delivery and receiving zones and routes established by the Administration (see Exhibit _____).

In the event Lessee (its employees, agents, servants, subcontractors, or Sublessees) cause damage to access doors, door frames, walls or floor areas of the Airport Terminal Building, the Administration may direct Lessee to undertake the maintenance, repair and/or replacement of areas, installations and improvements (e.g., doors, door frames, protective bumpers and walls) necessitated by the negligent acts or omissions of Lessee, its employees, agents, servants, subcontractors, or Sublessees, at Lessee's expense.

Notwithstanding the previous paragraph, in the event Lessee (its employees, agents, servants, subcontractors, or Sublessees) causes damage to access doors, door frames and adjacent walls located at secured areas of the Airport Terminal Building, and there is immediate need for those doors, door frames and/ or adjacent walls to be repaired in order that the Airport remain in compliance with federal requirements, the Administration shall make said repairs and shall invoice Lessee for the repairs. Such work shall be paid for by Lessee within thirty (30) days of Lessee's receipt of Administration's invoice for said repairs. Failure by Lessee to pay the invoice within thirty (30) days of receipt shall result in Lessee being required to pay that cost plus a fifty percent (50%) overhead fee.

In order to recover the direct costs for delivery and distribution services, including any capital improvements to the on-Airport centralized receiving and distribution facility, Lessee shall assess reasonable charges to each Sublessee for delivery and distribution services (Delivery & Distribution Charge) as well as charges that may be associated with such services as approved by the Administration. The Delivery & Distribution Charge shall recover direct costs for all expenses, costs and disbursements of every kind and nature incurred in connection with the delivery and distribution service.

The Delivery & Distribution Charge collected from Sublessees shall be maintained by Lessee in a separate account to be established for this purpose, and not commingled with any other funds. Lessee shall have the annual obligation to report on income and expenditures of the prior year's Delivery & Distribution Charges to both the Administration and to its Sublessees no later than ninety (90) days following the end of each Contract Year. The annual report submitted to the Administration shall have a full and complete accounting of all Delivery & Distribution Charges collected and spent, with detailed documentation of actual expenditures (including invoices, cancelled checks, or other detailed documentation). The Administration may audit Delivery & Distribution charge expenditures or require Lessee to provide an unqualified written statement from a

CPA that in the CPA's opinion the collection and use of the Delivery & Distribution Charges complies with the terms of this Contract.

Lessee agrees that on an annual basis, no later than sixty (60) days prior to the commencement of the upcoming Contract Year, Lessee shall consult with the Administration prior to setting the upcoming year's Delivery & Distribution Charges for each Sublessee.

In the event there are funds remaining in the Delivery & Distribution Charges, those funds can rollover into the following year and allow the Delivery & Distribution Charges for the next year for every Sublessee to be reduced by the proportional share of the remaining funds. Funds remaining in the Delivery & Distribution Charges in excess of one hundred thousand dollars shall be returned to Sublessees on a proportional share basis no later than one hundred twenty (120) days after the Contract Year, including any interest. If there is a shortage in any year, it shall be the responsibility of Lessee to cover the shortage and recover such shortage, without markup, in the upcoming Contract Year.

Any misuse of the Delivery & Distribution Charges or intentional or failure of Lessee to maintain accurate and accessible records as to its proper use shall be an event of default under this Contract.

Lessee shall include in its subcontract with the selected Delivery & Distribution Logistics Provider, the Administration's requirements as follows:

1. "Annualized Operating Budget

Contractor shall prepare and submit to the Terminal Concessions Program Developer for its review and approval an annualized Operating Budget and monthly projection for each year of the Contract Term. The Operating Budget shall be reviewed quarterly by the Contractor and Terminal Concessions Program Developer and may be reviewed more frequently at the request of either party. The Operating Budget shall reflect the amounts established in the agreement between Contractor and Terminal Concessions Program Developer and shall be comprised of three

sections: (i) details of the Contractor’s Fixed Management Fee; (ii) details of the non-recurring reimbursable expenses that are expected to occur on a one-time or irregular basis; (iii) details of the normal, recurring reimbursable expenses. These three sections together shall constitute the Operating Budget.

The normal, recurring reimbursable expense portion of the Operating Budget shall include, without limitation, the following separate subsections and any other subsections as requested in writing by the Terminal Concessions Program Developer:

- a. Personnel Compensation;
- b. Employee Benefits;
- c. Training;
- d. Communication & Utilities;
- e. Reimbursable Contract Services;
- f. Supplies & Materials;
- g. Insurance & Taxes;
- h. Facility and Equipment Maintenance
- i. Non-Capital Equipment;
- j. Capital Equipment;
- k. Non-Capital Facility Projects; and
- l. Capital Facility Projects.

The Operating Budget shall also include a separate schedule detailing the foreseeable, non-recurring expenses that are expected to occur on a one-time or irregular basis.

Operating Budget approvals and approval of revisions will be made in writing by the Terminal Concessions Program Developer. The approved Operating Budget or revised Operating Budget shall be binding upon Contractor. For purposes of approval, Contractor shall develop and submit its Operating Budget to the Terminal Concessions Program Developer according to the following schedule:

Action	Completion Date
Contractor’s Operating Budget Submission to the Terminal Concessions Program Developer	October 1
Terminal Concessions Program Developer’s review and comments completed	November 1
Approval of final Operating Budget and First Quarter Plan	December 1

Contract Year Begins	January 1
Closeout of previous Contract Year Budget	on or before May 1
Submission of Year-End Closeout Budget Report	on or before June 1
Evaluation/review of previous Contract Year Budget Performance	on or before July 1

a. Quarterly Review

Contractor shall submit on or before the 30th day of each calendar quarter of the Contract Term a revenue and expense report with documents of all actual operating expense payments. **Upon the two-year anniversary of the Contract Term, Contractor may submit its documents of all actual operating expense payments on a semi-annual basis. All Operating Expenses as referenced in Contractor’s Operating Budget must be actually incurred and paid by Contractor in its performance of this Contract and must be on a dollar-for-dollar basis with a mark-up of _____%.**

b. Shifting of Budget Funds

Contractor may, subject to advance written notice and approval by the Terminal Concessions Program Developer, shift funds within Contractor’s Operating Budget from one-line item to another as necessary to fulfill the service and operations requirements specified herein.

c. Contractor’s Fixed Management Fee

Commencing on the Effective Date, for the management and operation of the CRDF, Contractor shall maintain a fixed annual dollar amount of _____Dollars (US\$_____.00) to operate the Integrated Logistics Concession Service at the Airport. The Contractor’s Fixed Management Fee be paid by the Terminal Concessions Program Developer and shall increase to an additional _____Dollars (US\$_____.00) on the _____-year anniversary of the Contract Term.

d. Reimbursable Expenses

In addition to the Fixed Management Fee, Terminal Concessions Program Developer shall reimburse Contractor dollar-for-dollar for expenses incurred for additional items, that have been approved (such approval not to be unreasonably withheld, conditioned, or delayed) in writing by the Terminal Concessions Program Developer, after the commencement date and before the expiration or earlier termination of this Contract and that are not otherwise prohibited by this Contract.

All line items included in the approved Operating Budget and additional items approved in writing by the Terminal Concessions Program Developer shall be considered Reimbursable Expenses. **All reasonable expenses, except Non-Reimbursable Expenses as defined below, are reimbursable provided that the expenses are either included in the approved Operating Budget or specifically approved in writing by the Terminal Concessions Program Developer.** Any expenditure not included in the approved Operating Budget or otherwise expressly approved in writing by the Terminal Concessions Program Developer is not a Reimbursable Expense. Contractor shall ensure that Reimbursable Expenses are timely submitted to the Terminal Concessions Program Developer for deduction approval in accordance with the approved Operating Budget and fall within the expenditure's budget cycle, with the exception of deductions (Reimbursable Expenses) associated with the last month of the budget year, which would be deducted within the first quarter in the subsequent budget year. **Notwithstanding the above, and references herein, all Reimbursable Expenses must be actually incurred and paid by Contractor in its performance of this Contract and the associated Airport Concessions Program contract with the Terminal Concessions Program Developer and will be reimbursed on a dollar-for-dollar basis plus a mark-up of _____ % for profit.** Reimbursable Operating Budget Expenses include, but are not necessarily limited to the following:

- i. Start-up and transition costs in accordance with the Terminal Concessions Program Developer approved Operating Budget;
- ii. Base payroll costs for all authorized employees, including regular salaries and wages (FICA, SUTA, Workers Compensation and Social Security), employee incentives, employee training costs and overtime as evidenced by a payroll register;
- iii. The expense of any retirement program, e.g., 401(k);
- iv. The cost of employee benefits (including sick days, health insurance, vacation, and approved holiday's) applicable only to employees employed by Contractor at the Airport, including fees and expenses payable to any professional employer organization utilized by Contractor, including Insperity;
- v. The cost of training materials for local employees, employee seminars, and local training programs or seminars approved in advance by the Terminal Concessions Program Developer;
- vi. The cost of insurance as required in the Contract;
- vii. Cost of any bonds or other security required to be posted by Contractor hereunder or under any agreement with the Terminal Concessions Program Developer;
- viii. Cost of uniforms and the cost of uniform maintenance including professional cleaning, if any; Maintenance materials, supplies used on site and small equipment;
- ix. The cost of materials, equipment maintenance and facility maintenance (as approved and not unreasonable withheld - either dollar for dollar or amortized), and repair services and cost for fuel for service vehicles operating at the Airport;
- x. Cell phones, other mobile and/or wireless devices and third-party information technology expenses;
- xi. Incentive awards (subject to approval by Terminal Concessions Program Developer).
- xii. Marketing and promotion;

- xiii. Office equipment, computers, and other information technology equipment;
- xiv. Utilities (which falls under Contractor's responsibilities) and common area maintenance charges;
- xv. Business telephone and communications lines for credit card processing;
- xvi. Amounts required to be paid under this Contract (other than any Percentage of Concession Fee);
- xvii. Contractor's interest expense with respect to and financing used to fund Contractor's equipment, improvements to the Leased Premises and fixtures;
- xviii. Depreciation of capital assets at a rate of 5 years for equipment (including, x-ray and EDS) and 10 years for improvements to the Leased Premises and fixtures;
- xix. any non-income taxes assessed on Contractor in connection with providing the services contemplated by this Contract;
- xx. The cost of maintenance and repair of the Leased Premises and delivery zones performed by Contractor; and
- xxi. The cost of commercial property (the Leased Premises) rental, property taxes and insurance.

e. Non-Reimbursable Expenses

The approved Operating Budget shall not include the following expenses (all of which shall be paid for by Contractor using its own funds):

- i. Salary, costs, and expenses of all off-site, nonresident legal, audit, administrative, bookkeeping, and executive personnel of Contractor, except as specifically approved in writing by the Terminal Concessions Program Developer. "Nonresident" personnel are defined as personnel whose primary work site is not within the designated operating area at the Airport;
- ii. Home office travel, home office or local entertainment and accommodations, and off-site general office expenses;

- iii. Membership/sponsorship on any professional organization and travel to training programs and seminars that are not local;
- iv. Deductibles for insurance claims and the administrative costs of administering claims;
- v. The expenses of legal representation, lobbyists and associated costs;
- vi. The expense of any penalties, fines, and late payment fees incurred by Contractor;
- vii. The expense of off-site business license and similar fees incurred by Contractor in its business operations;
- viii. Missing or unreturned employee badges, lost employee uniforms, laundry, and linens;
- ix. Any cost incurred for repair or replacement of property due to acts of vandalism and negligence caused by employee(s) of Contractor.
- x. The financing costs associated with Contractor's working capital;
- xi. Expenses for meetings between executive level representatives of Contractor and the Terminal Concessions Program Developer;
- xii. Any employee compensation benefits, e.g., a car allowance, that are not specifically approved by the Terminal Concessions Program Developer;
- xiii. Any operating expenses incurred or associated with or that can be contributed to services provided external to the Concessions Program.

f. Certified Quarterly Statements

By the 20th day of each calendar quarter, Contractor shall detail its budgeted Operating Expenses in a certified quarterly statement with all invoices and supporting documents for the previous quarter. Within thirty (30) days, the Terminal Concessions Program Developer shall notify Contractor in writing of its objection to any item or items or expenses which it deems to be non-reimbursable. Any such notice shall set forth the nature of the Terminal Concessions Program Developer's objection and

shall be accomplished by the Terminal Concessions Program Developer's written non-approval of the of reimbursable and prohibited inclusion of Contractor's Operating Expense. Notwithstanding the above, upon the two-year anniversary of the Contract Term, Contractor may submit all invoices and supporting documents on a semi-annual basis for the remainder of the Contract Term.

g. Disputed Expenses

The Terminal Concessions Program Developer shall give Contractor written notice of any disputed Contractor expenses and the reasons for such dispute. Contractor, within fifteen (15) days from receipt of such notice from the Terminal Concessions Program Developer shall provide a written explanation of the disputed expenses to the Terminal Concessions Program Developer. All disputed expenses shall be resolved within forty-five (45) days from written notice of dispute. If such disputed expense is not resolved within forty-five (45) days, then the Terminal Concessions Program Developer's determination shall be final.

h. Operating Advance and Payments

Contractor's service agreement with the Terminal Concessions Program Developer shall outline the terms and conditions for service and payment as approved by the Terminal Concessions Program Developer shall advance to Contractor an amount equal to one month of Contractor's approved Operating Budget. Contractor's Fixed Management Fee shall not be included or subject to advance payment. The Operating Advance shall be fully reimbursed by Contractor to the Terminal Concessions Program Developer upon termination or expiration of the Contract.

i. Payment

Contractor shall be reimbursed its Operating Expenses as outlined in its approved annual Operating Budget, through the Terminal Concessions Program Developer. Contractor's approved Operating Expenses shall be

paid monthly by the Terminal Concessions Program Developer as a pass through from its Delivery & Distribution Charges assessed to each Terminal Concessions Program sublessee.

All Operating/Reimbursable Expenses as referenced in Contractor's Operating Budget must be actually incurred and paid by Contractor in its performance of this Contract and in conjunction with the Terminal Concessions Program and must be on a dollar-for-dollar basis with a mark-up of ____%. In the event there are funds remaining or an overpayment of the Operating Expenses, such excess funds shall rollover into the following year's Operating Budget and reduce the following year's Operating Budget expenses for the Terminal Concessions Program Developer. Notwithstanding the foregoing, funds remaining in the Delivery & Distribution Charges in excess one hundred Thousand dollars shall be returned to Sublessees.

2. Maintain or cause to be maintained the Leased Premises, including, but not limited to: general custodial services, pest control, fire extinguisher installation and maintenance, trash removal services, and the assurance that boxes, wooden pallets, cartons, crates, drums or the like do not pile and are removed from the Terminal Building. Contractor shall manage the return process of containers, pallets, and similar product-related containers and items back to the CRDF;
3. Perform services in compliance with all applicable TSA and Administration security requirements.
4. Utilize and maintain the designated delivery and distribution zones located at apron and ramp areas at the Airport Terminal Building and supply routes established by the Administration;
5. Install and maintain at Contractor's cost and expense, thermoplastic striping, and pavement markings with enhanced wet night visibility systems (or as recommended or required by the Administration) at the designated delivery and distribution zones for Contractor's exclusive use.

Contractor shall be required to replace all striping and pavement markings every three (3) years of the Contract Term or as determined by the Administration;

6. Repair or cause to be repaired, any damage to access doors, door frames, walls, or floor areas of the Airport Terminal Building in the event Contractor (its employees, agents, servants, subcontractors, etc.) cause damage to such facilities. The Administration may direct Contractor to undertake, at Contractor's expense, such maintenance, repair and/or replacement of such areas, installations, and improvements (e.g., doors, door frames, protective bumpers, and walls) necessitated by the negligent acts or omissions of Contractor, its employees, agents, servants, subcontractors, or users.
7. Participate in the Administration's Airport-wide trash disposal and recycling program pursuant to the Administration's Tenant Directive 003.1 and the Administration's Airport Community Tenant Guide for Trash and Cardboard Disposal (Attachment Nos. ___ and ___, respectively). In addition, Contractor shall participate in the Administration's Food Waste Composting Program (see Attachment No. ___)."

I. Security Clearance/Badges

Lessee's personnel designated to the role of managing the issuance, renewal, and collection of Airport Security badges for the Concessions Program shall cause Sublessees to be responsible for their personnel under the Subleases and will monitor compliance by Sublessees with required badging and security clearances and the screening of Sublessee goods, products, equipment, materials and supplies. Lessee will apply remedies under Subleases as required to remedy violations or other deficiencies by Sublessees.

1. General

- a. Lessee employees and its Sublessees and their employees shall comply with all BWI Airport security regulations, as mandated by

the TSA and/or other authorized governmental entities including the Administration. The Airport shall take immediate and aggressive action to ensure compliance with Federal Regulations 49 CFR Part 1542 (Airport Security).

- b. Security is to be maintained at all times. If security is breached or penetrated by Lessee personnel in any manner or form at any time during this Contract, the Lessee is required to immediately restore "security" regardless of the circumstances. The Lessee and Sublessees, in the performance of their duties, shall be responsible for maintaining the integrity of the controlled access security system for the duration of this Contract.

2. **BWI Airport Access Badge and Vehicle Ramp Permits**

- a. All Lessee and Sublessee personnel who, in the performance of their duties must have access to the Security Identification Display Area (SIDA) of the Airport shall first obtain a valid Airport issued identification and access badge from the Administration. Prior to badge issuance, the individual requesting a badge must first submit to fingerprinting for the purposes of undergoing a Criminal History Record Check. The Criminal History Record Check will determine whether an individual has, within the last ten (10) years, been convicted of one of thirty-six (36) disqualifying crimes. In accordance with TSR 1542 and Public Law 106-528, this will be used as the sole determining factor for granting permanent unescorted SIDA access privileges. If the work to be completed by a particular individual or Sublessee is short term, and the Lessee has appropriately badged personnel available, said individuals may be escorted. The escorts must stay with the non-badged individual(s) at all times and must be able to control such individuals.
- b. The Administration shall sponsor the badging and perform an employment history investigation, if necessary, for up to three (3)

of Lessee's employees, who will be responsible to participate in the required training to become Lessee's designated authorized signers. These individuals employed by Lessee shall then be responsible for sponsoring (signing badge applications) and performing employment history investigations for all subsequent Lessee employees, as well as for one (1) manager for each Sublessee. Thereafter, each Sublessee manager sponsored by Lessee (as provided in the foregoing sentence) shall be responsible for sponsoring (signing badge applications) and performing employment history investigations for all employees of such Sublessee. A letter to the Administration indicating who will be the authorized signer(s) along with their signature shall be required. The authorized signer(s) must be badged first before they can authorize others to be badged. They may not sign for security privileges or clearances that they themselves do not possess.

- c. Lessee and Sublessee personnel shall not be permitted to begin work on the SIDA until issued access badges. Lessee and Sublessees must insure that badges are displayed at all times while their employees are in the SIDA.
- d. The Administration reserves the right to confiscate or suspend the access badge of any employee allegedly involved in any of the criminal acts enumerated under 49 CFR Part 1542 or for security violation at the Airport; and to permanently revoke the access badge upon a guilty, nolo contendere, or probation before judgment disposition of the charges.
- e. The Lessee is hereby on notice that all persons not properly identified by BWI Marshall Airport-issued access badges may be challenged, and if positive identification or association cannot be made, appropriate corrective action shall be taken by the Administration.

- f. All Airport access identification badges and airfield vehicle ramp permits are the property of the Administration and upon expiration of this Contract or in the event any employees are terminated for any reason or resigns, and/or vehicle(s) are not used for the purpose for which the permits were issued, the Lessee and its Sublessees must return all access badges and airfield vehicle ramp permits to the Administration. Lessee shall have the responsibility to ensure the return of all access badges and shall be responsible for the replacement cost of lost access badges and permits. Failure by Lessee to manage the return of access badges to the Administration for Lessee and/or its Sublessees as determined by the Administration shall be the basis for immediate assessment of a fine in accordance with Article XXXVIII herein.

3. **Access Badge Application Procedures**

- a. BWI Marshall Airport access badge applicants and those requesting the Administration to authorize others to have unescorted access privileges to the SIDA or Sterile Area must thoroughly complete a BWI Marshall Airport access badge application and furnish all necessary attachments.
- b. Each access badge applicant shall submit a BWI Marshall Airport access badge application along with the necessary attachments to the Administration. Prior to fingerprinting, the individual must present two forms of identification to the Airport Security Division. At least one must be a state or federal government issued photo ID. The access badge applicant must successfully undergo a fingerprint based criminal history records check to determine whether an individual has, within the last ten (10) years, been convicted of one of thirty-six (36) disqualifying crimes.
- c. If an individual cannot be fingerprinted (prints return unclassifiable from FBI twice), then the employer (Lessee or Sublessee) must perform a 10-year Employment History Investigation on the

applicant. Information on the most recent five (5) years must be verified in writing, by documentation, by telephone or in person. If verification is made by telephone, the information shall be obtained from an individual in a position to speak on behalf of the company, and who has access to the records used to verify the information being requested.

- d. The Employment History Investigation records shall be maintained for a period of one hundred eighty (180) days after the termination of the individual's access privileges in accordance with FAA 49 CFR 1542.209. The Employment History Investigation Records must include the application, copies of the IDs used to establish identity at the time of badging and the verification information obtained by the employer.

4. **Airfield Vehicle Ramp Permit and Temporary Airfield Vehicle Registration**

- a. The Lessee and its Sublessees shall secure from the Administration's Operation Center an Airfield Vehicle Ramp Permit or Temporary Airfield Vehicle Registration for all its vehicles to be used in and around restricted areas of BWI Marshall Airport in connection with fulfillment of its contractual obligations.
- b. The Lessee and its sublessees shall abide by all driving and parking rules and regulations at BWI Marshall Airport as stipulated and enforced by the Administration.

5. **Airport Perimeter Access Control**

All perimeter fence gates (manual and automatic) must be secured or manned (guarded) at all times. Any access portal (gates/doors) found to be unsecured, or any entry by an unauthorized person(s) and/or vehicle(s) as a result of Lessee's or Sublessee's failure to follow proper Airport Security procedures shall subject the Lessee or its Sublessee to a TSA-imposed fine of up to \$10,000 per occurrence, and/or suspension/revocation of the violator's BWI access badge.

6. **Vehicular Movement on the Air Operations Area (AOA)**

- a. Control of vehicle traffic on the AOA is regulated by COMAR 11.03.01.04. Detailed regulations are available at Airport Security Center (Study Guide – COMAR 11.03.01.04). As part of the Airfield Safety Training requirements, and prior to taking the required test, this study guide shall be provided to all appropriate personnel.
- b. All Vehicles shall be inspected and approved for operating on the AOA by the Administration's Division of Maintenance, prior to airfield vehicle registration. Vehicles satisfactorily completing the safety inspection shall be registered by the Airport Operations Center.

7. **Penalties**

In the event that the Administration shall be subject to any fine or penalty by reason of any violation at BWI Marshall Airport of any governmental (including TSA) rules, regulations, or standards as they now exist or may hereafter be promulgated or enacted, the Administration may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Administration that the Lessee or its Sublessees is/are responsible for all or part of the fine or penalty, the Lessee or its Sublessees shall pay said amount of the fine or penalty. The Administration and the Lessee shall each have the right to contest the validity or amount of such fine or penalty before the governmental entity seeking to impose such fine or penalty. In addition, the Administration and the Lessee are each entitled to a hearing regarding the Administration's determination pursuant to Maryland Code Annotated, Transportation Article, Sections 5-209 and 5-210, the Maryland Administrative Procedure Act and COMAR, Title 11, Subtitle 01, Chapter 14 entitled "Procedure for Hearings in Contested Cases."

ARTICLE IX - SUBLESSEE AGREEMENT

Each Sublessee must lease its Sublessee Premises pursuant to a Sublease previously approved by the Administration, before it may begin any work in the development or redevelopment of any Sublessee Premises. Any proposed changes to the form Sublease must be submitted for prior written approval to the Administration, such approval not to be unreasonably withheld, conditioned, or delayed. In the event that the Administration approves any Sublease which contains changes/modifications to the Sublease form (attached as Exhibit _____), Lessee shall not be in violation of or in default of the requirements contained in this Contract.

As part of its submission of its Proposal, Lessee provided a sample form Sublease. No later than thirty (30) days following Contract commencement, Lessee shall submit to the Administration, Lessee's proposed standard form Sublease(s) with all recommended/required changes to the proposed standard form sublease for the Administration's written approval. Lessee shall provide the Administration, true and complete, fully executed duplicate originals of each Sublessee's Sublease including all exhibits, attachments, and insurance thereto. Such Subleases shall be submitted to the Administration's Office of Commercial Management within five (5) business days of Sublease execution.

ARTICLE X - CONSTRUCTION OF THE CONCESSIONS PROGRAM & CAPITAL IMPROVEMENTS

A. Permitting/Planning Requirements

Before Lessee or its Sublessees undertake any construction or improvement work within the Airport Terminal Building, the Administration requires that Lessee/Sublessees obtain certain permits. Lessee shall comply and shall cause its Sublessees to comply with Administration's Permit Information Guide, (Attachment _____, incorporated by reference), which explains the permit process and requirements. All BWI Tenant Directives are subject to occasional revision. Lessee shall comply and shall cause its Sublessees to comply with the latest Tenant Directives.

Lessee shall cause Sublessees to furnish conceptual drawings and plans (“Conceptual Plans”) and final drawings and specifications (“Final Documents”) for each Sublessee Premises Capital Improvement well in advance of the Turnover Dates to allow time for the Administration’s review and approval. To expedite the review process and resolve design and technical issues, Lessee and its Sublessees may be required to attend review meetings at various stages of design and construction at no cost to the Administration

1. **“Conceptual Plans”** shall include a color board with samples of finish materials and colors, and cut sheets of furniture, decorative fixtures, elevations, interior floor plans and other esthetic design components. The Administration requires Lessee and its Sublessees to enhance the passenger experience through the quality of artful design and shall require Lessee and Sublessee to be prepared to review and discuss specific elements about their submitted design concepts.

Conceptual Plans shall be submitted by Sublessees to Lessee for its written review and approval no later than thirty (30) days after execution of their Sublease. After its review and comment, Lessee shall submit three (3) copies of such Conceptual Plans to the Administration’s Office of Commercial Management (“OCM”) (or such successor office as designated by the Administration). The Administration shall promptly review such Conceptual Plans and shall endeavor to promptly provide written comments or approvals to Lessee following receipt of Conceptual Plans.

Following approval of the Conceptual Plans by the Administration, Lessee shall cause Sublessee to submit ‘Design Development Drawings’ within thirty (30) days (or such shorter period of time) in order for the applicable entity (Lessee or its Sublessee) to complete installation of their Capital Improvement in accordance with its Sublease-specified Opening Date.

Lessee and the Administration shall each promptly review such 'Conceptual Plans' and the Administration will provide written comments or approvals to Lessee following receipt of a Sublessee's Conceptual Plans. In the event of disapproval, Lessee shall cause Sublessees to revise the Conceptual Plans and to promptly resubmit them for approval of Lessee and the Administration until such approval is obtained. Lessee shall act as the concession tenant construction coordinator for each Sublessee's design and construction requirements, which shall be coordinated with the Administration.

Lessee shall be similarly required to submit its Conceptual Plans and drawings for its development work.

During the Development and Renovation Phases of this Contract, Lessee, along with Lessee's Architect, and others as necessary, shall attend weekly meetings with Administration representatives for the purpose of review of plans and designs. Such meetings will discontinue upon approval of all Sublessee Premises and accommodation of all Food Courts and Common Area.

2. **Submission of Design Development (30%)**

Following the approval of Conceptual Plans by the Administration's Office of Commercial Management, unless otherwise directed, Lessee shall cause Sublessee to submit 'Design Development Drawings' (30% Review) plans, reports, specifications and renderings for the proposed improvements to the Administration for its review and approval.

3. **Submission of Construction Documents (60%)**

When the Design Development (30% Review) documents are approved by Administration's Office of Commercial Management (whether as originally supplied or as subsequently revised to meet the comments of the Administration), unless otherwise directed by the Administration, within thirty (30) days following its receipt of the written notice of approval,

Lessee shall prepare and submit its Construction Documents (60% Review) submission to the Administration for its approval in accordance with the Administration's Concession Design Criteria (see Exhibit_____) and Lessee's Concessions Design Standards. The Construction Documents (60% Review) submission shall include, but are not limited to, the following:

- a. A true architectural rendering of the proposed Sublessee Premises. The color, material, and design of the required facilities and other proposed improvements shall complement Airport structures and conform to the Administration's Concessions Design Criteria and Lessee's Concession Design Standards unless otherwise approved by the Administration, and require the approval of the Administration as provided herein;
- b. Detailed progress plans for the architectural, mechanical, heating, ventilating, air conditioning, electrical, structural, plumbing, and other components and specifications; and
- c. A certified statement by Lessee's principal architects and engineers indicating the proposed level of LEED certification (the Maryland State LEED standard is LEED Silver) and the expected life of the improvements and the estimated costs of construction.

4. **Submission of Final Construction Documents (90%)**

When the Construction Documents (60% Review) are approved by the Administration (whether as originally supplied or as subsequently revised to meet the comments of the Administration) then, unless otherwise directed by the Administration, within thirty (30) days following its receipt of the written notice of approval, Lessee or its Sublessee shall prepare and submit its Final Construction Documents (90% Review) submission to the Administration for its approval in accordance with the Administration's Design Standards Manual. The Final Construction Documents (90% Review) submission shall include, but are not be limited to, the following:

- a. A true architectural rendering of the proposed Lessee or Sublessee Premises. The color, material, and design of the required facilities and other proposed improvements shall complement Airport structures unless otherwise approved by the Administration, and require the approval of the Administration as provided herein;
- b. Final detailed architectural, mechanical, heating, ventilating, air conditioning, electrical, structural, plumbing, and other plans and specifications; and
- c. A certified statement by Lessee's principal architects and engineers indicating the proposed level of LEED certification (the Maryland State LEED standard is LEED Silver) and the expected life of the improvements and the estimated costs of construction.

The scope of the Administration's review and approval will cover all aspects of the Project including, but not limited to, the design, aesthetics, and construction detail, selection of materials and colors, To expedite the review process and resolve technical issues, Lessee and its Sublessee may be required to attend review meetings at various stages of design and construction at no cost to the Administration.

5. Submission of Final Documents

When the Construction Documents (90% Review) are approved by the Administration (whether as originally supplied or as subsequently revised to meet the comments of the Administration), then, unless otherwise directed by the Administration, within thirty (30) days following its receipt of the written notice of approval, Lessee shall prepare and submit its Final Documents (Final) submission to the Administration for its approval in accordance with the Administration's Concessions Design Standards Manual. The submission of Final Documents (Final) shall incorporate changes necessary to address the Administration's comments on the submission of Construction Documents (90% Review).

Lessee shall incorporate the Administration's recommendations into the Final Documents (Final) submission and shall continue to resubmit the revised Final Documents (Final) submission until such time that all deficiencies and responses to comments are corrected and accepted by the Administration at which time a notification of design acceptance shall be issued in writing to Lessee.

- a. Lessee shall not implement nor shall Lessee's Sublessees implement or commence any change in the Administration-approved final plans and specifications without the express written approval of the Administration. Lessee shall submit or cause its Sublessees to submit, any and all requests for change orders to the final plans and specifications to the Administration for its approval prior to the commencement of any work relating to implementation of the same. The Administration shall have the right to approve or disapprove any and all requests for change orders so submitted, including architectural and aesthetic matters. The Administration shall have the right to require Lessee and/or its Sublessees to resubmit change order proposals, including plans, specifications, designs, and layouts until they meet the Administration's approval.
- b. Lessee shall request or cause its Sublessees to request a building permit from the Administration in accordance with Administration's Permit Information Guide (Attachment _____, incorporated by reference), as it now exists or may hereafter be modified, within fifteen (15) days after the Administration's approval of Lessee's or its Sublessee's plans and specifications.
- c. Lessee and its Sublessees are responsible for obtaining all necessary permits and approvals, from any and all agencies, for all improvements and equipment necessary for construction prior to commencement of construction, and shall comply with Anne Arundel County and the Administrations requirements.

- d. The Lessee shall provide the Administration two (2) sets of “record drawings” duly certified by a registered architect or registered engineer. The said “record drawings” shall be furnished to the Administration’s Office of Commercial Management and the Administration’s Office of Engineering & Construction no later than sixty (60) days after commencement of the Operation & Management Period for Lessee and DBO for all Sublessees. If Lessee fails to provide said “record drawings,” the Administration may hire a registered architect or registered engineer to provide same and shall recover the cost of the said drawings from the Lessee or its Sublessee, plus a fifty percent (50%) administrative fee.

B. Quality and Innovativeness

All Concession Areas’ appearances shall be in accordance with the architectural theme as presented in the Administration’s Concessions Design Criteria and Lessee’s Concessions Design Standards in Attachment_____, with changes proposed by the Lessee and accepted by the Administration. Lessee shall be required to provide a prototype storefront to reflect its understanding of the Administration’s Concessions Design Criteria Tenant Design Standards and changes it proposes that are accepted by the Administration. Finishes and furnishings shall meet or exceed quality standards established in the Tenant Design Standards. The Administration will permit each Concession Location to present individual and unique signage and concessions fronts, subject to the directives of the Concession Tenant Design Standards and the prior written approval of the Administration.

C. Initial Construction and Fit-Out

Lessee shall construct, equip and complete, or cause to be constructed, equipped, and completed, the Capital Improvements in accordance with the plans and specifications submitted and approved by the Administration at its sole discretion, free and clear of all liens, encumbrances and security instruments. Lessee, at no

expense to the Administration, shall be responsible for the completion of all work to refurbish or finish, update, and furnish Common Areas of the concession development, including, for example, seating areas for food courts, common employee restrooms, janitorial closets to service those areas, and common use back corridors. Lessee and/or its Sublessees shall, at their expense, be responsible for the design, finish and fit out their individual Concession Location(s), including furniture, fixtures and equipment, and all Capital Improvements in their individual concession locations.

Lessee and its Sublessees will be granted one hundred and twenty (120) days from the Turnover Date to complete construction of restaurant and food service concessions and ninety (90) days for construction of retail and commercial service concessions. Please note that, in the case of A/B Core Expansion, if the Administration is unable to provide the full one hundred and twenty (120) days of construction time for food service concessions or ninety (90) days construction time for retail concessions prior to the opening of the A/B Core Expansion area to the public, then construction will be allowed to continue during the area's operation to the full allowable construction period without penalty.

Lessee shall ensure that construction activities are closed off from the public view with a painted gypsum board dust partition with cove base, with attractive, easy to read signs explaining the construction or construction wall graphics, as approved in writing by the Administration in advance of construction.

Lessee's, or Sublessees', construction contractors are required to provide adequate payment and performance bonds with the Administration as a dual obligee along with Lessee.

Lessee agrees and Lessee shall cause Sublessees to agree not to start construction until it has received the Administration's approval of its final plans and specifications and until it has obtained the appropriate licenses, permits, insurance and other required approvals which are needed for construction and agrees not to commence construction until it has submitted satisfactory evidence to the

Administration that it has obtained all such appropriate and required licenses, permits, insurance and other required approvals.

All costs associated with construction shall be borne by Lessee and/or its Sublessees.

Neither the Lessee, its Sublessees, nor their construction contractors shall begin any part of the Lessee's construction work until Lessee and/or its Sublessees, at its own cost, obtains, and maintains insurance in accordance with Administration's Permit Information Guide (Attachment_____).

During the construction period, the Lessee and its agents, servants, employees and Sublessees shall be permitted entry and access to the Airport and to the Leased Premises at all reasonable times for the purposes of performing and completing all work necessary to make the Leased Premises ready for use and occupancy.

During the period of construction, the Administration agrees to permit Lessee, consistent with all controlling governmental regulations, to connect with existing water and electric systems located at or adjacent to the Airport. Lessee shall cause the connection to those systems to be made or constructed at locations and in a manner approved in writing by the Administration which shall not be unreasonably withheld. All costs associated with connecting to and use of such systems shall be borne by Lessee.

Lessee shall promptly repair, at its expense, any damage caused by Lessee, its agents, employees, or Sublessees to the Leased Premises, the Airport or to the property of the Administration or any other lessee of the Administration.

Lessee and its agents, employees and Sublessees shall observe all applicable rules and regulations contained in COMAR (the Code of Maryland Regulations), and all applicable Tenant Advisories and Directives imposed by the Administration at the Airport, in all their activities at the Airport including but not limited to the conduct of their work, and they shall keep and maintain all of their equipment, material, supplies, tools, work trailers and the like upon the Leased Premises, and,

with approval of the Administration, upon a usable area adjacent to the Leased Premises designated by the Administration.

Lessee agrees to incorporate the following provisions in its contract with its construction contractor and shall provide the Administration with a copy of the executed contract.

1. Lessee shall retain from the contractor five (5) percent of the total construction contract value. Such retainage will not be released by Lessee until final payment.
2. Lessee shall issue progress payments to the construction contractor throughout the term of construction and provide copies to the Administration.
3. Construction contractor shall certify with each invoice submitted for payment to Lessee that it has made payments from proceeds of prior payments for all amounts due to all mechanics, subcontractors and materialmen and that it shall make like and timely payments from the proceeds of this payment.
4. Prior to Lessee's final payment to the construction contractor, construction contractor shall provide Lessee with a signed release of liens from each mechanic, subcontractor and materialman who provided work or materials under the construction contract certifying that it has been fully and completely paid for all work performed or materials furnished under the construction contract.
5. Construction contractor agrees not to file or claim, and will ensure that no mechanic, subcontractor or materialman files or claims, any mechanic's or other lien against the construction or any other property of Lessee on account of the performing or furnishing of any labor, materials or equipment. If any such lien is filed or claimed either before or after Lessee's acceptance of the construction, Lessee or construction contractor will promptly remove the lien.

D. Payment and Performance Bonds

During the Term of this Contract or any holdover period, during construction and when any leasehold improvements are constructed, installed or renovated, Lessee and/or its Sublessee will procure and furnish to the Administration, payment and performance bonds written by a company authorized to write such bonds in the State of Maryland.

1. Lessee and Sublessees shall cause its general construction contractor to obtain a performance bond for one hundred percent (100%) of the costs of construction to secure fulfillment of Lessee's obligations under this Contract.
2. Lessee and Sublessees shall cause its general construction contractor to obtain a payment bond for one hundred percent (100%) of the costs of labor and materials in the execution of the work provided for in this Contract.
3. Lessee and Sublessees shall cause its general construction contractor to obtain one hundred percent (100%) performance and payment bonds for any alteration or expansion of the construction performed under this Contract in excess of One Hundred Thousand Dollars (US\$100,000.00)

E. Financing Capital Improvements/Liens

If Lessee decides to finance a Sublessee's construction costs for the Capital Improvements, Renovations, Refurbishments or other finish-out or repair costs, Lessee shall not be entitled to deduct any costs or expenses it incurs in connection with any such financing or undertakings from Sublessee Rentals, nor shall interest earned and/or principal payments from such financing be included in Sublessee Rentals.

The Capital Improvements, upon termination of the Contract, shall immediately become the property of the Administration, free and clear of any liens or encumbrances whatsoever. Lessee agrees that any contract for construction, alteration or repairing of the Capital Improvements or Leased Premises or for the purchase of material to be used, or for work and labor to be performed in or on the Leased Premises, shall be in writing and shall contain provisions to protect the

Administration from the claims of any laborers, subcontractors or materialmen against the Leased Premises or Capital Improvements. Lessee agrees to give the Administration immediate written notice of the placing of any lien or encumbrance against the Leased Premises or the Terminal and further agrees to extinguish such lien in accordance with Article XV.D of this Contract.

F. Minimum Initial Investments in Capital Improvements (IICI)

Lessee, at no expense to the Administration, and for no additional Contract Term, shall be responsible for expending the minimum investment in capital improvements and for any and all upside limits beyond any and all capital improvement costs. Lessee, at no expense to the Administration, will be responsible for constructing, equipping, furnishing and completing the Minimum Initial Investment in Capital Improvements for Existing Concession Facilities. Lessee, for Existing Concession Facilities, shall expend not less than \$ _____ as proposed in Lessee's Proposal.

For constructing, equipping, furnishing and completing the Build-Out of the new A/B Core Expansion Area as shown on Exhibit _____ to this Contract in accordance with the Administration's Concessions Design Criteria and Lessee's Tenant Design Standards (see Attachment _____ to this Contract). Lessee's Initial Investment in Capital Improvements for the Build-Out of the new A/B Core Expansion Area shall be \$ _____ as proposed by Lessee in its Proposal.

Lessee's required IICI includes only the following items:

1. Directly contracted construction costs;
2. Furniture, fixtures, decorative treatments, and equipment purchased for direct use in the Common Areas; and
3. Design and engineering costs not to exceed 15% of the total approved cost of the unit project.

The Lessee shall also cause its Sublessees to construct, equip and complete the Capital Improvements for their respective units in accordance with the Airport's

applicable Concessions Design Criteria and Lessee's Concessions Design Criteria. The minimum Sublessee IICI is no less than \$_____ per square foot for food/beverage service concessions and no less than \$_____ per square foot for retail/service concessions by no later than the Facility Opening Date. Allowable expenses will include:

1. Directly contracted construction costs;
2. Furniture, fixtures, decorative treatments, and equipment purchased for direct use in the Sublessee Premises; and
3. Design and engineering costs not to exceed 15% of the total approved cost of the unit project.

All construction is subject to the approval of the Administration and the acquisition of required permits as described in Article X.A of this Contract. All designs must follow the prescribed Tenant Design Standards.

G. Midterm Renovations

In addition to the annual Refurbishments, for Lessee, between the ninth (9th) year of the Operation & Management Period and the midway point of the tenth (10th) year of the Operation & Management Period of the Contract, Lessee shall be required to spend and invest a minimum of \$_____ per square foot on Renovations of its Common Areas and food courts. These investments shall be at no expense to the Administration and for no additional Contract Term, and subject to the same permitting, reporting, and investment certification requirements as those for the initial construction as otherwise set forth in this Article X. The annual Refurbishments, upon the expiration or termination of this Contract shall immediately become the property of the Administration, free and clear of any liens or encumbrances whatsoever.

With respect to Sublessees, in the event that a Sublease is for a term greater than five (5) years, the Administration will require that at the midpoint of the Sublease, the Lessee will cause its Sublessees to spend and invest a minimum of \$_____ per square foot on Renovations. At no expense to the Administration and for no

additional Contract Term, these investments shall be subject to the same permitting, reporting, and investment certification requirements as those for the initial construction as otherwise set forth in this Article X. The midterm Renovations, upon the expiration or termination of Sublessee's Sublease, shall immediately become the property of the Administration, free and clear of any liens or encumbrances whatsoever.

H. Additional Work

From the effective date of this Contract to the end of first five years of the Contract's Operation and Management Period, any Lessee-revised or Lessee mis-identified capital improvements or capital investment costs shall be considered Additional Work. Lessee shall be required to fund such Additional Work at no expense to the Administration, and for no additional Contract Term. All identified capital investment costs from Lessee's revised and/or mis-identified capital improvements shall be at the sole cost and expense of the Lessee during the aforementioned-period. Nevertheless, should the Administration expand or modify the Airport Terminal Building, and such expansion or modification effects the Concessions Program beyond Lessee's original capital investment costs and capital improvement plan, then Lessee may request additional Contract Term or negotiate revised business terms with the Administration to satisfy the Additional Work. Any terms or modifications agreed to by the Administration and Lessee for Additional Work shall be contingent upon the approval of the Executive Director of the Maryland Aviation Administration, the Maryland Secretary of Transportation, and the Board of Public Works of Maryland.

I. Certification of Minimum IICI and Midterm Renovation Investments

For IICI and required midterm Renovation investments by both Lessee and its Sublessees, Lessee shall provide the Administration with certified receipts and lien releases for the above expenditures within ninety (90) days of completion of the construction/Renovation to confirm the investment. Non-receipted expenditures will not be credited. If the investment by either the Lessee or Sublessees is less than the minimum IICI shown in Article X.F or midterm

Renovation investment in Article X.G Administration requires that 110% of the difference between the IICI and the amount actually expended (as detailed by the certified receipts) be paid by Lessee to the Administration, along with submission of the certified receipts. If the Administration disputes the amount of investment claimed by Lessee, the Administration may utilize its own Audit and Accounting staff or, at its option and expense, hire a Certified Public Accountant ("CPA") to determine the cost of the investment. Lessee shall cooperate with the audit. If it is determined that the investment is less than the minimum required investment, then Lessee will pay 110% of the unpaid difference, as well as the costs of conducting such audit to the Administration within thirty (30) days of the determination.

J. Construction Fines

All contracts entered into by Lessee for the construction of the Capital Improvements shall require completion of the Capital Improvements within the schedules submitted by Lessee and accepted by the Administration and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages in the event a contractor fails to complete the construction on a timely basis. The Lessee agrees that it will take all necessary action available under each construction contract to enforce the timely completion of the work covered thereby. Fines, payable to the Administration for failure to open stores on a timely basis, are detailed in Article XXXVIII.

K. Administration Responsibility

The Administration shall deliver the Leased Premises to Lessee free and clear of all liens and encumbrances. In addition, in the event there is any asbestos-containing material in an area that would be disturbed by Lessee's or its Sublessees' Capital Improvements, then the Administration will, in accordance with its policy for asbestos removal in the Airport Terminal Building, monitor and remove the asbestos, and provide Lessee with documentation that the asbestos has been removed and that the area is safe for construction to proceed.

L. Annual Refurbishments

Unless the Administration determines in writing that a particular Sublessee's premises does not require an annual refurbishment, Lessee commits to and shall require all of its Sublessees, regardless of the length of term of the Sublease, to make an annual Refurbishment investment of a minimum of one-half percent (0.5%) of Gross Sales. Unless the Administration determines in writing that Common Areas do not require an annual refurbishment, Lessee shall be required to make annual Refurbishment investments (over and above CAM) of \$5 per Common Area square foot. Annual Refurbishments are not subject to buy-out at Contract termination.

M. As-Built

Lessee shall be responsible for ensuring submittal of standard architectural drawings reflecting the "as-built" configuration of all Capital Improvements to the Administration's Office of Engineering & Construction within seventy (70) days after substantial completion of work for each Sublessee Premises and Lessee's Common Area improvements, as determined by the Administration. Should "as-built" drawings not be provided, fines may be applied as specified in Article XXXVIII hereof, and the Administration reserves the right to cause such drawings to be created, and to bill Lessee for the cost of providing such drawings, along with a 50% administrative fee.

N. Title

At the date of expiration, or earlier termination of this Contract, and notwithstanding the above, the Administration shall have the right to retain title to some or all of the Capital Improvements. Should the Administration elect not to retain title to some Capital Improvements, Lessee shall cause Sublessees to affect the immediate removal of said Capital Improvements. Should the Administration elect to retain title to all Capital Improvements, then all Capital Improvements shall vest in the Administration at the expiration or earlier termination of this Contract. Any damage to the Base Building Work due to removal of Capital

Improvements will be repaired by Lessee at no cost to the Administration, unless otherwise agreed to in writing by the Administration.

The title to all Capital Improvements shall vest in the Administration at the expiration or earlier termination of the Contract.

O. Buyout at Contract Termination

All Capital Improvements shall be depreciated on a straight-line basis over the remaining Contract Term or Sublease term, respectively, unless otherwise approved by the Administration in writing. For any approved subleases that may extend beyond the term of this Contract, should there be any undepreciated portion of such investment, the Administration may reimburse Lessee, or have Lessee reimbursed, in cash, in the amount of the undepreciated balance of such cost within sixty (60) days after the termination of this Contract except that

1. There shall be no reimbursement of any Capital Improvements or Midterm Renovations investment for which certified receipts and lien releases are not supplied, as required in Article X.H;
2. There shall be no reimbursement of any Capital Improvements, or midterm Renovations investments in the event the Contract is terminated early due to Lessee's default in accordance with Article XXXVI of the Contract;
3. There shall be no reimbursement of any Capital Improvements, or Midterm Renovations investments in the event the Contract is terminated early pursuant to Article XXXVI.E of this Contract; and
4. There shall be no reimbursement of any Capital Improvements or Midterm Renovations in the event that the Administration does not elect to take title to such Capital Improvements or midterm Renovations.

P. Surrender of Leased Premises

In the event the Administration elects to retain title to the Capital Improvements, Lessee shall yield and deliver peaceably to the Administration possession of the Leased Premises and Capital Improvements thereupon on the date of termination of this Contract, whether such cessation be by termination, expiration or otherwise. Such Leased Premises shall be in a condition at least as good as that

which existed at the commencement of the Contract, obsolescence, and ordinary wear and tear excepted. In the event Administration elects not to retain title to the Capital Improvements, Lessee shall cause the immediate removal of all Capital Improvements from the Leased Premises at the termination of the Contract, Lessee must repair damages caused by removal of Capital Improvements at no cost to the Administration, and Lessee shall surrender the Leased Premises and appurtenances thereto in a clean condition. The Administration will retain Lessee's Guaranty Bond until such time as all covenants, terms and conditions herein are performed and Administration determines that the Leased Premises are clean, and in good repair as provided by this Article. Lessee shall be liable to the Administration for Administration's costs, plus a fifty percent (50%) overhead fee, of disposing of any Capital Improvements to which title is not retained by the Administration, and of restoration of the Leased Premises to its demised condition, obsolescence, ordinary wear and tear excepted if Lessee failed to expeditiously perform such activities within fifteen (15) days of the end of the Contract term.

ARTICLE XI - UTILITIES

Existing Concession Locations, and those areas that are designated for concessions but that formerly served other purposes will be provided to Lessee "as-is, where-is" including existing utility connections (for example, gas, electric, etc.). It will be the responsibility of the Lessee or its Sublessees to provide any additional hook-ups necessary for safe, convenient and legal operation of the business within the Leased Premises. Newly constructed areas will be provided with adequate utilities by the Administration, which shall be stubbed into Leased Premises for the envisioned use. Utility charges (with the exception of telecommunications expenses) will not be billed separately to the Lessee or Sublessees.

All telecommunications hook-up serving the Leased Premises and expenses therefor, both hard-wired and wireless, are the responsibility of Lessee or its Sublessees, and must be completed through existing cables. Lessee and/or Sublessees may select any telecommunications service provider of their choice, subject to the stipulation that any third-party provider must have a

contractual relationship with the exclusive wireless service provider at BWI Marshall Airport (“Airport Wireless Service Provider”) to provide its services at BWI Marshall Airport.

The Administration will provide access to its copper communications backbone at no additional cost to Lessee or Sublessees. If the Lessee or its Sublessees wish to utilize the Administration’s fiber optic backbone, it is available at the rate specified in the BWI Tenant Directive 401.1, Standard Rates and Fees at Baltimore/Washington International Thurgood Marshall Airport the most current version of which may be found at Attachment_____, and subject to adjustment from time to time. Sublessee usage of the fiber optic backbone will be billed to Lessee, who can pass these charges onto its Sublessees without markup. If additional wiring for telecommunications is required, the Lessee or its Sublessees will be responsible for the permitting and installation of such equipment.

Access to the neutral wireless access system (NWAS) will be made available by a third-party wireless provider, contracted by the Administration when such wireless backbone is installed. No other wireless service provider is authorized to be used by Lessee or its Sublessees to perform such function. Should Lessee or any of its Sublessees desire to access the NWAS, Lessee or any of its Sublessees are hereby required to use the Airport Wireless Service Provider for any installation, operation and use of Wi-Fi systems or other wireless communication services for Sublessees within the Airport and at all assigned space referenced herein. All wireless communication devices must operate through the BWI NWAS, or be converted to service through the NWAS, when it is installed. In any case, the Administration shall not be held liable for any damages as a result of an interruption of any utility service. However, the Administration will use responsible efforts to ensure resumption of any utility service on a timely basis.

ARTICLE XII - COSTS OF CONSTRUCTION

- A.** No later than ninety (90) days following the commencement of the Operation & Management Period or DBO of any Sublessee Premises, Lessee shall submit to the Administration detailed written evidence of the cost of construction, certifying actual costs and dates of completion for each of the project elements of the Concessions Program including Sublessee Premises. Such costs of construction shall mean and include all costs, fees, and expenses paid, incurred or to be

incurred by Lessee or its Sublessee in connection with the design, development, financing and construction of the Leased Premises except for the costs of work done by Lessee's employees. This shall specifically, without limitation, include the following:

1. Amounts paid by Lessee or its Sublessee for the construction and capital improvements upon the Leased Premises.
2. Amounts paid by Lessee or Sublessee for the construction improvements (redevelopment) upon the Leased Premises.
3. Amounts paid by the Lessee to provide all utility services and connections, from the point of pick-up and connection. The utility costs shall also include costs for installation of meters to record Lessee's or Sublessee utility usage.
4. Sums paid to the Lessee's and/or Sublessee's architects, engineers, surveyors and other consultants in connection with the design, development, financing and construction of the Lessee's or Sublessee Work.
5. Premiums paid for all insurance required during the Construction Period, including, without limitation, public liability, builder's risk with extended coverage endorsements, and workers' compensation insurance, and premiums paid for a performance bond and labor and material payment bond during the Renovation Period.
6. All costs, fees and expenses, excluding overhead, incurred in obtaining and settling for the Lessee's or Sublessees' construction money financing, if any, and the permanent financing, if any, including, but not limited to broker's fees, standby fees, and obtaining title insurance.
7. Sums paid to independent attorneys, accountants, appraisers, and other professionals, involved in the development, financing and construction of

the Lessee's or Sublessee's Work excluding Lessee's or Sublessees' own personnel or marketing expenses.

8. Interest paid to the construction lender, if any, during the period of construction.
 9. Other costs that Lessee or Sublessee charges to the building construction in accordance with GAAP.
- B.** Lessee shall prorate each of the costs paid pursuant to A.4 to A.9 above to each of the project elements included in the project and describe the basis for prorating each cost.
- C.** The Administration shall have the right to examine all of Lessee's and Sublessees' records concerning such costs of construction upon seven (7) days advance written notice and to audit such records at any time upon seven (7) days advance written notice within seven (7) years following completion of construction.
- D.** When the Administration has verified the costs of construction, the Administration shall confirm such amount in writing to Lessee.

ARTICLE XIII - COMPENSATION FOR CONCESSION RIGHTS

A. Payments to the Administration – Development and Renovation Phases

In consideration of the rights and privileges granted to Lessee by the Administration and in addition to any rents or other fees paid to the Administration for the non-exclusive right to redevelop, renovate, lease and manage the retail, restaurant & commercial services at BWI Marshall Airport as described herein, during the Development and Renovation Phases of the Contract Term Lessee shall pay to the Administration sixty percent (60%) of Sublessee Rentals.

B. Payments to the Administration – Operation & Management Period

During the Operation & Management Period of the Contract Term, Lessee shall pay the Administration the **greater** of:

1. **Minimum Monthly Guarantee (MMG)**

A Minimum Monthly Guarantee of Eight Hundred Thousand Dollars (\$800,000), paid on or before the first day of each calendar month.

OR

2. **Percentage Concession Fee**

A Percentage Concession Fee of _____ percent (___%) of all Sublessee Rentals during each month of the Operation & Management Period of the Contract Term, based on Lessee's Financial Proposal.

- C.** No deductions from Sublessee Rentals shall be made for bad debts.
- D.** Commencing the second year of the Contract Term and thereafter, the MMG shall adjust to eighty-five percent (85%) of the financial compensation paid to the Administration for the preceding Contract Year and then prorated to determine the MMG. At no time during the Contract Term shall the MMG be less than Eight Hundred Thousand Dollars (\$800,000). The Administration shall advise Lessee of the MMG for the succeeding Contract Year within ninety (90) days of the succeeding Contract Year. Lessee shall continue to pay the MMG from the previous Contract Year until receipt of such notification by the Administration. Upon notification, and if greater than the Percentage Concession Fee, Lessee shall pay the difference between the previous Contract Year's MMG payment(s) and the current Lease Year's MMG amounts due for the month(s) in the then current Contract Year in which it paid the prior Contract Year's MMG, and shall thereafter pay the current Lease Year's MMG on a monthly basis.
- E.** On or before the twentieth (20th) day of each calendar month during the Contract Term, starting with the second month of the Operation & Management Period and by the twentieth (20th) day of the month following the final month of the Contract, Lessee shall reconcile the MMG paid in advance for the preceding month with the total percentage amount of Sublessee Rentals due the Administration and shall pay the positive variation owed the Administration, if any.

F. Regardless of whether any additional payments are due, Lessee shall submit, by the 20th of each month, the Unit Sales Report and the Monthly Developer Sales Report in a form approved by the Administration, showing the reconciliation of the two fees and the calculation of monies owed, as well as a report detailing actual individual concession sales by location and rental payments by the Sublessees on both a monthly and year to date basis as reference in Article XVI herein. ACDBE utilization reports in compliance with the Administration's PRISM compliance system, or in a form acceptable to the Administration, must be submitted with the monthly reports. Such report forms are available from the Administration's Office of Fair Practices.

G. Rescindment of the Minimum Monthly Guarantee

If Lessee is in material compliance with the terms, covenants and conditions set forth herein, the Administration shall rescind the Minimum Monthly Guarantee payment if the number of commercial airline passengers enplaning on flights at the Airport during any three (3) consecutive calendar months, is less than seventy-five percent (75%) of the greatest number of such enplaning commercial passengers in each of the same three (3) consecutive calendar months of (a) the preceding year or (b) the last twelve (12) calendar month period preceding the first year of the Operation & Management Period of this Contract. For the period beginning the Administration's approved rescindment of the Minimum Monthly Guarantee, Lessee shall pay to the Administration the Percentage Concession Fee referenced in Article XIII.B.2. from all operating concessions. No deductions shall be allowed for uncollected or uncollectable rents due. Such rescindment of the Minimum Monthly Guarantee payment shall be discontinued when the enplaning commercial passengers for a calendar month equal or exceed seventy-five percent (75%) of the commercial passengers enplaning on airline flights at the Airport in the same calendar month of (a) the preceding year or (b) the last twelve (12) calendar month period preceding the first year of the Operation & Management Period of this Contract, whichever year was used in determining the abatement.

ARTICLE XIV - METHOD OF PAYMENT

A. Payment

All payments due and payable to Administration shall be paid by electronic fund transfer to the following:

Payee:

Bank:

ACH ABA:

Swift code:

Chips code:

Account:

Payments not received within ten (10) days from date due may be assessed an additional one and one quarter percent (1.25%) fee per month late charge until paid. In the event Lessee's past due account is forwarded by the Administration to the State of Maryland Contract Collection Unit (CCU), the Lessee will be responsible to pay CCU's standard collection fees in addition to any amounts due to the Administration.

B. Payment Default

If, for any month of the Contract term, Lessee fails to remit to the Administration the MMG by the first (1st) of the month or the balance of the Concession Percentage Fee or other payments due by the twentieth (20th) day on the following month, subject to the deductions allowed hereunder, Lessee may be declared in default and the Administration shall have the right to terminate the Contract or take any or all other actions as provided in Article XXXVI, Default and Rights and Remedies upon Default of this Contract.

ARTICLE XV - TAXES, ASSESSMENTS & LIENS

- A.** Lessee hereby agrees to pay on a timely basis all taxes and assessments to which it is subject, associated with its operations at the Airport.
- B.** Lessee agrees to include in any Subleases a clause requiring each such Sublessee to pay all legitimate taxes and assessments to which they are subject, associated

with their operations at the Airport, on a timely basis. Said clause shall permit Lessee to terminate any such Sublessee's rights to operate in the event of non-payment.

- C. The Administration shall not be responsible for any taxes or assessments associated with Lessee's or any Sublessee's operations at the Airport.
- D. Lessee agrees not to permit or suffer any liens to be imposed upon the Terminal or any part thereof as a result of its or its Sublessees' activities without promptly discharging the same within fifteen (15) days of its filing.

ARTICLE XVI - REPORTING & RECORD KEEPING REQUIREMENTS

A. Record Keeping Requirements

Lessee shall maintain, or cause to be maintained (including, without limitation, requiring each Sublessee to maintain), for a period of five (5) years from the date of each sale from the Leased Premises, or, in the event of a claim by the Administration, until such claim for payments hereunder shall have been fully resolved, separate and accurate daily records of Gross Receipts as herein defined, and in accordance with GAAP, showing in detail all business done or transacted in, on, about or from or pertaining to the Concession Area, as well as activity concerning the funding and use of the Common Area Maintenance Charges, Delivery & Distribution Fees, and the Joint Concession Marketing Fund. Lessee shall also maintain, and cause to be maintained by Sublessees, separate and accurate records of construction on Capital Improvements and Refurbishments in the Concession Area in accordance with GAAP. Amounts expended shall be reported in the Lessee's annual audited financial statements.

Lessee shall enter, or cause Sublessees to enter, all receipts arising from such business in regular books or electronic records of account, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. In addition, Lessee shall prepare monthly, quarterly and annual reports of Gross Receipts, rents, and fees derived from operations under this Contract (on a Sublessee by Sublessee basis), using a form and method as

directed by the Administration, which reports shall be simultaneously delivered to the Administration. Lessee shall employ such forms and methods throughout the Contract Term.

Within ninety (90) days after the end of each Contract Year, Lessee shall furnish to the Administration with an audited report of its operations prepared by an independent Certified Public Accountant (CPA) satisfactory to the Administration. The audit shall be conducted in accordance with GAAP and represent Lessee's operations at the Airport on a Contract Year basis. The audit requires an independent CPA to issue an opinion on the completeness and accuracy of the statement of revenues collected or collectible and payments due to the Administration, or Administration's designee. The Administration expects that Lessee's books, records and operations will permit the CPA to provide an unqualified opinion. Should the CPA be unable to render an unqualified opinion, the Administration may consider Lessee in default and cause the Contract to be terminated.

Lessee shall cause annual audits of a portion of its Sublessees to be conducted and prepared by an independent CPA satisfactory to the Administration. Subject to Administration's approval, Lessee shall establish a rotating schedule under which representative samples of its Sublessees are included in each annual audit; for example one subset of the Sublessees (representing several concourses and all four Lines of Business) is audited after the first year, a second subset is audited after the second year, and so on until all Sublessees have been audited. The audits shall be conducted in accordance with GAAP and represent Lessee's Sublessees' operations at the Airport. The audit requires an independent CPA to issue an opinion on the completeness and accuracy of the statement of revenues collected or collectible and payments due by each selected Sublessee to Lessee.

B. Monthly, Quarterly and Annual reports shall be forwarded to:

**Director, Office of Commercial Management
Maryland Aviation Administration
P. O. Box 8766**

**Third Floor, Airport Terminal Building
BWI Airport MD 21240-0766**

With a copy sent to:

**Accounting Section
Maryland Aviation Administration
P. O. Box 46129
BWI Airport MD 21240-6129**

A copy of the Annual ACDBE Participation Report shall be sent to:

**Director, Office of Fair Practices
Maryland Aviation Administration
P. O. Box 8766
Third Floor, Airport Terminal Building
BWI Airport MD 21240-0766**

C. Monthly Report

Within twenty (20) days after the expiration of each calendar month during the term of this Contract and any extension thereof, concurrently with the remittance of the payment to the Administration, Lessee shall deliver a detailed electronic financial report using Microsoft Excel or in a format specifically expressly identified by the Administration. The monthly financial report must accompany a signed and certified transmittal letter by an authorized representative of the Lessee. At minimum the monthly report shall include:

1. A summary cover page that includes:
 - Subtenant name and the Administration's assigned location number.
 - Sales by month during current year
 - Sales by month during prior year
 - Rent by month during current year
 - Rent by month during prior year
 - Rent as a percent of sales by month during current year
 - Rent as a percent of sales by month during prior year
 - Square feet rented (w/o storage) by month during current year
 - Square feet rented (w/o storage) by month during prior year
 - Sales per square foot by month during current year
 - Sales per square foot by month during prior year

- Sales per enplaned passenger (EPAX) on that concourse
(Administration will provide a monthly count of EPAX by concourse)
by month during current year.
 - Sales per enplaned passenger (EPAX) on that concourse
(Administration will provide a monthly count of EPAX by concourse)
by month during prior year.
2. A separate worksheet comparing Sales by month during current year to Sales per square foot by month during prior year summed for the four Lines of Business (Restaurants [FSR/QSR], Convenience Retail, Specialty Retail, and Commercial Services).
 3. A separate worksheet comparing Sales by month during current year to Sales by month during prior year for Vending.
 4. A separate worksheet showing sales by month for each concession location, with concession locations sorted by concourse. There should be one row in the Excel worksheet for each concession location, and one column for each month.
 5. A separate worksheet showing rent paid by month for each concession location. There should be one row in the Excel worksheet for each concession location, and one column for each month. This worksheet will not include storage rent.
 6. A separate worksheet showing storage rent by month for each storage location, identifying the storage location using the Administration's assigned location number and identifying the entity paying the storage rent. There should be one row in the Excel worksheet for each storage location, and one column for each month.
 7. A separate worksheet showing square feet by month for each concession location, with concession locations sorted by concourse. There should be one row in the Excel worksheet for each concession location, and one column for each month. This worksheet will not include storage square feet.

8. A separate worksheet showing storage square feet rented by month for each storage location, identifying the storage location using the Administration-assigned location number and identifying the entity paying the storage rent. There should be one row in the Excel worksheet for each storage location, and one column in the Excel worksheet for each month.
9. A separate worksheet, showing total sales, total rent due to the lessee, and rent paid by the Lessee to Administration for the month, and for year-to-date. Rent paid to Administration should show rent paid on the 1st of the month for the MMG and additional rent, if any, paid on the 20th of the month. The worksheet should show results for each concourse, for each of the four Lines of Business (Restaurants, Convenience Retail, Specialty Retail, and Commercial Services).
10. In addition to the above, Lessee shall also ensure that Sublessees are trained and input accurate data monthly into the Administration's ACDBE database.

Statements not received by the twenty (20th) day following each complete calendar month during the term of the Contract may be assessed a One Hundred Dollar (\$100.00) per day late charge payable to the Administration.

D. Quarterly Statistics Report

The Administration has the right to request statistics reports periodically, but no more frequently than on a quarterly basis. Upon such request, Lessee shall make available to the Administration concession performance data for a one (1) month period occurring within the most recent three (3) months prior to the date of the request. Unless otherwise approved in writing by the Administration, such data shall be provided to the Administration within twenty (20) days of its request.

Notwithstanding the above, Lessee shall provide standing reports on the 20th day of April, August and December of each Calendar Year during the Contract Term. At minimum, Lessee shall provide the following quarterly reports:

1. Environmental Maintenance & Service Report providing schedules and updates on environmental and maintenance issues. (See Article VIII.C.7.);
2. KPI Performance Report;
3. Concession Pricing Audit Results;
4. Quality Assurance & Performance Reports;
5. Launchpad/Small Business Incubator Performance Review;
6. CAM Charges, Delivery & Distribution Fees, and Joint Concession Marketing Fund account updates; and
7. Progress payment to construction contractor throughout the term of construction in accordance with Article X.C.2 and X.C.3.

E. Annual Reports

1. CPA Review of Lessee Operations

Within ninety (90) days after the expiration of each Contract Year during the term of this Contract and any extension thereof, Lessee shall have the annual obligation to deliver an audit report of its operations at the Airport prepared by an independent Certified Public Accountant (CPA) satisfactory to the Administration. The audit shall be conducted in accordance with GAAP and represent Lessee's operations at the Airport on a Contract Year basis. The audit requires an independent CPA to issue an opinion on the completeness and accuracy of the statement of revenues, rents, and/or fees collected or collectible and payments due to the Administration, or Administration's designee. Administration expects that Lessee's books, records and operations will permit the CPA to provide an unqualified opinion. Should the CPA be unable to render an unqualified opinion, the Administration may consider Lessee in default and cause the Contract to be terminated.

2. ACDBE Participation Report

In addition to the monthly and quarterly report requirements in accordance with Article XVI.C-D, Lessee shall submit an Annual ACDBE Participation Report, reflecting any/all ACDBE firms utilized to meet the

ACDBE contract participation goal The Annual ACDBE Participation Report shall contain the following information:

1. Lessee's name, address, point of contact and contact information,
2. The time period covered by the report,
3. The name and address of the participating firm(s),
4. ACDBE Certification status of firm(s),
5. Gross receipts generated,
6. Items purchased or services provided,
7. Dollar value of purchase or contract,
8. Total value of contract,
9. Total value paid to each participating firm to date,
10. Name and title and telephone number of people preparing the report, and
11. Name, title and signature of an individual authorized to contractually obligate the Lessee.

3. **Diversity & Inclusion Report for Voluntary Minority Participation**

In addition to the monthly and quarterly report requirements in accordance with Article XVI.C-D, Lessee shall submit an Annual Diversity & Inclusion Report for Voluntary Minority Participation, if any. The annual report must provide for the separate and distinct utilization of minority businesses by the Lessee and its Sublessees. The report must reflect any and all minority businesses utilized in the Capital Improvements of the Concessions Program and by category. The Annual Diversity & Inclusion Report for Voluntary Minority Participation shall contain the following information:

1. Lessee's name, address, point of contact and contact information;
2. The time-period covered by the report;
3. An executive summary;
4. The name, address and contact information of the participating minority business(es) and its minority business certification number, if any;

5. The type or category of service the minority business performed;
6. Dollar value of purchase or contract with each participating minority business;
7. Total value of all voluntary minority participation;
8. Total value paid to each participating firm to date;
9. Total participation by race, gender and ethnicity;
10. Name and title and telephone number of people preparing the report; and
11. Name, title and signature of an individual authorized to contractually obligate the Lessee.

4. **Concessions Program Demographic Study**

Lessee shall deliver to the Administration an annual concessions program demographic study prepared by an independent third-party, which at minimum shall include: (1) a census of the number of concession employees, (2) employment demographics by race, gender and ethnicity, and (3) job classifications and (4) wages and benefits.

F. Acceptance of Reports and Payments

The acceptance by the Administration of any statement or of any payment from the Lessee, shall not be deemed a waiver of the right of Administration to claim additional payment is due after a review and inspection of Lessee's books and records.

G. False Statements

Knowingly furnishing to the Administration false statements will constitute a default of the Contract and the Administration may use any and all available remedies, including but not limited to the option to declare the Contract terminated and exercise such other remedies available at law or set forth herein.

H. Audits

The Administration reserves the right to audit the operations of the Lessee for compliance with this Contract. Audits of Rents, Gross Revenues and/or contract

compliance (e.g. licensing, insurance, ACDBE and Minority utilization and reporting) may be conducted by or on behalf of the Administration at any time. Upon the Administration's written request, Lessee shall make available within seven (7) business days to the Administration or its authorized representative any and all reports, books, records, and accounts, including electronic data, pertaining to its business activities under this Contract to conduct an audit of the Lessee's operations at the Airport. The Lessee further agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records and operations at the Airport. Should such books and records or Lessee's personnel not be made available in the greater Washington/Baltimore metropolitan area, Lessee shall reimburse the Administration for reasonable travel, lodging and meal expenses to examine/meet them at Lessee's office. The form and method of Lessee's reporting of Rents and/or Gross Revenues shall be adequate to provide a control and test check of all Rents and Gross Revenues derived under the Contract to be awarded. Should records and reports not be maintained in a form that will permit a speedy audit, the Lessee may be assessed charges representing costs associated with extraordinary audit time and effort needed to complete the review. Should any examination, inspection, and audit of Lessee's books and records by the Administration disclose any underpayment by Lessee, Lessee shall pay the Administration the amount of such underpayment with interest calculated from the date of the underpayment within no more than thirty (30) days after such disclosure. In addition, if the underpayment is a result of Contractor's gross negligence, intentional acts, or fraud, Lessee shall also (1) reimburse the Administration for all reasonable and actual costs incurred in the conduct of such examination, inspection, and audit (including without limitation, reasonable attorney's fees and litigation expenses), and (2) pay an additional charge equal to fifteen percent (15%) of the underpayment, within no more than thirty (30) days after such disclosure.

If, as a result of such inspection or audit, it is determined that the Lessee has overpaid the Administration, the Administration shall pay the Lessee an amount equal to such overpayment within thirty (30) days following such determination.

ARTICLE XVII - FINANCIAL LIABILITY OF ADMINISTRATION & LESSEE

The Administration and the Lessee are not and shall not be considered as joint venturers, partners, or agents of each other, and none shall have the power to bind or obligate any other except as set forth in any contract agreed to by said parties. There shall be no liability on the part of the Administration to any person for any debts incurred by the Lessee or by any business conducted on or off the Airport in connection with the operations of the retail, restaurant and commercial service concessions program at the Airport.

ARTICLE XVIII - PERFORMANCE GUARANTEE

- A. Lessee shall be required to execute and deliver to the Administration within thirty (30) days after receipt of notification of approval of this Contract by the Board of Public Works of the State of Maryland, a performance guarantee, in the amount of _____ Thousand Dollars (\$_____). Lessee shall maintain such performance guarantee for the entire term of this Contract, to include any extension thereto. The amount of the performance guarantee shall be subject to adjustment at the end of each Contract Year of the term, that is, the amount of the performance guarantee shall be adjusted each year to an amount equal to approximately fifty percent (50%) of the amount billed to Lessee by the Administration for the previous Contract year.

- B. If in the form of a surety bond, the performance guarantee may be issued for a one (1) year period, provided, however, that evidence of renewal or replacement of the said bond must be submitted annually by Lessee to the Administration at least sixty (60) days prior to the expiration date of the bond. The surety bond shall contain language that the surety company shall notify the Administration in writing within fifteen (15) days of a determination that the surety bond is to be terminated, or is not going to be renewed. The surety bond must be executed by

the Lessee and by a surety meeting the qualifications set forth in Article XIX hereof.

- C.** The performance guarantee assures performance of the Contract by Lessee and the payment to Administration of all payments required by the Contract, and shall be subject to claim in full or in part by the Administration in the event Lessee fails to fully perform the Contract.
- D.** The performance guarantee, at the option of Lessee, may be in the form of: 1) an irrevocable standby letter of credit issued by a financial institution approved by the State Treasurer and in a form satisfactory to the Office of the Attorney General of Maryland; or 2) a bond executed Lessee and by a surety meeting the qualifications set forth in Article XIX.
- E.** Any interest accrued on the performance guarantee will be retained by the Administration.
- F.** In the event that Lessee fails to provide the performance guarantee as provided herein within thirty (30) days after receipt of notification of Intent to Award, the Contract may not be executed by the Administration.
- G.** If the Administration draws upon the required performance guarantee, it shall be the obligation of Lessee to replenish the performance guarantee to the contractually required level within ten (10) business days of such draw by the Administration. Failure to do so may constitute a default under the Contract.

ARTICLE XIX - SURETY QUALIFICATIONS

The surety, or sureties, upon the required performance bond(s) shall be a corporate surety, or sureties, authorized to do business in the State of Maryland by the Maryland Insurance Administration and the Maryland Department of Assessments and Taxation.

ARTICLE XX - TITLE TO LEASEHOLD IMPROVEMENTS

- A.** Title to the Leased Premises, including all facilities, improvements, and appurtenances constructed by the Lessee and or its Sublessees upon the Leased Premises, including all subsequent alterations, modifications, replacements, additions, reconstruction, enlargements, and the like, beginning from the date of the commencement of the term of the Contract until the date of its termination or expiration, will remain with the Lessee throughout the term of the Contract. Lessee shall have the right and privilege to claim depreciation for all such leasehold improvements it shall make at the Leased Premises in its tax returns to the extent permitted by law. Upon termination or expiration of the Contract, the Administration shall have the option to take title to any or all of the foregoing leasehold improvements, in which case such improvements shall vest in the Administration without cost or payment to Lessee its Sublessees or their successors or assigns except as stated in Article XXXII, Airport, Development, Expansion, or Modification.
- B.** Upon termination or expiration of the Contract, the Lessee, or its successor or assignees, agrees, at the request of the Administration, to execute all documents reasonably required by the Administration to evidence the transfer of the unencumbered title to such leasehold improvements to the Administration. There shall be no buy-back of the improvements by the Administration upon the termination or expiration of the Contract, except as otherwise stated in this Contract. In addition, there shall be no buy-back of any improvements if the Contract is terminated early due to the default of the Lessee or its successors or assigns in accordance with Article XXXVI, Default and Rights and Remedies Upon Default.
- C.** Upon the expiration or early termination of the Contract, title to all of the foregoing leasehold improvements shall vest in the Administration, unless the Administration requires Lessee to remove the facilities and other improvements in accordance with Paragraphs D and E and with Article X.M. At termination of the Contract, the Lessee agrees to execute all documents reasonably required by the

Administration to evidence the transfer of title to such leasehold improvements. Lessee shall pay all fees, charges, expenses, documentary stamps, and all applicable taxes which may be involved in the transfer and in the recording of such documents evidencing the transfer of title. Lessee shall be responsible to clear all liens, if any, against the Leased Premises and other Lessee-constructed improvements on the Leased Premises at the time the Administration takes title to the Leased Premises.

D. Removal of Improvements

Subject to Paragraph E below, the Lessee, at its sole cost and expense, shall remove any or all improvements, fixtures, and equipment owned, constructed, installed, or placed in or on the Leased Premises by the Lessee, within the period of sixty (60) days of the expiration or termination of the Contract or any extension thereof. The Lessee shall repair any damage to the Leased Premises caused by such removal and restore the Leased Premises to its previous condition, normal wear and tear excepted, which includes but is not limited to, performing all necessary environmental remediation, restoration, and tests required to be performed under federal, State or local law, rule, regulation, or directive, if any.

E. The Administration may, at its option, by providing prior written notice, require the Lessee not to remove any or all of the Lessee's capital improvements and permanent fixtures within the Leased Premises. If the Administration does not make such request and Lessee fails to remove any such improvements, fixtures, or equipment within the allotted time, the Administration shall have the right to acquire title to same at no expense, and the Administration shall have the right to remove same and restore the area to a satisfactory condition and hold Lessee liable for all costs incident thereto plus a twenty-five percent (25%) administrative fee and interest at one and one-quarter percent (1.25%) per month until paid. The Administration is not responsible for any liability by reason of any such removal or custodial care of the improvements, fixtures, or equipment.

ARTICLE XXI - LEASEHOLD MORTGAGES

- A.** The Administration agrees that during the Construction Period of this Contract and thereafter during the Operation & Management Period of this Contract, Lessee and its successors and assigns shall have the right to pledge, encumber and to mortgage its interests in this Contract and in the leasehold estate created hereby, under one or more leasehold mortgage(s) to provide construction money financing and permanent financing, and/or under any purchase money leasehold mortgage(s) granted in connection with any sale of such leasehold interest, and, in either of such events, to assign their interests in the Contract as collateral security for such mortgage(s) upon the condition, however, that all rights acquired under such mortgages shall be subject to the Administration's absolute and prior written approval and subject to all of the covenants, conditions and restrictions set forth in the Contract on the part of the Lessee to observe, pay and to perform. The right of the Lessee to grant such mortgage(s) shall also include the refinancing of such mortgage(s) and all renewals, modifications, consolidations, replacements and extensions of the original mortgage(s) and of any replacement mortgage(s) on the condition that all rights acquired under such mortgage(s) shall be subject to the Administration's absolute and prior written approval.
- B.** If the Lessee, or its successors or assigns, shall pledge, encumber or mortgage its interest in the Contract and the leasehold estate created hereby, and if the holder(s) of such mortgage(s) shall, within thirty (30) days following written approval of such mortgage(s) by the Administration and the execution of such mortgage(s) by the Lessee and the mortgagee(s) deliver to the Administration an exact copy thereof, the Administration agrees that so long as such leasehold mortgage(s) shall remain unsatisfied of record or until written notice of satisfaction is given by the holder(s) to the Administration, that the following shall apply:
1. There shall be no voluntary cancellation, surrender or modification of the Contract by the joint action of the Administration and Lessee unless thirty (30) days prior written notice is given to the leasehold mortgagee(s).

2. The Administration shall, upon serving Lessee with any notice of default, simultaneously serve a copy of such notice upon the holder(s) of such leasehold mortgage(s) if any such mortgagee has provided its address in writing to the Administration. The leasehold mortgagee(s) shall thereupon have sixty (60) days, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and the Administration shall accept such performance, if deemed satisfactory to the Administration, by or at the instigation of such leasehold mortgagee(s) as if the same had been done by Lessee, and the Administration shall not be entitled to terminate the Contract, and any notice of termination theretofore given shall be void and of no effect.
3. The Administration agrees that the name of the leasehold mortgagee(s) may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under the Contract on condition that the insurance proceeds are to be applied in the manner specified in the Contract and that the leasehold mortgage(s) or collateral documents shall so provide.
4. Lessee's mortgage agreement with its leasehold mortgagee shall provide that in the event of termination of the Contract by reason of any default by Lessee, the Administration, at its sole option, will have any one or more of the following options:
 - a. Pay off the balance of the Lessee's mortgage without penalty, and take title to the buildings and other improvements;
 - b. Assume itself the Lessee's obligations under the Lessee's mortgage without paying off same;
 - c. Consent to the assignment of Lessee's rights hereunder to a new Lessee, on terms acceptable to the Administration which may include either of the following obligations on the part of the new Lessee:

- i. Assumption by new Lessee of Lessee's mortgage, subject to the mortgagee's approval of the new Lessee's credit worthiness, or
 - ii. Refinance Lessee's former interest in the Leased Premises, or
 - iii. Assume for itself Lessee's obligations under Lessee's mortgage without paying off same.
 5. The proceeds from any insurance policies payable with respect to the Leased Premises or arising from a taking under power of condemnation or eminent domain are to be held by any leasehold mortgagee(s) and distributed pursuant to the provisions of the Contract, but the leasehold mortgagee(s) may reserve its rights to apply to the mortgage debt all, or any part, of the Lessee's share of such proceeds pursuant to the terms of such mortgage(s).
 6. The leasehold mortgagee(s) shall be given notice of any dispute proceedings by the parties and shall have the right to intervene therein where allowed by law and be made a party to such proceedings provided the leasehold mortgagee(s) has advised the Administration of its address in writing.
 7. The terms "mortgage," whenever used in this entire Article XXI, shall include whatever security instruments the leasehold mortgagee(s) elect to use to secure the mortgage debt, including, but not limited to, deeds of trust, security deeds and conditional deeds, financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code as set forth in the Commercial Law Article of the Annotated Code of Maryland, as amended.
- C.** In order to obtain for a proposed leasehold mortgagee(s) the rights of the leasehold mortgagee(s) under this Article XXI and under the other provisions of the Contract, (1) prior to the execution and delivery of the proposed mortgage(s), Lessee shall obtain the consent of, and the approval by, the Administration to the proposed mortgage(s), and (2) concurrent with the execution and delivery of the approved mortgage(s), Lessee or the leasehold mortgagee(s) shall deliver to the Administration (a) copies of the mortgage(s) and a Certificate of Lessee and the

leasehold mortgagee(s) that the same are true and complete copies thereof, and (b) a notice from the leasehold mortgagee(s) setting forth the address of the leasehold mortgagee(s) for service of notices hereunder. Within a reasonable time after the delivery of the mortgage(s), Lessee or the leasehold mortgagee(s) shall furnish to the Administration copies of any of the mortgage(s) which have been filed, registered or recorded showing the filing, registration or recording data and a Certificate of Lessee or leasehold mortgagee(s) that the same are true and complete copies thereof. The Administration agrees to provide estoppel certificates and written notice to the leasehold mortgagee(s) of the Administration's consent to financing.

- D.** In order for a leasehold mortgagee(s) to continue to have the rights of the leasehold mortgagee(s) under this Article XXI and the other provisions of the Contract, (1) prior to the execution and delivery of any amendment, modification, consolidation, replacement, extension or renewal of any of the mortgage(s) approved by the Administration or the delivery of any additional mortgage(s), except a reduction or satisfaction of the indebtedness hereunder or a partial or complete release thereof, Lessee or the leasehold mortgagee(s) shall obtain the consent of the Administration to the proposed amendment, modification, consolidation, replacement, extension or renewal or additional instrument; (2) concurrent with the execution and delivery of the approved amendment, modification, consolidation, replacement, extension or renewal or additional instrument, including a reduction or satisfaction of indebtedness hereunder or a partial or complete release thereof, Lessee or the leasehold mortgagee(s) shall deliver to the Administration a copy thereof and a Certificate of Lessee and the leasehold mortgagee(s) that the same is a true and complete copy thereof and, if the amendment, modification, consolidation, replacement, extension, renewal or additional instrument is filed, registered or recorded, within a reasonable time thereafter, Lessee or the leasehold mortgagee(s) shall furnish to the Administration a copy of the filed, registered or recorded instrument showing the filing, registration, or recording data and a Certificate of Lessee or the leasehold mortgagee(s) that the same is a true and complete copy thereof; (3) whenever the

mortgage(s) shall be assigned or otherwise transferred, the successor leasehold mortgage(s) shall immediately give notice to the Administration and Lessee of the assignment thereof, the name of the successor leasehold mortgagee(s) and the address of the successor leasehold mortgagee(s) for service of notices hereunder; and (4) whenever the leasehold mortgagee(s) shall change its address, it shall promptly give notice to the Administration and Lessee of its new address for service of notices hereunder.

- E.** Lessee's mortgage agreement with its leasehold mortgagee(s) shall provide that in the event of termination of the Contract by reason of any default by Lessee or by reason of Lessee's rejection or disaffirmance of the Contract pursuant to bankruptcy law or other law affecting creditors' rights, to the extent permitted by applicable law, the Administration will have the right, at its sole option, to either (a) pay off Lessee's mortgage(s) (including prepayment fees) without penalty and take title to the Capital Improvements, (b) approve the assignment of Lessee's rights hereunder to a new Lessee, which may either assume Lessee's mortgage(s), subject to the leasehold mortgagee's approval of the new Lessee, or refinance Lessee's former interest in the Leased Premises, or (c) acquire the Leased Premises (either by termination of the Contract or an assignment of the Leased Premises or by any other means it shall determine) subject to the mortgage(s) without assuming or undertaking any pecuniary liability therefore, provided that the Administration shall have cured any monetary defaults of the Lessee and any other defaults that are capable of being cured by the Administration; and if the Administration effects such cures, the leasehold mortgagee(s) shall withdraw any prior notice of default or acceleration and reinstate the financing in good standing.

Lessee's mortgage agreement with its leasehold mortgagee(s) shall provide that in the event Lessee fails to perform its obligations to leasehold mortgagee(s), the Administration shall have the right to: (1) pay off Lessee's mortgage(s) (including prepayment fees) without penalty if the Contract would otherwise be terminated, (2) pay off Lessee's mortgage(s) in accordance with the mortgage agreement, or (3) acquire the Leased Premises (either by termination of the Contract or a

reconveyance of the Leased Premises or by any other means it shall determine) subject to the mortgage(s), without assuming or undertaking any pecuniary liability therefore, provided that the Administration shall have cured any monetary defaults of the Lessee and any other defaults that are capable of being cured by the Administration; and if the Administration effects such cures, the leasehold mortgagee(s) shall withdraw any prior notice of default or acceleration and reinstate the financing in good standing.

Lessee's mortgage agreement(s) with its leasehold mortgagee(s) shall provide that the leasehold mortgagee(s) give timely written notice to the Administration of foreclosure action against the Lessee.

Lessee's mortgage agreement(s) with its leasehold mortgagee shall provide that the Administration's rights in and to the Leased Premises shall not be subordinated to the mortgage(s).

F. Lessee Covenants

Lessee affirms that it shall be responsible for the following obligations:

1. To make duly and punctually all payments required to be made under the mortgage(s);
2. To observe and perform duly and punctually all terms, covenants, conditions and provisions of the mortgage(s);
3. Not to enter into any amendment, modification, consolidation, replacement, extension or renewal of any of the mortgage(s), or any additional mortgage(s), except an instrument reducing, satisfying, releasing or discharging any indebtedness payable under the mortgage(s), without the prior written consent of the Administration;
4. To notify the Administration immediately of the receipt by Lessee of any notice of default under any of the mortgage(s) and to furnish to Administration a copy of such notice of default;

5. To notify the Administration immediately upon learning of any condition which, with or without the giving of notice or the passage of time or both, might result in a default or event of default under the mortgage(s);
6. To furnish to the Administration promptly certified copies of all amendments, modifications, consolidations, replacements, extensions or renewals of any of the mortgage(s); and
7. Upon the Administration request, to furnish immediately evidence reasonably satisfactory to the Administration that Lessee has complied with its covenants hereunder with respect to the mortgage(s).

ARTICLE XXII - DAMAGE OR DESTRUCTION OF LEASED PREMISES

A. Partial Damage

If all or any portion of the Premises is partially damaged by fire, explosion, the elements, act(s) of war or terrorism, or other casualty, but not rendered untenable, the same will be repaired with due diligence by the Administration at its own cost and expense, and there shall be no abatement of Lessee payments, provided, however, that if the damage is caused by the act or omission of Lessee, its Sublessees, agents, employees, contractors, or subcontractors, Lessee shall be responsible at its expense for making the necessary repairs in a timely manner as determined by the Administration. If the Lessee fails to make the necessary repairs in a timely manner as determined by the Administration, then, Administration may at its option cause such repairs to be completed and then Lessee shall reimburse the Administration for the costs and expenses incurred in such repair, plus a twenty-five percent (25%) administrative fee.

B. Extensive Damage

If damage referred to in Article XXII.A above shall be so extensive as to render part or all of the Demises Premises untenable, but capable of being repaired in one hundred and twenty (120) days, the same shall be repaired with due diligence by the Administration at its own cost and expense, and the rent and other fees, if applicable, for such Premises shall abate, in proportion to the portion of the

Premises rendered untenable, from the time of such damage until such time as the Premises are fully restored as determined by the Administration; provided, however, that if said damage is caused by the act or omission of Lessee, its Sublessees, agents, employees, contractors, or subcontractors, there shall be no abatement of rent and the Lessee shall be responsible, at its expense, for making the necessary repairs as approved by the Administration. If Lessee fails to make necessary repairs in a timely manner as determined by the Administration, then Lessee shall reimburse the Administration for the costs and expenses incurred in such repair, plus a twenty-five percent (25%) administrative fee.

C. Complete Destruction

1. In the event the Premises are completely destroyed by fire, explosion, the elements, act(s) of war or terrorism, or other casualty or so damaged that they are untenable and cannot be replaced except after more than one hundred and twenty (120) days, the Administration shall be under no obligation to repair, replace, and reconstruct said Premises and Lessee's concession fees and other fees, if applicable, for such Premises shall abate as of the time of such damage or destruction and shall henceforth cease until such time as said Premises are fully restored, or until Administration provides substitute facilities, acceptable to Lessee, for use by Lessee. If within twelve (12) months after the time of such damage or destruction, said Premises not have been repaired or reconstructed, and Administration has not supplied substitute facilities, acceptable to Lessee, Lessee may give the Administration written notice of its intention to cancel its lease of such Premises under this Contract in its entirety as of the date of such damage or destruction.
2. Notwithstanding the foregoing, if said Premises are completely destroyed as a result of the act or omission of Lessee or its sublessees, agents, employees, contractors, subcontractors or assigns, the concession fees and other fees, if applicable, for such Premises shall not abate and the Administration may, in its discretion, require Lessee to repair and reconstruct said Premises within twelve (12) months of such destruction

and pay the costs therefore; or the Administration may repair and reconstruct said Premises within twelve (12) months of such destruction and Lessee shall be responsible for reimbursing the Administration for the costs and expenses incurred in such repair, plus a twenty-five percent (25%) administrative fee.

ARTICLE XXIII - CONDEMNATION; EMINENT DOMAIN

A. Total or Substantial Taking

During the Term of this Contract, if the whole or a portion of the Lessee's Leased Premises, including any buildings or other improvements that would materially interfere with the Lessee's conduct of its business, is taken or acquired by or is sold to a governmental entity in lieu of a threat of such a taking (each event referred to herein as a "taking") for any public or quasi-public use or purpose under any power of eminent domain or condemnation, then, and in any of such events, the term of the Contract shall cease and terminate on the date that title vests in the condemning authority pursuant to such proceedings or under such sale in lieu thereof. The Lessee shall pay rent and all other charges apportioned to the date of such termination and shall promptly vacate and cause its tenants to vacate the Leased Premises. All sums representing prepaid rents, fees or charges, if any, shall be promptly repaid to the Lessee.

B. Less Than a Total or Substantial Taking

1. If a taking involves only a portion of the Lessee's Leased Premises and such taking will not materially interfere with the Lessee's conduct of its business, then this Contract shall expire as to that portion of the Leased Premises taken but shall continue in full force and effect as to that portion of the Leased Premises not taken.
2. In the event of a partial taking as described in this Article, promptly following the Lessee's receipt of the net proceeds of the partial taking from the governmental authority(ies), the Lessee shall repair and restore that portion of the Leased Premises not taken so that it is reasonably

appropriate for the Lessee's continued use and occupancy. The Lessee shall be obligated to expend towards the repair and restoration of the Leased Premises only such amounts as it will have received as net proceeds of the taking. During the period of repair and restoration, the MMG payable under this Contract may be determined in rescindment. Upon the completion of the work of repair and restoration, the MMG payable under this Contract shall be reinstated by the Administration.

ARTICLE XXIV - TRADEMARK

A. Use of Trademark:

1. **Ownership of Rights.** The Administration is the sole and exclusive owner of all right, title and interest in and to the Trademarks (the "Trademarks"), attached hereto and incorporated herein by reference as Exhibit _____, and, with the exception of the rights being licensed hereunder, all other rights relating thereto are expressly reserved by the Administration.

B. Grant of License and Agreements Regarding Use.

1. Administration hereby grants, to the extent allowable by law, to Lessee the non-exclusive, non-transferable, non-assignable license and right, but not the obligation, to use the Trademarks solely in connection with advertising and publicizing the Contract.
2. Lessee shall not at any time: use or authorize the use of any mark or other designation identical with or colorably similar to the Trademarks or any other mark of the Administration, except as set forth in this Contract; apply for any registration of any trademark, service mark, copyright, or other designation which uses or incorporates the Trademarks or which would or could affect the ownership of the Trademarks; or file any document with any governmental authority to take any action which would affect the ownership of the Trademarks.

3. Lessee acknowledges and agrees that: the Administration owns the Trademarks; Lessee is not entitled to assign, sell, sublicense, or otherwise transfer its non-exclusive rights to use the Trademarks as provided for in this Contract; the Trademarks may not be used without the written consent of the Administration; this Contract does not constitute authorization for the use of any Trademark except as it relates to the use in this Contract and the Trademarks may not be used in any other form or format; Lessee shall use the Trademarks as Administration directs and in accordance with Administration's guidelines; Lessee shall state in its use of the Trademarks that Administration does not endorse i) Lessee or ii) any of the opinions or ideas expressed by the Lessee; Lessee shall state that the Administration is not related to Lessee and; Lessee shall not use the Trademarks in any manner that implies a relationship with or an endorsement by the Administration.
4. Administration Representation. The Administration represents and warrants that to the extent allowable by law: it grants to Lessee rights to use the Trademarks as described, and use of the Trademarks will not violate or infringe upon the trademarks, service marks, or trade names of any third parties. Administration disclaims any other warranties, express or implied. The Administration reserves the right to alter or discontinue a Trademark at any time. The Trademarks are provided on an "AS IS" basis, and Lessee is fully and solely responsible for Lessee's use of Trademarks and for any results or consequences of Lessee's use.
5. Quality Control. Lessee agrees to furnish Administration, upon request, samples and specimens of and information about Lessee's use of the Trademarks, at no cost to Administration. If, in the sole and exclusive discretion of Administration, the reproduction of any Trademark fails to conform to the standards of quality set by Administration, Administration may, at its sole election, terminate this License and in such event, Lessee agrees to immediately discontinue any use of a Trademark.

6. Symbol and Legend. Lessee agrees that when the Trademarks are used it shall bear the trademark symbol ® and shall include the legend, “‘<logo>’ is a registered trademark of the Maryland Aviation Administration and is used with permission. All rights reserved.” “[Lessor] is not a part of State of Maryland, MDOT MAA”

C. Prohibited Uses. Lessee shall not use any Trademarks in a manner that is, or in conjunction with content that the Administration deems to be, misrepresentative, defamatory, derogatory, or in any way objectionable or otherwise harmful to the Administration or the State of Maryland’s or their reputation, or to any person or entity connected with the Administration.

D. Good Will.

1. Lessee recognizes the value of the good will associated with the Trademarks and acknowledges that the Trademarks have acquired a secondary meaning. Lessee agrees, during the Term of this Contract and thereafter, never to attack the rights of the Administration in such Trademarks or the validity of the license being granted herein.
2. Lessee agrees that its use of the Trademarks inures to the benefit of the Administration and that the Lessee shall not acquire any rights, directly or indirectly, in and to the Trademarks.
3. All of the terms of this paragraph D shall survive any termination of this Contract.

ARTICLE XXV - INDEMNIFICATION

A. Lessee assumes all risks incident to, or in connection with, its operation under this Contract and shall be solely responsible for all damages or injuries to persons, property, or the environment caused by its operations and shall indemnify, defend, and hold harmless the State of Maryland, the Maryland Department of Transportation, the Administration, and their authorized officers, agents, employees and representatives from and against any and all claims, suits, losses or damages for injuries (including death) to persons or damage (including

destruction) to property or the environment, of whatsoever kind or nature, including any claims or fines assessed by the Federal Environmental Protection Agency, or any State of Maryland agency, arising directly or indirectly from its operations out of or incident to the use and occupancy of facilities at the Airport or resulting from any act or omission of Contractor, its officers, agents, contractors, subcontractors, employees, customers, or assigns in connection with this Contract. Contractor further agrees to defend, at its own cost, and to protect, indemnify, and otherwise hold harmless, the Administration, its authorized officers, agents, employees and representatives (including but not restricted to the posting of bond and release of attachment) from and against any and all claims in any way connected with or arising out of this Contract and/or arising out of repair or maintenance work hereunder (including but not restricted to attachments, liens and/or levies, and whether or not such claim is meritorious) made, filed and/or asserted by any party other than Contractor against the Administration, its authorized officers, agents, employees, or representatives and/or the Leased Premises or improvements thereon or any part thereof, or against monies owing to the Administration, or against monies owed the Contractor for goods and services of the Contract, except to the extent that a judgment of liability is entered against the Administration, its authorized officers, agents, employees, or representatives. This indemnity shall not apply to claims, suits, losses or damages of whatsoever nature arising out of the negligence or willful misconduct of the Administration, its authorized officers, agents, employees or representatives, which negligence or willful misconduct is the sole and exclusive cause of said loss, injury or damage. Additionally, Contractor agrees that in the event Administration reasonably determines that mutual representation would create an actual or potential conflict of interest or Administration reasonably determines that mutual representation would not adequately protect its interest, then, in such an event, Contractor shall upon demand reimburse the Administration for any reasonable attorneys fees so incurred by Administration hiring outside counsel.

- B.** Lessee expressly agrees the Administration shall not be liable to Lessee, for loss of income, for interruption of Lessee's business, for personal injury or for any

loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, any act of God, biological/pandemic, explosion, riot, strike, civil disobedience or commotion, aircraft, smoke, vandalism, malicious mischief, or acts of civil authority.

- C. Lessee shall indemnify, protect and save harmless, the State of Maryland, The Maryland Department of Transportation, the Maryland Aviation Administration, and their officers, directors, agents, employees, volunteers and representatives from all claims growing out of any patent or copyright infringements or claims thereof pertaining to any design, drawings, specifications or other patentable or copyright items used by Lessee or its Sublessees.

ARTICLE XXVI - INSURANCE

- A. Lessee shall, at its own cost and expense, purchase or acquire and carry in effect, through the Term of this Contract a policy or policies of insurance, with a reputable insurance company that is financially sound and authorized to conduct business in the State of Maryland and upon whom process in any suit or action or other proceeding in the courts of the State of Maryland or of the United States may be served, insuring Lessee against all liability, subject to policy terms, conditions and exclusions, for injuries to persons (including wrongful death) and damages to property caused by Lessee's use and occupancy of the Leased Premises or otherwise caused by Lessee's activities and operations on said Leased Premises or elsewhere at the Airport, the policy limits thereof to be in the minimum(s) which may be increased by the Administration, as deemed necessary, as set forth below. Said levels of insurance are to cover claims arising in connection with this Contract and shall not be subject to any degree of depletion as a result of claims arising in connection with other activities undertaken by the Lessee.
- B. **Commercial Property Insurance**

1. Lessee shall maintain all-risk property insurance covering the full value and full replacement cost of Lessee's property and Lessee's improvements and betterments.
2. Lessee may, at its option, purchase business income; terrorism; extra expense; or similar coverage as part of the commercial property insurance, and in no event shall Administration be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured, even if such loss is caused by the negligence of the State of Maryland, the Maryland Department of Transportation, the Administration or their agents, officers, directors, employees, volunteers or representatives.
3. Lessee may, at its option, purchase insurance to cover its personal property. In no event shall Administration be liable for any damage to or loss of personal property sustained by Lessee, even if such loss is caused by the negligence of the State of Maryland, the Maryland Department of Transportation, the Administration or their agents, officers, directors, employees, volunteers, and representatives.

C. Commercial General Liability Insurance

Lessee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance.

1. The CGL insurance and, if necessary, commercial umbrella insurance shall be a limit of not less than Five Million Dollars (\$5,000,000) for each occurrence, which may be increased by the Administration, as deemed necessary. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location or project, as appropriate.
2. The CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover, but not be limited to, liability arising from Premises, Operations, Independent Lessees and sublessees, Products-Completed Operations, Personal Injury and Advertising Injury, Fire Liability, and liability assumed under an insured contract, and contain separation of insureds

(cross liability) condition. Explosion, Collapse, and Underground Property Damage Liability shall not be excluded.

3. The CGL insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Administration. There shall be no endorsement or modification of the CGL to make it excess over other available insurance. If the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.
4. Waiver of Subrogation. Lessee waives all rights against the State of Maryland, the Maryland Department of Transportation, the Maryland Aviation Administration, and their authorized officers, directors, agents, employees, volunteers, and representatives for recovery of damages to the extent these damages are covered by the CGL or umbrella liability insurance obtained by Lessee pursuant to this Contract.
5. Additional Insureds Endorsement. The CGL and, if necessary, commercial umbrella insurance shall be endorsed to identify the State of Maryland, Maryland Department of Transportation, Administration, and their authorized officers, directors, agents, employees, volunteers, and representatives as additional insureds, not named insureds, as their interest may appear in connection with the Contract. A policy endorsement evidencing the same shall be provided to Administration in accordance with Paragraph P, Evidence of Insurance below.
6. Cancellation, Material Changes, or Non-Renewal Endorsement. The CGL and, if necessary, commercial umbrella insurance shall be endorsed to provide Administration with at least thirty (30) days, ten (10) days for non-payment of premium, advance notice, in writing, of cancellation, non-renewal, or material change. A policy endorsement evidencing the same shall be provided to Administration in accordance with Paragraph P, Evidence of Insurance.

D. Cyber Liability Insurance

1. Lessee shall maintain cyber liability insurance with a limit of not less than Five Million Dollars (US\$5,000,000.00) per claim for each occurrence covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.
2. Waiver of Subrogation. Lessee waives all rights against the State of Maryland, the Maryland Department of Transportation, the Maryland Aviation Administration, and their authorized officers, directors, agents, employees, volunteers, and representatives for recovery of damages to the extent these damages are covered by the cyber liability or umbrella liability insurance obtained by Lessee pursuant to this Contract.

E. Business Interruption Insurance

1. Lessee shall have and maintain, at its sole expense, business interruption insurance insuring that the required Rents will be paid to the Administration for a period of not less than fifteen (15) months if any portion of the Leased Premises is destroyed or rendered inaccessible.
2. Waiver of Subrogation. Lessee waives all rights against the State of Maryland, the Maryland Department of Transportation, the Maryland Aviation Administration, and their authorized officers, directors, agents, employees, volunteers, and representatives for recovery of damages to the extent these damages are covered by the business interruption or umbrella liability insurance obtained by Lessee pursuant to this Contract.

F. Liquor Liability Insurance

1. If a Sublessee's operation involves selling or serving alcoholic beverages, Lessee shall require Sublessee to have and maintain Liquor Liability Insurance coverage in an amount of at least One Million Dollars (\$1,000,000) per occurrence, with an annual aggregate of at least Two Million Dollars (\$2,000,000).

2. Waiver of Subrogation. Lessee waives all rights against the State of Maryland, the Maryland Department of Transportation, the Maryland Aviation Administration, and their authorized officers, directors, agents, employees, volunteers, and representatives for recovery of damages to the extent these damages are covered by the liquor liability or umbrella liability insurance obtained by Lessee pursuant to this Contract.

G. Commercial Automobile Liability Insurance (non-restricted areas)

1. Lessee shall maintain commercial automobile liability insurance and, if necessary, commercial umbrella liability insurance with limits, which may be increased by the Administration, as deemed necessary, as set forth below:
 - a. Non-Restricted Areas (Areas accessible to the General Public). A limit of not less than One Million Dollars (\$1,000,000.00) for each accident.
 - b. Restricted Areas (Non-Movement Area Access – Aircraft Ramp Areas). A limit of not less than Five Million Dollars (\$5,000,000.00) for each accident.
 - c. Restricted Areas (Movement Area Access – Runways and Taxiways). A limit of not less than Ten Million Dollars (\$10,000,000.00) for each accident.
2. This Contract does require the Lessee to have vehicular access to Non-Restricted Areas of the Airport. The limit provisions of commercial automobile liability insurance for Non-Restricted Area in Section A.5.a.i apply to this Contract.
3. Such insurance shall cover liability arising out of any auto. If the Lessee does not own automobiles, then coverage, at a minimum, shall be for non-owned and hired autos.
4. Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, or CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability

coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

5. Waiver of Subrogation. Lessee waives all rights against the State of Maryland, the Maryland Department of Transportation, the Administration and their authorized officers, directors, agents, employees, volunteers, and representatives for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Lessee as required by this Contract or under any applicable auto physical damage coverage.
6. Designated Insured Endorsement (Additional Insured). The automobile liability insurance and, if necessary, commercial umbrella insurance shall be endorsed on ISO endorsement form CA 20 48 (or a substitute form providing equivalent coverage) to identify the State of Maryland, the Maryland Department of Transportation, the Administration, and their authorized officers, directors, agents, employees, volunteers, and representatives as additional insureds, as their interest may appear in connection with this Contract. A policy endorsement evidencing same must be provided to the Administration in accordance with Paragraph P, Evidence of Insurance.
7. Cancellation, Material Changes, or Non-Renewal Endorsement. The CGL and, if necessary, commercial umbrella insurance shall be endorsed to provide Administration with at least thirty (30) days, ten (10) days for non-payment of premium, advance notice, in writing, of cancellation, non-renewal, or material change. A policy endorsement evidencing the same shall be provided to Administration in accordance with Paragraph P, Evidence of Insurance.

H. Workers' Compensation and Employer's Liability Insurance

If Lessee is required by the laws of the State of Maryland to provide workers' compensation and/or employer's liability insurance, then Lessee shall provide evidence of such insurance to the Administration as specified below:

1. Workers' Compensation. Coverage shall be at statutory limits as required by the laws of the State of Maryland.
2. Employer's Liability. The commercial umbrella and/or employer's liability limits shall not be less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease, which may be increased by the Administration, as deemed necessary.
3. Waiver of Subrogation Endorsement (WC 00 03 13). Lessee waives all rights against the State of Maryland, the Maryland Department of Transportation, the Administration and their agents, officers, directors, employees, volunteers, and representatives for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by the Lessee pursuant to this Contract. Lessee shall obtain an endorsement equivalent to WC 00 03 13 to effect this waiver which must be provided to the Administration in accordance with Paragraph P, Evidence of Insurance.
4. Cancellation, Material Changes, or Non-Renewal Endorsement. The workers' compensation and employer's liability insurance shall be endorsed to provide the Administration with at least thirty (30) days, ten (10) days for non-payment of premium, advance notice, in writing, of cancellation, non-renewal, or material change. A policy endorsement evidencing same must be provided to the Administration in accordance with Paragraph P, Evidence of Insurance.

I. Pollution Legal Liability Insurance (Environmental Impairment Liability)

1. Lessee shall maintain pollution legal liability insurance and, if necessary, commercial umbrella insurance covering losses caused by pollution conditions that arise from the operations of Lessee described under this Contract.
2. Lessee shall maintain pollution liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim for bodily injury,

property damage, and environmental cleanup costs caused by pollution conditions, both sudden and non-sudden.

3. Lessee shall maintain all-risk pollution legal liability insurance covering the full value of loss and related legal expense resulting from any pollution condition on, at, under or migrating from the Leased Premises.
4. The insurance shall apply to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims
5. Coverage shall be written on a claims-made basis.
6. Lessee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.
7. Extended Reporting Period. There shall be an extended reporting period or continuous coverage of at least three (3) years beginning from the time that work under this Contract is completed.
8. Waiver of Subrogation. Lessee waives all rights against the State of Maryland, the Maryland Department of Transportation, the Administration and their agents, officers, directors, employees, volunteers, and representatives for recovery of damages to the extent these damages are covered by the pollution legal liability or commercial umbrella liability insurance obtained by Lessee pursuant to this Contract.
9. Self-Insured Retention (SIR) or Deductible. The use of a SIR or deductible is allowed. The limits of the SIR or deductible must be approved by the Administration.

J. Other Insurance

Other insurance may be required during the term of this Contract, as determined by the Administration, and the Lessee shall obtain such additional insurance required by the Administration at its own cost and expense within forty-five (45) days after receipt of written request from the Administration.

K. Sublessees and Subcontractors

The Lessee shall be responsible to ensure that its Sublessees and subcontractors

comply with the insurance provisions specified herein. All Sublessees and subcontractors shall be required to maintain, at a minimum, the types and amounts of insurance required for the Lessee by this Article XXV, independently carry insurance to cover the Sublessees and subcontractor's exposures, or are covered under the Lessee's policies.

L. Self-Insured Retention (SIR) or Deductible

The use of a SIR or deductible is allowed. The limits of the SIR or deductible must be approved by the Administration.

M. Insurance Company's Financial Rating

For those insurance companies subject to A.M. Best's ratings, they shall have an A.M. Best's rating of A- or better and a financial size category of VII or better. For those insurance companies not subject to A.M. Best's ratings, they shall have a nationally or internationally recognized reputation and responsibility and shall be approved by the Administration with such approval not to be unreasonably withheld.

N. Insurance shall be written on an occurrence, not claims made basis. Professional Liability Insurance (Environmental Impairment Liability Insurance) and Cyber liability Insurance, if required in this Contract, shall be on a claims made basis.

O. Required Endorsements

1. Additional Insureds Endorsement. All policies, except Workers' Compensation, shall be endorsed to identify the State of Maryland, the Maryland Department of Transportation, the Administration, and their authorized officers, agents, employees, directors, volunteers, and representatives as additional insureds, not named insureds, as their interest may appear in connection with this Contract. A policy endorsement evidencing same must be provided to the Administration in accordance with Paragraph P, Evidence of Insurance.
2. Designated Insured Endorsement (Additional Insured). The automobile liability insurance and, if necessary, commercial umbrella insurance shall be endorsed on ISO endorsement form CA 20 48 (or a substitute form providing equivalent coverage) to identify the State of Maryland, the

Maryland Department of Transportation, the Administration, and their authorized officers, directors, agents, employees, volunteers, and representatives as additional insureds, as their interest may appear in connection with this Contract. A policy endorsement evidencing same must be provided to the Administration in accordance with Paragraph P, Evidence of Insurance.

3. Cancellation, Material Changes, or Non-Renewal Endorsement. All policies shall be endorsed to provide the Administration with at least thirty (30) days, ten (10) days for non-payment of premium, advance notice, in writing, of cancellation, non-renewal, or material change. A policy endorsement evidencing same must be provided to the Administration in accordance with Paragraph P, Evidence of Insurance.
4. WC 00 03 13 Endorsement. An endorsement equivalent to WC 00 03 13 is required to effect the waiver of subrogation requirement for workers' compensation and employer's liability. A policy endorsement evidencing same must be provided to the Administration in accordance with Paragraph P, Evidence of Insurance.

P. Evidence of Insurance

1. Prior to the commencement of this Contract, unless otherwise specifically authorized by the Administration in writing, and at least annually thereafter, and as soon as possible after renewal but no later than five (5) business days after said renewal, the Lessee agrees to furnish the Administration with certificate(s) of insurance and the required endorsement(s) referenced above, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements of this Contract.
 - a. Each certificate of insurance shall provide for thirty (30) days written notice to the Administration prior to the cancellation, non-renewal, or material change of any insurance referred to herein.
 - b. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its

agents or representatives” shall be deleted from the cancellation provision of all certificates of insurance provided by Lessee or duly authorized representative of each insurer.

- c. Certificate(s) of insurance shall indicate at a minimum;
 - i. the type of insurance in effect,
 - ii. the kind of insurance in effect,
 - iii. the amount of insurance in effect,
 - iv. the period of the policies,
 - v. the Contract Number of this Contract,
 - vi. any applicable additional insured statement as referred to herein,
 - vii. if commercial umbrella or excess policies are obtained by Lessee to meet the required limits of insurance, then the certificate of insurance must indicate the policies covered by said umbrella or excess policies, and
 - viii. name of insurance company.
- d. Required endorsements and certificate(s) of insurance shall be issued to:

**Maryland Aviation Administration
Office of Commercial Management
Third Floor, Airport Terminal Building
P. O. Box 8766
BWI Airport, MD 21240-0766**

- 2. Administration reserves the right to obtain relevant endorsements, declaration pages, and/or a complete copy of the insurance policy(s) from Lessee, evidencing the coverage required herein, upon written demand. Lessee shall provide certified copies of the required items within ten (10) business days of the Administration’s written request for said copies. The Administration shall deem such information confidential commercial and/or confidential financial. All policies and declaration pages shall be returned to the Lessee upon review and acceptance by the Administration.

- Q.** In no event will any insurance referred to herein be cancelled by the Lessee without the prior written consent of the Administration.
- R.** The failure of Administration, at any time or from time to time, to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Lessee to maintain such insurance or to defend and hold the Administration harmless with respect to any items of injury or damage covered by this Contract.
- S.** Failure to maintain the insurance required by this Contract shall be the basis for immediate termination of this Contract at Administration's option.
- T.** No Representation of Coverage Adequacy. By requiring insurance, the Administration does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability under the indemnities granted to the Administration in this Contract.
- U.** As indicated above, Lessee may use commercial umbrella liability insurance so that Lessee has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Contract.
- V.** Administration reserves the right at any time throughout the term of the Contract to adjust the insurance requirements, if, in Administration's reasonable judgment, the insurance required by the Contract is deemed inadequate to properly protect the Administration's interest. Lessee agrees that it shall adjust such insurance requirements, and, if necessary, those of its Subcontractors, at its own cost and expense, within forty-five (45) days after receipt of written request from the Administration.
- W.** **Incidents**
To the extent of Lessee's knowledge, Lessee shall send a written report to the Administration within twenty-four (24) hours or as soon as possible, but no more than four (4) business days, of Lessee's receipt of any knowledge of any accident or other event arising in any manner from the performance of the Contract which

results in or might have resulted in bodily injury, personal injury, property damage, or loss of any kind. A copy of the incident report shall be sent to:

**Maryland Aviation Administration
Office of Safety & Risk Management
Kauffman Building
1500 Amtrak Way
Linthicum, Maryland 21090**

And to:

**Maryland Aviation Administration
Office of Commercial Management
Terminal Building, Third Floor
PO BOX 8766
BWI Airport MD 21240-0766**

- X.** Self-Insurance. As an alternative to purchasing Pollution Legal Liability Insurance (Environmental Impairment Liability), Lessee may satisfy the requirements of Article XXV.J: (1) by maintaining a debt rating from both Moody's and Standard & Poor's equal to or better than Ba2 and BB, respectively, or (2) providing to Administration evidence, in a form acceptable to Administration in its sole judgment, of a restricted cash fund equal to the requirements of Article XXV.J of this Contract, or (3) providing to Administration a surety bond, in a form acceptable to Administration in its sole judgment, equal to the requirements of Article XXV.J of this Contract. Any such alternative used to satisfy the Lessee's Pollution Legal Liability Insurance (Environmental Impairment Liability) requirement shall be maintained throughout the term of the Contract and for three (3) years thereafter.

ARTICLE XXVII - FEDERAL, STATE & LOCAL LAW

- A.** At its sole cost and expense, the Lessee shall comply with all present and future federal, State, county, or other local governments statutes, charters, laws, rules, orders, directives, regulations and ordinances, including those of the Administration and any and all of the Departments and Bureaus which may be applicable to the Leased Premises and its occupancy, licensing, use and repair.

- B.** The Lessee shall also comply with all applicable codes, rules, orders and regulations of (i) the police, health, and fire departments, and (ii) of the Insurance Services Office (ISO), Factory Mutual (FM), International Code Council (ICC), National Fire Protection Association (NFPA), or other similar organizations for the prevention of fire and for the correction of unhealthy or hazardous conditions. The Lessee shall further comply with the requirements of all insurance companies having policies of public liability, fire and other insurance in force and effect covering the Leased Premises and the buildings and other improvements constructed thereon.
- C.** The Lessee shall pay all costs and expenses incidental to such compliances and Lessee shall indemnify, defend and hold the Administration harmless as to, and free from any and all costs, expenses, fees (including reasonable attorney's fees) and damages the Administration may incur by reason of any notices, orders, violations, directives, liens or penalties (a "violation order") filed against or imposed upon the Leased Premises or the Airport or against the Administration because of the failure of the Lessee to comply with any of the covenants of this Article XXVI.
- D.** The Lessee shall have the right, in good faith, to contest, or to seek a review of any such violation orders by appropriate legal proceedings, promptly instituted, conducted at its expense and diligently pursued. If, by the terms of applicable law, compliance with the violation order may be legally delayed pending the prosecution of the legal proceedings without imposing criminal liability, lien or loss upon the Administration of the Leased Premises, the Administration may delay with compliance until the determination of the legal proceedings. If, as a result of any such legal proceedings or actions, the violation order is modified or partially revoked or cancelled, the Lessee shall be obligated to comply with such part thereof as shall remain in force and effect. The term "legal proceedings" shall include reviews and appeals from the administrative or judicial judgments, decrees, or orders, notices, regulations, and appeals from the same. If and whenever any such judgment, decree or order shall become final and binding,

whether before, during or after contest, and even if after the expiration of the term of the Contract, the Lessee shall promptly comply with the final judgment, decree, or order and this covenant shall survive the termination of the Contract. This Article XXI shall survive the expiration of this Contract.

ARTICLE XXVIII - POLITICAL CONTRIBUTION DISCLOSURE

Lessee shall comply with Annotated Code of Maryland, Election Law Article, Sections 14-101*et seq.*, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500.00 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (a) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (b) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the Contract Term, on (i) February 28, to cover the 6-month period ending January 31; and (ii) August 30, to cover the 6-month period ending July 31. Lessee shall not utilize any funds collected from Sublessees for political contributions of any kind.

ARTICLE XXIX - COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

Lessee, at its expense, shall comply with all applicable provisions of the Americans with Disabilities Act and shall not discriminate or permit discrimination against any persons or group of persons in any manner on the grounds of race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity or disability. This Contract is subject to the provisions of Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. § 35.130 (2016).

**ARTICLE XXX - COMPLIANCE WITH NONDISCRIMINATION
REQUIREMENTS**

This Contract is subject to the provisions outlined in Attachment_____, which is incorporated herein by reference. During the performance of this Contract, the Lessee, for itself, its assignees, and successors in interest agrees as follows:

A. Compliance with Regulations

The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

B. Non-Discrimination

The Lessee, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.

C. Solicitation for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports

The Lessee will provide all information and reports by the Acts, the Regulations, and directives issued pursuant and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by

the sponsor of the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and Instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance

In the event of a contractor's noncompliance with the Non-discrimination provisions of this Contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding payments to the Lessee under the Contract until the Lessee complies;
2. Cancelling, terminating, or suspending a contract, in whole or in part.

F. Incorporation of Provisions

The Lessee will include the provisions of Paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Lessee will act with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contract may request the United States to enter into litigation to protect the interests of the United States.

ARTICLE XXXI - AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE(ACDBE) PARTICIPATION

- A.** This Contract is a revenue-producing contract awarded to Lessee for the non-exclusive right to redevelop, renovate, lease and manage the retail, restaurant and commercial services at the Airport. Lessee will use Administration's property. This Contract will result in the provision of services to passengers, patrons and tenants at the Airport. This Contract is outside the scope of State procurement law and State Minority Business Enterprise (MBE) goals. Federal regulations provide guidance on the requirements for the inclusion of ACDBE goals on concessions contracts.
- B.** In accordance with federal regulations 49 C.F.R. Part 23, it is the Administration's obligation to ensure that certified ACDBEs have the opportunity to compete for available revenues at the Airport. All firms utilized in the Contract by Lessee to meet the ACDBE participation goal must be certified by the Maryland Department of Transportation (MDOT) as ACDBEs. To be counted toward the ACDBE participation goal, MDOT-certified DBE firms will also have to apply to MDOT to obtain the ACDBE designation. ACDBEs must meet the experience and economic guidelines set forth in 49 C.F.R. Part 23 and be certified by MDOT. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The Administration has set an ACDBE participation goal of twenty percent (20%) for retail and commercial services and thirty-five (35%) for all restaurant/food service concessions. The firms being utilized to meet these goals are included in Exhibit_____.
- C.** This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor 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.

- D.** The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23 that it enters and cause those businesses to similarly include the statements in further agreements.
- E.** In order to provide a fair opportunity for ACDBE participation, the Administration requires that Lessee make good faith efforts to provide for a level of ACDBE participation in this concession equal to or greater than fifteen percent (15%) for retail and commercial services, thirty percent (30%) for all restaurant/food service concessions.
- F.** ACDBEs must be certified by MDOT in the North American Industry Classification System (NAICS) codes that cover the type of participation they will be providing on the concession. The ACDBE must perform a commercially useful function. An ACDBE is considered to perform a commercially useful function when it is independently responsible for the execution of a distinct element of the contract work, and carries out its responsibilities by actually performing, managing and supervising the work/operations involved. In light of industry practices and other relevant considerations, the ACDBE must have a necessary and useful role in the business transaction of a nature for which there is a market outside the context of the ACDBE Program.
- G.** Lessee shall take all reasonable and necessary steps to commit to and meet the ACDBE goal and is required to provide documentation demonstrating these efforts if unable to achieve the ACDBE goal.
- H.** If for any reason, Lessee is unable to structure the contract with fifteen percent (15%) for retail and commercial service concessions and thirty percent (30%) for all restaurant/food service concessions ACDBE participation, Lessee may request in writing a waiver to the ACDBE participation goal. Lessee must justify, with

sufficient written documentation, its good faith efforts to achieve the ACDBE contract goal.

I. The following is a list of efforts that can be made and will be considered a part of Lessee's good faith efforts to meet the contract goal. Please note that this list is not intended to be exhaustive in nature. These items are recommended good faith efforts, but good faith efforts are not limited to this list.

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of MDOT-certified ACDBEs who have the capability to perform the work of the contract.
2. Selecting portions of the contract to be performed by ACDBEs in order to increase the likelihood that the goal will be achieved.
3. Providing interested ACDBEs with adequate information about the requirements of the contract in a timely manner to assist them in responding to the solicitation.
4. Following up initial solicitations of interest by contacting prospective ACDBEs to determine if they are interested. Detailing the efforts with the names, addresses, dates, and telephone numbers of the prospective ACDBEs contacted.
5. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State and federal M/W/DBE assistance offices and other organizations as appropriate to obtain assistance in identifying ACDBEs.
6. Making efforts to assist interested ACDBES in obtaining bonding, lines of credit, insurance, equipment, supplies materials or other related assistance or services as needed/appropriate.
7. Negotiating in good faith with interested ACDBEs and not rejecting them as being unqualified without sound reasons based on a thorough investigation of their capabilities. Evidence of such negotiations include the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the work

and evidence as to why agreements could not be reached for ACDBEs to perform the work.

8. Executed agreements with ACDBE subcontractors or Sublessees, if proposed as a method of achieving participation, must be submitted to the Administration by Lessee within ten (10) business days after award or Sublease execution.
9. If Lessee elects to meet the ACDBE goal through Joint Ventures with MDOT-certified ACDBEs, Lessee or its Sublessees must submit the Joint Venture agreement and evidence of all necessary MDOT ACDBE certifications to Administration. The ACDBE Joint Venture partner must demonstrate in the technical submission that it is independently responsible for the clearly defined work and that it shares in the ownership, control, management responsibilities, risks, and profits of the Joint Venture. The Joint Venture agreement was submitted with the proposal and is incorporated herein.

J. Lessee shall take all reasonable and necessary steps to meet the ACDBE goal. To determine compliance with the ACDBE program, the Administration requires that Lessee submit quarterly reports, indicating the participating ACDBE(s), the type(s) of work performed, the value of the work and personnel performing the work. The reports shall be submitted within twenty (20) days after every quarter end during the Contract Term. Annual reports will also be required each Contract Year. Monthly reports will also be required from each ACDBE firm and will be due on the same date as the reports provided by Lessee. The ACDBE participation reports will be reviewed along with the information provided by Lessee to ensure both parties are providing consistent and accurate information about ACDBE participation in the Contract to be awarded. Failure by Lessee to submit requested records on a timely basis to the Administration may result in termination of the Contract. The Administration and its duly authorized representatives shall have the right to audit the quarterly reports with or without prior notice. All such records must be retained by Lessee for a period of three (3) years following

Contract completion and will be made available for inspection upon request by the Federal Aviation Administration (FAA), MDOT, or the Administration.

- K.** If Lessee fails to achieve and maintain the level of MDOT-certified ACDBE participation submitted, Lessee shall provide documentation demonstrating that it made good faith efforts, as determined by the Administration, in its attempt to achieve and maintain the required level of MDOT-certified ACDBE participation. The documentation shall include, but not be limited to, correspondence, advertisements, contacts, and telephone calls to obtain services of MDOT-certified ACDBEs on this Contract. If Lessee fails to reflect a good faith effort to maintain the fifteen percent (15%) for retail and commercial service concessions and thirty percent (30%) for all restaurant/food service concession level of MDOT-certified ACDBE participation throughout the Contract Term, the Administration may consider this as a material breach of the Contract and may terminate the Contract. Lessee must also obtain the approval of the Administration's Office of Fair Practices before substituting another MDOT-certified ACDBE firm for any MDOT-certified ACDBEs included in the approved ACDBE participation plan and/or making any other changes to the approved ACDBE participation plan.
- L.** Lessee 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 C.F.R. Part 23.
- M.** Lessee agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
- N.** The Administration shall notify Lessee in the event that new regulations are issued by the Federal DOT implementing section 511 (h) of the Airport and Airway Improvement Act (AAIA) of 1982, as amended or via changes to 49 CFR Part 23. In the event the new regulations impose new requirements on the

Administration related to this Contract, Lessee agrees to use its best efforts to comply with the new requirements.

- O.** For purposes of ACDBE goal attainment, the participating certified ACDBEs must be certified with MDOT in the appropriate NAICS Code for each type of goods and/or services they are providing. MDOT assigns the codes and description at the time of certification. Further, the participating ACDBEs must be eligible to participate in the ACDBE program.
- P.** Any questions pertaining to certification procedures, eligibility criteria, submittal of Disclosure Affidavits, and obtaining appropriate forms shall be directed in writing to:

**Director, Office of Fair Practices
Maryland Aviation Administration
Third Floor, Terminal Building
P.O. Box 8766
BWI Airport MD 21240-0766
Telephone: (410) 859-7009**

OR

**Director, Office of Minority Business Enterprise
Maryland Department of Transportation
7201 Corporate Center Drive
P.O. Box 548
Hanover MD 21076
Telephone: (800) 544-6056**

ARTICLE XXXII - AIRPORT DEVELOPMENT, EXPANSION OR MODIFICATION

Lessee agrees that no liability shall attach to the Administration, its officers, agents and employees by reason of any efforts or actions related to development, expansion or modifications of the Airport and, for purposes of implementing any present or future Airport Master Plan or for any other Airport related purposes in its sole and absolute discretion that the Administration may deem necessary. For and in consideration of granting the rights and privileges herein granted, Lessee waives any right to claim damages or other consideration arising there from. The Administration reserves the right to cancel and terminate this Contract upon the giving of ninety (90) days' written notice to Lessee in the event such cancellation and termination is deemed

necessary for the development, expansion or modification of the Airport or Airport facilities or for such other purposes as Administration may deem necessary. If the Contract is terminated by the Administration pursuant to this Article XXXII, then the Administration shall pay to the Lessee an amount equal to the undepreciated value of the Administration's approved improvements, which Lessee constructed or installed upon the Leased Premises, using straight-line depreciation over a five (5) year life from the first day of the month of installation or the Administration's acceptance of such improvements to the last day of the month of Contract termination. Lessee understands that the Administration reserves the right to terminate this Contract without any buyout responsibility if the Contract is terminated for default during the Contract Term. Nothing in this Contract, whatsoever shall be interpreted, construed, deemed, or implied to restrict in any way the Administration's right to terminate this Contract subject to the provisions as set forth in this Article.

ARTICLE XXXIII - FAA OR TSA REQUIREMENTS

In the event that the Federal Aviation Administration ("FAA") or the Transportation Security Administration, as a condition precedent to granting of funds for improvements, maintenance or security at the Airport, requires modifications or changes to the Contract, then Lessee shall consent to such reasonable amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of the Contract as may be required to enable the Administration to qualify for and obtain FAA funds provided that in no event shall such changes impair or diminish the rights of Lessee hereunder.

ARTICLE XXXIV - AIRPORT SECURITY & AIRPORT ACCESS

At the discretion of the Administration, or as security conditions may dictate, all Lessee's personnel involved in the Contract (including management) may be required to undergo background investigations. These background investigations may include a ten (10) year employment history verification, a Criminal History Records Check via fingerprinting, and a Security Threat Assessment conducted through the US Department of Homeland Security. Upon completion of one or more of the above background investigations, the Administration may elect to issue identification badges to contractor personnel. If it becomes necessary to issue identification badges to contractor personnel, the contractor shall follow all security processes

necessary to obtain said identification badges. Lessee's personnel shall abide by all airport security regulations and fulfill all responsibilities associated with possessing and airport identification badge. Personnel who do not pass the background investigation(s) may not provide services to the Contractor at BWI Marshall Airport.

ARTICLE XXXV - CONDUCT OF BUSINESS

Lessee shall have the right to use public Airport Facilities in common with others authorized to do so, which right shall be exercised in accordance with the laws of the United States of America and the State of Maryland, the rules and regulations promulgated by their authority with reference to aviation and air navigation, and all reasonable and applicable rules and regulations of the Airports.

ARTICLE XXXVI - DEFAULT & RIGHTS & REMEDIES UPON DEFAULT

A. Lessee's Default

The occurrence of any one or more of the following events shall be a default by Lessee under this Contract:

1. Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its organization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or
2. By order or decree of a court, Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if Lessee is a corporation, by any of the stockholders of Lessee seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any state thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Lessee that is not dismissed within ninety (90) days after the filing thereof; or
4. This Contract or the rights and interest of Lessee hereunder be transferred to, pass to, or devolve upon, by operation of law or otherwise any other person, firm, or corporation without Administration's prior written approval; or
5. There is a substantial change in the ownership or proprietorship of Lessee, which, in the sole opinion of the Administration, is not in the best interest of the Administration, or the public and substantially diminishes, or indicates the substantial diminution of Lessee's performance of its obligations under this Contract; or
6. Lessee shall, notwithstanding thirty (30) day prior written notice from Administration to rectify any of the following irregularities, (i) cease to be properly registered, qualified, or otherwise remain in good standing in the state of its incorporation, or (ii) cease to be qualified or registered to do business in the State of Maryland, or (iii) become a corporation in dissolution; or
7. Lessee is declared by its mortgagee in default on its mortgage agreement beyond any notice or cure period; or
8. Lessee, if a corporation, without the prior written consent of the Administration, becomes a non-surviving merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
9. The Lessee is, or Lessees collectively are, doing business as, or constitute, a co-partnership, and the said co-partnership is dissolved as the result of any action or omission of its co-partners or any of them or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
10. By or pursuant to, or under authority of any federal, State or local statute, regulation or rule, or any order or decree of any court or governmental

board, agency or officer having jurisdiction, a receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of the Lessee, and such possession or control continues in effect for a period of fifteen (15) days; or

11. Any lien is filed against the Airport property because of any act or omission of the Lessee or any of its agents, servants, employees, or contractors, and is not removed within thirty (30) days; or
12. The Lessee abandons, deserts, vacates, or discontinues performance of its operations and services required by the Contract; or
13. The Lessee assigns, transfers, encumbers or subcontracts the Contract or any interest therein without the prior written approval of the Administration; or
14. The Lessee fails to pay punctually any Rents and other charges or to make any other payment required under this Contract when due to the Administration; or
15. The Lessee fails to maintain the quality of service to the public to the sole satisfaction of the Administration, as required under this Contract, within ten (10) days after receiving notice from the Administration to correct the condition or practice objected to; or
16. There is a cessation or deterioration of services provided by Lessee, as required under this Contract, for a period which, in the judgment of Administration, substantially and adversely affects the operations; or
17. The Lessee or any of its agents, servants, employees, or contractors conducts business activities at the Airport beyond those authorized under this Contract, without the prior written approval of the Administration; or
18. The Lessee or any of its agents, servants, employees, or contractors fails to keep, perform and observe each and every promise, covenant, condition, and agreement set forth in the Contract, and does not cure such failure within ten (10) days after receipt of written notice of non-compliance by Administration, or, when fulfillment of its obligation requires activity over a period of time, fails to commence performance to the satisfaction of the

Administration, within ten (10) days after receipt of written notice, and to continue such performance without interruption; or

19. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Lessee, and such possession or control shall continue in effect for a period of fifteen (15) days; or
20. Subject at all times and in all events to the rights of Lessee's leasehold mortgagee(s), if any, as provided in Article XXI – Leasehold Mortgages of this Contract, if Lessee shall fail to pay punctually any ground rent, fee or any other payment required hereunder when due to the Administration and if such failure shall continue uncured for at least thirty (30) days after receipt by Lessee of written notice of such failure; or
21. The conduct by Lessee of business activities at the Airport, which have not been authorized hereunder or approved in writing by the Administration and the continued conduct of same for at least thirty (30) days after Lessee receives written demand from the Administration to cease such conduct; or
22. There is a finding by an independent CPA firm or the Administration's designated auditors which indicates a lack of proper internal control structure or fraudulent practices on the part of the Lessee, which results in an audit adjustment to the amount due to the Administration of five percent (5%) or more in any two (ii) consecutive months; or
23. There is a finding by the Administration that there was a material misstatement or omission made by the Lessee in its Proposal which the Administration relied upon in making its award of the Contract; or
24. The Lessee fails to meet or maintain ACDBE participation goals or show good faith efforts to do so in accordance with Article XXX - ACDBE Participation.

25. There is a finding by the Administration of Lessee's misuse of Common Area Maintenance funds, Marketing funds, Delivery & Distribution funds or Lessee fails to maintain accurate and accessible records as to its proper use, or the Lessee's failure to remedy repeated violations and deficiencies in performance audits and any other operating requirements including quality assurance and performance.
26. There is a finding by the Administration that Lessee failed to meet and/or maintain the Street Pricing Policy, and does not cure such failure within thirty (30) days after receipt of written notice of non-compliance from Administration.

B. Administration Remedies

Upon the occurrence of any such event of default by Lessee or at any time thereafter during the continuance thereof, the Administration may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:

1. If the Lessee fails to fulfill its obligation under this Contract properly and on time, or otherwise violates any provision of the contract, the State may terminate the contract by written notice to the Lessee. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Lessee shall, at the State's option, become the State's property. The State shall pay the Lessee fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Lessee's breach. If the damages are more than the compensation payable to the Lessee, the Lessee will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B ;

2. Without waiving any default, pay any sum required to be paid by the Lessee to parties other than the Administration that Lessee has failed to pay, and perform any obligations required to be performed by the Lessee under this Contract, and any amounts so paid or expended by the Administration in fulfilling the obligations of the Lessee thereunder shall be repaid by the Lessee to the Administration on demand with interest thereon at the rate of one and one quarter percent (1.25%) per month from the date of such payment or expenditure, without terminating this Contract;
3. Bring suit (a) for the collection of rent payments for which Lessee may be in default, or (b) for the performance of any obligations of Lessee under this Contract or any other covenant, promise, or agreement or (c) for any other damages consequent to Lessee's default hereunder, all without terminating this Contract;
4. Assess Lessee at the rate of one and one quarter percent (1.25%) per month of any and all rentals and amounts not paid to the Administration when due, until such rentals or amounts are paid;
5. Without prior demand or notice, take possession, and/or assume operation of the Leased Premises, either with or without the institution of summary or any other legal proceedings or otherwise and without diminishing, excusing or altering in any effect the obligations of Lessee under this Contract, with or without, at Administration's option, terminating this Contract;
6. The rights and remedies of the Administration provided under this Article shall not be exclusive and are in addition to any other rights and remedies which the Administration may have at law or in equity or under this Contract.

C. All rights and remedies provided in the Contract shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any remedy available to the Administration at law or in equity.

- D.** No waiver by the Administration at any time of any of the terms, conditions, covenants or agreements herein shall 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. No delay, failure or omission of the Administration to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of fees then or thereafter accrued, shall 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; and no notice by the Administration shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the Administration of default in one or more instances.
- E.** The Administration and the Lessee shall mutually waive all rights to a jury trial concerning a dispute about any issue arising out of this Contract, including but not limited to concession rights, obligations of the Lessee, and the default or termination of the rights and obligations stated in this Contract.

ARTICLE XXXVII - ADDITIONAL ADMINISTRATION'S REMEDIES

Upon any default by Lessee due to failure to pay the rent or any other sum required by the terms of this Contract for a period of ten (10) days following notice of its failure to do so:

- A.** Administration shall have the right to institute an action of distress therefor, and upon such distress, this tenancy may terminate at Administration's option. In the event of such termination, the provision of Article XXXVI - Default and Administration's Rights Upon Default shall be applicable.
- B.** Administration shall have a lien upon the property of Lessee in the Leased Premises for the amount of the unpaid rent or other sum. In such event, Lessee shall not remove any of Lessee's property from the Leased Premises except with the prior written consent of Administration, and Administration shall have the right and privilege, at its option, to take possession of all property of Lessee in the Leased Premises, to store the same on the Leased Premises, or to remove it and

store it in such place as may be selected by Administration, at Lessee's risk and expense.

ARTICLE XXXVIII - FINES

- A.** Lessee acknowledges the desire of the Administration, as part of its obligation to ensure the highest level of passenger service and experience, to provide air travelers with the level and quality of service as described in this Contract. Lessee acknowledges that it shall comply with its obligations under this Contract. Therefore, Administration has set forth a series of fines for various violations of this Contract. The parties agree that the fines set forth below are reasonable, and Lessee agrees to pay the Administration, or collect payment from its Sublessees to remit to the Administration, such fines in accordance with this section at the rates or in the amounts specified below upon the occurrence of the specified violation and upon written demand by Administration. Lessee further agrees that the payment by Lessee of any fines imposed by the Administration does not waive any Administration rights or remedies set forth in this Contract.
- B.** Administration shall issue written notice of each violation to Lessee. Lessee shall then have five (5) days to cure the violation (except for violations that take longer than five (5) days to cure, provided that Lessee is diligent in pursuing such cure). Fines will begin to accrue on the sixth (6th) day without additional notice from Administration and will continue to accrue until the violation is cured.
- C.** Lessee shall be required to impose fines on its Sublessees as referenced in Article XXXVIII.E, herein. Lessee shall retain all such fines imposed on its Sublessees in accordance with Article XXXVIII.F and at the rates or in the amounts specified in Article XXXVIII.E. Such imposed fine will not be considered as additional payment to the Administration unless such incident of failure to meet standards is a third violation (beyond the Administration's two violation grace period) within a rolling twelve (12) month cycle. In the event of a third failure caused by an individual Sublessee or the Lessee itself, the Administration shall impose fines in accordance with Article XXXVIII.E and F. Immediately upon the third violation,

Lessee shall remit payment to the Administration upon written notice or demand by the Administration. Lessee and/or its Sublessee shall have a clean slate if it does not repeat the violation for a period of twelve (12) months.

- D.** Failure to pay a fine within thirty (30) days of the Administration’s written notice of violation shall constitute default under this Contract. Fines in this Article are cumulative during each Contract Year and are in addition to any other remedies Administration may have under this Contract or other applicable law. Administration waives no rights under this Contract, such as default and termination or other remedies.
- E.** Fines referenced in Article XXXVIII.F shall increase 50% every five (5) years during the Contract Term.
- F.** Administration may determine if a violation of this Contract has occurred and may impose the following fines:

	Violation	Fine
1	Lessee fails to obtain any necessary permits and approvals per Article VI.B.1	\$1,000 per day
2	Failure to observe hours of service; Article VIII.C.4	\$250 per each occurrence
3	Failure to observe Concession Pricing Policy; Article VIII.C.4	\$250 per day
4	Failure to observe Concession Signage Policy; Article VIII.C.5	\$250 per occurrence
5	Failure to observe Waste Disposal and Recycling Requirements; Article VIII.C.6	\$500 per day
6	Failure to operate and maintain Kitchen Exhaust & Grease Trap Systems; Articles VIII.C.7 and VIII.C.9.1	\$500 per occurrence
7	Failure to respond to customer complaints within five (5) days; Article VIII.C.9.f	\$100 per day
8	Failure to observe Delivery and Distribution Rules and Regulations; Article VIII.C.9.j	\$500 per occurrence

	Violation	Fine
1	Lessee fails to obtain any necessary permits and approvals per Article VI.B.1	\$1,000 per day
2	Failure to observe hours of service; Article VIII.C.4	\$250 per each occurrence
9	Failure to maintain or cause to maintain annual training of Sublessee personnel in food service and food safety training, hospitality and/or customer service; Article VIII.C.9.r	\$250 per employee per occurrence
10	Failure to return Airport security badges; Article VIII.C.9.t	\$350 for every 10 unreturned badges
11	Failure to observe minimum quality assurance performance standards as outlined in Article VIII.E	
12	Failure to comply with reporting and record keeping requirements; Article XVI	\$100 each violation per day
13	Unauthorized alterations to the Leased Premises; Article X	\$1000 per day
14	Failure to maintain insurance; Article XXV	\$500 per day
15	Failure to maintain ACDBE participation; Article XXX	\$350 per day and/or default

ARTICLE XXXIX - CONTRACT CLOSEOUT & TRANSITION PROCEDURES

In connection with any transition in operation of the Permitted Use from Lessee to a new entity, Lessee shall, both prior to and for a period of one (1) year following termination or expiration of the Contract Term, cooperate reasonably with such new Entity and the Administration to ensure an orderly transition of the Retail, Restaurant and Commercial Services at the Airport by such new Entity, at no cost or expense to Lessee. Such cooperation (where applicable) shall include each of the following:

- A. Lessee shall provide the Administration and such new Entity with access to the Leased Premises at reasonable times upon reasonable advance notice.
- B. Lessee, together with the Administration and new Entity, shall jointly catalogue all fixtures and equipment If Lessee does not remove any item(s) for which

ownership and removal has been approved by the Administration within ten (10) days from termination or expiration of this Lease and Concession Contract, such item(s) shall be deemed to have been abandoned, and either may be retained by the Administration as its sole property (without the execution of any further instrument and without payment of any money or other consideration therefor) or may be disposed of in such manner as the Administration may see fit. Upon the request of the Administration, Lessee agrees, and agrees to require all Sublessees, to execute and deliver such documents and instruments as the Administration shall reasonably request to evidence or confirm the Administration's ownership interest (as set forth herein) in any portion or all of the improvements or fixtures and equipment affixed to the improvements.

- C.** Lessee shall furnish to the Administration or new Entity a list of those Employees that are involved in providing the services required by this Lease and Concession Agreement, including their job titles and length of employment with Lessee and salaries, waive any contractual arrangement, including noncompetition agreements, made with such employees to the extent practicable and not prohibited by law, and allow the Administration and/or such new operator to interview such employees for new employment positions (without any obligation on their part to hire same for any position).
- D.** Lessee shall either terminate or assign all of its sublease agreements with Sublessees, vendors, and tenants providing goods and/or services to the Concessions Program. If such agreements are terminated, Lessee shall furnish to the Administration or new Entity the names, telephone numbers and account numbers of all vendors providing goods and/or services to the Concessions Program (including utilities, cleaning, garbage disposal and the like).
- E.** In the event that Lessee shall fail to cooperate with the Administration or such new Entity as aforesaid, then the Administration shall so notify Lessee in writing (which notice shall include a reasonably detailed explanation of the Administration's basis for Lessee's non-compliance). In the event that Lessee

shall fail to cure such non-compliance within thirty (30) days following receipt of such notice, Concessionaire shall pay to the Administration upon demand, as Additional Payment, all of the Administration's damages, costs and expenses arising from such breach; provided that nothing herein shall obligate Lessee to incur any cost or expense with respect to the cooperation set forth in this Article XXXIX.

ARTICLE XL - GENERAL PROVISIONS

This Contract is subject to Attachment _____, "Lease and/or Concession Agreements – General Provisions, BWI Marshall Airport" attached hereto and made a part hereof. In the event of a conflict between these Special Provisions of the Contract and the "Lease and/or Concession Agreements – General Provisions, BWI Marshall Airport" the Special Provisions shall govern.

ARTICLE XLI - MISCELLANEOUS PROVISIONS

- A.** This Contract constitutes the entire agreement between Administration and Lessee.
- B.** No change in, modification of, or supplement to this Contract shall be valid or enforceable unless it is in writing and signed by the fully authorized representatives of Administration and Lessee.
- C.** This Contract is a lease of real property under Maryland law with respect to the possession and use of the Leased Premises.
- D.** All rights and remedies provided in the Contract shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any remedy available to the Administration in law or in equity.
- E.** The Article headings in the Contract are inserted only as a matter of convenience and reference shall in no case define, limit, or describe the scope or intent of any provision of this Contract.

ARTICLE XLII - REMEDIES CUMULATIVE

All rights and remedies provided in this Contract shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any remedy available to the Administration at law or in equity.

ARTICLE XLIII - NOTICE OF FIRES, ACCIDENTS, OR IMPAIRMENTS

Lessee shall give Administration immediate notice in case of fire, accidents or impairment to any required fire suppression and/or notification devices at the Leased Premises by telephoning the Fire Rescue Service via BWI Dispatch at (410) 859-7222 to report any such incidents.

ARTICLE XLIV - FIRE OR OTHER OCCURRENCE

A. Insurable Cause

During the entire term of this Contract, if any portion of the Leased Premises shall be damaged or destroyed by fire or other specified insurable casualty (insurable cause) written and covered under the policies of insurance which the Lessee is required to provide under the provisions of Article XXV - Insurance of this Contract or any other policy Lessee may carry, promptly following the collection of insurance proceeds, the Lessee shall cause the work of repair and restoration to commence and shall restore the Leased Premises within six (6) months thereafter as nearly as possible to its condition before the date of such damage or destruction to the extent of insurance proceeds received by Lessee plus the amount of any deductible uninsured loss below the coverage level of Lessee's insurance. All insurance proceeds received by the Administration, the Lessee and its leasehold mortgagee(s), if any, from the policies of insurance provided by the Lessee, less the cost, if any, of its recovery, shall be held in trust and applied by the Administration, the Lessee and its leasehold mortgagee(s), if any, to the payment of the work of such repair and restoration by the Lessee's contractors as the work progresses, but subject, however, to reasonable safeguards imposed by the Administration and the Lessee's leasehold mortgagee(s), if any, as to the payment of the funds, including, but not limited to, the requirement (i) that an approved architect or other expert approve the work covered by a requisition for payment

before the payment or draw is allowed, (ii) that each contractor and supplier of labor and materials furnish partial lien waivers as a condition of each requisition for a partial payment or draw, and (iii) that each contractor and supplier furnish full and final lien waivers at the time of the final completion of all work as a condition of final payment, including any retainage.

B. Uninsurable Cause

1. If the Leased Premises or the facilities or other improvements shall be damaged or destroyed by a cause, including but not limited to war or nuclear attack, not covered by Lessee's insurance maintained pursuant to Article XXV - Insurance hereof or otherwise carried by Lessee, then the Lessee shall have the right, to be exercised by notice in writing delivered to the Administration within sixty (60) days following the date of the uninsured loss, to (i) terminate this Contract, or (ii) repair the damage or destruction at its expense.
2. If the Lessee elects to terminate this Contract for the reasons permitted by Section B.1. above, the Lessee shall pay rent and all other costs and charges and shall perform all obligations hereunder accrued and apportioned to the date of the uninsurable cause and shall promptly vacate and restore the Leased Premises to its original condition (i.e., clear the site and remove the debris), normal wear and tear excepted.

C. Rent Forgiveness

Following the date of any occurrence (insurable or not) causing damage or destruction to the Leased Premises the rent and all other charges and fees due hereunder shall be forgiven and reduced appropriately to the extent to which all or any part of the Leased Premises are rendered untenable until such time as the damage or destruction is fully repaired or restored and the Leased Premises are again ready for occupancy or the expiration of six (6) months from the collection of insurance proceeds, whichever occurs first.

ARTICLE XLV - NOTICES

All notices to the Administration shall be hand delivered, sent by overnight mail or sent by certified mail, return receipt requested, addressed to the Administration at the address stated below or at such other address as the Administration designates in writing. All notices to Lessee shall be hand delivered, sent by overnight delivery (FedEx, USPS, UPS, etc.) or sent by certified mail, return receipt requested, addressed to Lessee at the address stated below or at such other address as Lessee designates in writing. The date of delivery, if by certified mail as evidenced by the postal return receipt, shall be deemed the date of service of the notice. Note: For notices sent to the Administration by overnight courier, omit the P.O. Box in the address below.

NOTICES TO ADMINISTRATION:

**Director, Office of Commercial Management
Maryland Aviation Administration
Third Floor, Terminal Building
P.O. Box 8766
BWI Airport MD 21240**

NOTICES TO LESSEE:

ARTICLE XLVI - MARYLAND PUBLIC ETHICS LAW

Maryland law provides specific provisions concerning ethics and involvement of certain individuals and entities in State contracts. Maryland Code Annotated, General Provisions Article, Title 5, the "Maryland Public Ethics Law" applies to this Contract and shall be adhered to by Contractor. These include but are not limited to provisions addressing former State officials' and employees' subsequent involvement in State contracts, contractors' participation in the creation of a solicitation being precluded from submitting a proposal, as well as financial disclosures. Contractor, as Selected Bidder, shall have provided a fully completed and notarized copy of the form titled "Maryland Public Ethics Law Affidavit," which was a required form to be submitted as part of Contractor's Technical Proposal, and which now becomes part of this Contract.

ARTICLE XLVII - APPLICABLE LAW

This Contract shall be construed under and governed by the Constitution and laws of the State of Maryland. Any disputes arising from this Contract shall be resolved in the courts of Maryland, without regard to any principles of conflicts of laws which might suggest application of the laws of another jurisdiction.

ARTICLE XLVIII - TERMINATION FOR CONVENIENCE

Performance under this Contract may be terminated by the Administration in accordance with this clause in whole, or from time to time in part, whenever the Administration shall determine that such termination is in the best interest of the Administration. The Administration will pay all reasonable costs associated with this Contract that the Lessee has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Lessee shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

ARTICLE XLIX - CONTINGENT APPROVALS

It is agreed and understood by all parties hereto that the execution of this Contract and its effectiveness are contingent upon approval by the Executive Director of the Maryland Aviation Administration, the Secretary of Transportation, and the Board of Public Works of Maryland and this Contract shall be considered to bind the parties hereto in accordance with the Constitution and laws of the State of Maryland and the United States of America.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be properly executed by their duly authorized representatives.

ATTEST:

[LESSEE]

BY: _____

FEDERAL ID NO. _____

WITNESS:

MARYLAND AVIATION ADMINISTRATION

BY: _____

**Ricky D. Smith, Sr.
Executive Director**

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

BY: _____
Assistant Attorney General

CONTRACT NO. MAA-LC-XX-XXX