



AIRPORT ADVERTISING PROGRAM CONCESSION AGREEMENT

_____, 2023

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This **AIRPORT ADVERTISING PROGRAM CONCESSION AGREEMENT** (this “Agreement”) is made this ____ day of _____, 2023 (the “Effective Date”), between **RALEIGH-DURHAM AIRPORT AUTHORITY** (the “Authority”) and [____], a [type of entity] organized under the laws of the state of [state of formation] (“Concessionaire”). The Authority and Concessionaire are sometimes referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

A. Authority owns and operates the Raleigh-Durham International Airport (“Airport”) and, as a component of the Airport’s operations, the Advertising Facilities (as hereinafter defined).

B. Concessionaire has the requisite skills and experience to operate and manage facilities similar to the Advertising Facilities and to assist the Authority, as more particularly described herein, with the design and management of the advertising program at the Airport.

C. Authority desires to engage Concessionaire, as required, to sell, construct, install, operate, maintain and service advertising and related advertising media in and around the Premises (the “Services”) at the Airport, and Concessionaire desires to perform such Services, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants of the parties set forth herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Authority and Concessionaire agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** The following words and phrases, wherever used in this Agreement, shall have the following meanings:

“ACDBE” has the meaning set forth in **Section 11.1**.

“ACDBE Participation Reports” has the meaning set forth in **Section 11.6**.

“Advertising Facilities” means those areas of the Airport that are designated for advertising as described in **Exhibit B** to this Agreement or as otherwise designated from time to time by the Authority President, to include all equipment, structures and other assets associated with those areas, together with any Improvements to such areas as may be constructed by the Authority as described in **Article 9**.

“Agreement” has the meaning in the first paragraph hereof.

“Airport” has the meaning set forth in **Recital A**.

“Annual Report” has the meaning set forth in **Section 4.4**.

“Authority” has the meaning in the first paragraph hereof.

“Authority Board” means the Raleigh-Durham Airport Authority Board of Directors.

“Authority Indemnities” has the meaning set forth in **Section 13.3**.

“Authority Management Fee” has the meaning set forth in **Section 4.1(A)**.

“Authority President” means the President and Chief Executive Officer of the Airport Authority or his or her duly authorized representative.

“Business Days” has the meaning set forth in **Section 20.14**.

“Commencement Date” means _____. The parties agree to confirm the Commencement Date in writing.

“Concessionaire” has the meaning set forth in the first paragraph hereof.

“Concessionaire Management Fee” has the meaning set forth in **Section 4.1(B)**.

“Concessionaire’s Representatives” has the meaning set forth in **Section 13.3**.

“Contract Year” means the period running from the Commencement Date to the day immediately prior to the first anniversary of the Commencement Date, and each subsequent one-year period thereafter during the Term.

“Delinquency Charge” has the meaning set forth in **Section 4.3(B)**.

“Delinquency Rate” means an interest rate equal to 18% per annum or the maximum rate of interest allowed by law, whichever is less.

“DENR” means the North Carolina Department of the Environment, Health and Natural Resources, and any successor agency thereto.

“Effective Date” has the meaning in the first paragraph hereof.

“Environmental Law” means any Law relating to the regulation or protection of human health, safety, occupational safety and health, the environment or natural resources, or the Management of Regulated Substances.

“EPA” means the United States Environmental Protection Agency.

“FAA” means the Federal Aviation Administration of the United States Government or any federal agencies succeeding to its jurisdiction.

“FAR” means Federal Aviation Regulations adopted by the FAA.

“Force Majeure Event” has the meaning set forth in **Section 20.7**.

“Gross Sales” means the total value of all sales by Concessionaire to advertisers or their agencies for any use of the Advertising Facilities for display, brochure or promotional advertising, or for any other Services rendered by Concessionaire at the Airport, which are derived from, arise out of, or become payable on account of the business and all business transactions conducted at, from or by reason of the Advertising Facilities by or for the account of Concessionaire, for cash, on credit or other form of payment, regardless of when or whether paid. Excluded from Gross Sales shall be: (i) only those sales, excise, or similar taxes imposed by governmental authority and collected from customers and directly paid out by Concessionaire to the government entity; (ii) standard sales/advertising agency selling commission in an amount not to exceed 15% of the contract value where such fees are paid to a third party agency of the advertiser; (iii) the amount of refunds and/or withheld funds caused by the loss of power or obstruction to displays that extends for three or more business days including Concessionaire’s share of lost revenue, provided that Concessionaire is not responsible for such obstruction or loss of power; and, (iv) revenue generated from brochure printing, technology fees (programming and technician expenses), utility fees (telephone service), sales tax and any property taxes that Concessionaire passes through without mark-up to advertisers.

“Hazardous Substance” means “hazardous substance” as defined at 29 C.F.R. §1910.120.

“Hazardous Waste” means “hazardous waste” as defined at 40 C.F.R. §261 and adopted at 15A NCAC §13A.

“Improvements” has the meaning set forth in **Section 9.1**.

“Initial Term” has the meaning set forth in **Section 3.1**.

“Law” means any federal, state or local law, statute, ordinance, regulation, common law theory of trespass, nuisance or ultra-hazardous activity and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, judgment or notice of non-compliance or violation, which now is in effect or is hereafter enacted or amended.

“Legal Holiday” has the meaning set forth in **Section 20.14**.

“Letter of Credit” or “LC” means the Letter of Credit that Concessionaire is required to obtain and maintain pursuant to **Section 4.5**, including any replacements thereof or amendments thereto.

“Losses” has the meaning set forth in **Section 13.3**.

“Manage” or “Management,” with respect to any substance or material, means the manufacture, processing, distribution, use, possession, generation, transportation, labeling, identification, treatment, handling, storage, Release or threatened Release thereof.

“Management Fees” means the Authority Management Fee and/or the Concessionaire Management Fee, as the context requires.

“Manager” has the meaning set forth in **Section 10.4**.

“Monthly Statement” has the meaning set forth in **Section 4.2**.

“Part 23” has the meaning set forth in **Section 11.6**.

“Premises” means any and all areas of the Airport including but not limited to Public Areas.

“Proposal” means the response submitted by Concessionaire to the Authority’s Request for Proposals – Proposal to Advertising Program, dated [_____], 2023 (the “RFP”), which response is included as **Exhibit A** to this Agreement.

“Public Areas” means those certain areas of the Airport terminals and parking structures and facilities designated by the Authority to be public or to be used in common, including, but not limited to, walkways, streets, roadways, waiting rooms, hallways, restrooms, and other passenger conveniences.

“Public Records Act” has the meaning set forth in **Section 15.4**.

“Regulated Substance” means any chemical, material, substance or waste the exposure to, access to, or Management of which is now or may hereafter be prohibited, limited or regulated by any Law or governmental body. Regulated Substances include, without limitation, any new, used or spent petroleum product or Solvent.

“Regulatory Claim” means any claim, action, damage, penalty, loss, liability or expense arising from a violation of any Law or any un-permitted Release of a Regulated Substance.

“Release” with respect to any substance or material, means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of such substance into the environment, or any other act or event the occurrence of which would require containment, remediation, notification or similar response under any Law.

“Release Notification Requirement” means any requirement imposed by any Law to notify any Third Party of a Release of Regulated Substances.

“Renewal Term” has the meaning set forth in **Section 3.1**.

“Revenue Procedure” has the meaning set forth in **Section 20.10**.

“Rules and Regulations” means those policies, rules, and regulations promulgated from time to time by the Authority and implemented by the Authority President for the orderly use of the Airport by air transportation companies, tenants, and users of the Airport.

“Security Deposit” has the meaning set forth in **Section 4.5**.

“Services” has the meaning set forth in **Recital C**.

“Solvent” means tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, 1,1,2-trichloroethane, xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, methanol, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, 2-nitropropane and any other substance which may in the future be listed at 40 C.F.R. §61.31(a) (F001-F005) or 15A NCAC §13A.

“Specially Designated National and Blocked Person” has the meaning set forth in **Section 18.16**.

“Statement Due Date” has the meaning set forth in **Section 4.2**.

“Statement of Gross Sales” has the meaning set forth in **Section 4.4 (A)**.

“Term” has the meaning set forth in **Section 3.1**.

“Terminal 1” means the easterly of two air carrier passenger terminals located at the Airport.

“Terminal 2” means the westerly air carrier passenger terminal opened in 2008 at the Airport.

“Transportation Security Administration” means the Transportation Security Administration of the United States or any federal agencies succeeding to its jurisdiction.

“TSR” means Transportation Security Regulations adopted by the Transportation Security Administration of the U.S. Government or federal agencies succeeding to its jurisdiction.

“VARA” has the meaning set forth in **Section 20.19**.

- 1.2 Agreement. This Agreement includes: (a) the body of this Agreement, including the recitals, together with all exhibits and schedules; and (b) the Proposal. The listed documents are to be interpreted so as to give effect to all terms of each and to harmonize their provisions. To the extent there are provisions in the listed documents that are irreconcilable, the order of precedence is as listed in this Section, with item (a) having the highest priority and item (c) having the lowest priority.

ARTICLE 2 DUTIES OF CONCESSIONAIRE

- 2.1 License Granted. The Authority hereby grants Concessionaire, effective as of the Commencement Date, a non-exclusive license to use the Advertising Facilities solely to perform Concessionaire’s obligations under this Agreement to operate the terminal and non-terminal concessions specified herein and to conduct only those operations and sell advertising only as described on **Exhibit C - Permitted Uses**, in accordance with the provisions of this Agreement. Concessionaire shall not use the Premises for any other

purposes. The Authority may grant rights to others to conduct the same or similar operations and/or to sell the same or similar goods and services.

2.2 Duties and Responsibilities. In connection with provision of its Services, Concessionaire shall be responsible for the following:

- A. presenting all proposed advertisement and/or advertising programs to the Authority's Administrator for evaluation and prior written approval, in the Authority's sole discretion, prior to implementation;
- B. testing and/or obtaining required permits for new equipment, assets or Improvements for Advertising Facilities prior to the operation thereof;
- C. except as provided in **Section 9.3**, maintaining and operating the Advertising Facilities in accordance with the operating standards set from time to time by the Authority;
- D. collecting all revenue from operations of the Advertising Facilities;
- E. paying all expenses necessary to operate the Advertising Facilities;
- F. directly remitting sales tax to the appropriate city, county, and state authorities, as well as the payment in full of any other applicable taxes;
- G. obtaining, and keeping in full force and effect, in the name of Concessionaire (unless the Authority expressly directs otherwise), all licenses and permits necessary or as may be required by law, rule, regulation, or ordinance to operate the Advertising Facilities (including, without limitation, business licenses or permits). Concessionaire shall not take any actions which could jeopardize or otherwise adversely affect any of such licenses or permits. Concessionaire shall comply with the conditions set forth in any such licenses and permits and at all times shall manage and operate the Advertising Facilities in accordance with such conditions and other applicable laws, ordinances and Rules and Regulations. Concessionaire shall keep such licenses and permits displayed in the Advertising Facilities as required by law and shall provide a copy of such licenses to the Authority upon request; and
- H. notifying the Authority, in writing within 24 hours, if it has actual knowledge relating to, and promptly forwarding to the Authority within 24 hours, any notices or communications it delivers or receives with respect to:
 - i. the occurrence of damage or destruction to the Advertising Facility assets;
 - ii. any litigation, claim, or proceeding affecting the Authority, Concessionaire, or the operation of the Advertising Facilities, and any written threat to institute any of the same which is likely to give rise to any such litigation, claim, or proceeding;

- iii. any notice of violation (or alleged violation) of any law, rule, regulation, or ordinance relating to ownership or operation of the Advertising Facility assets which could expose the Authority or Concessionaire to any criminal or civil penalty, or which is otherwise material to the ownership or operation of the Advertising Facility assets.

2.3 Warranty. Concessionaire warrants that it has the experience and qualifications required by the RFP. Further:

- (a) it has the right to publish the contents of the advertisement(s), without infringement of any rights of any third party including, without limitation, intellectual property rights; and
- (b) it shall comply with all relevant codes of practice in respect of the Services provided.

2.4 Concessionaire's Experience. In entering into this Agreement, the Authority has relied upon the knowledge, experience, and expertise of Concessionaire as described in the Proposal.

2.5 Representations of Parties. The Authority and Concessionaire represent that each has the full power and proper authority to make and execute this Agreement, to exercise its rights, powers, and privileges as described herein, to perform the agreements and covenants set forth herein, and that each has duly executed and delivered this Agreement. Concessionaire further represents that no order of any bankruptcy or other court, and no agreement with others, prohibits or limits such authority. Concessionaire further represents that (a) it is a _____ duly organized, validly existing and in good standing under the laws of the jurisdiction of its state of organization; and (b) it is duly qualified to do business in the State of North Carolina as a _____. Concessionaire agrees to remain qualified to do business in the State of North Carolina throughout the Term.

2.6 Limitations on Concessionaire's Authority. In addition to any other limitations on Concessionaire's authority set forth in this Agreement, Concessionaire shall not, without the Authority's prior written approval, take any of the following actions with respect to the Advertising Facilities, unless otherwise expressly permitted by the terms hereof or otherwise have received the prior written approval of the Authority:

- A. enter into any sublease, sublicense, sub-concession, or other agreement with respect to the Advertising Facilities;
- B. enter into any contract or other agreement with respect to, or perform, any construction, renovation, or other physical improvement to the Advertising Facilities;
- C. sell, transfer, grant a security interest in, or otherwise dispose of any Authority property used in the operation of the Advertising Facilities;

- D. enter into any arrangement to collateralize any payments due under this Agreement;
or
 - E. take any other action that is prohibited under the terms of this Agreement or requires the prior written approval of the Authority.
- 2.7 Product Exclusive Rights. The Authority may enter into contracts with one or more manufacturers or suppliers granting to said companies' certain exclusive rights pertaining to the sale of food, beverages, or other products or technologies of said exclusive supplier or manufacturer Concessionaire. Any rebates, allowances, or funds received by Concessionaire arising from or relating to any such contracts shall be for the account of the Authority and shall be immediately paid over to the Authority by Concessionaire following its receipt of such funds. For the avoidance of doubt, any such funds shall not impact the calculation of Gross Sales. If the Authority grants such an exclusive right during the Term of this Agreement, Concessionaire shall have 60 days from receipt of written notice to comply with the exclusive right.
- 2.8 Concessionaire Access to Advertising Facilities. For the avoidance of doubt, the Authority retains full ownership and right to use and access the Advertising Facilities, subject only to the license granted to Concessionaire in **Section 2.1**. The Authority shall have the right, but not the obligation, to access the Advertising Facilities at any time during the Term, without the requirement of providing notice to Concessionaire or any other party then utilizing the Advertising Facilities.
- 2.9 Additional Space. Concessionaire may lease storage and/or office space, if available, from the Authority. Such space would be covered by a separate agreement.

ARTICLE 3 TERM OF AGREEMENT

- 3.1 Term. The initial term of this Agreement will commence on the Commencement Date and continue for a period of three (3) years (the "Initial Term") , unless sooner terminated pursuant to the provisions of this Agreement. Upon the expiration of the Initial Term, the Authority at its sole discretion shall have the option to renew the Agreement for an additional two-year period (the "Renewal Term," and together with the Initial Term, the "Term"). The Authority shall deliver written notice of its intent to exercise the option to extend the Term to Concessionaire not less than ninety (90) days prior to expiration of the Initial Term.

ARTICLE 4 ADVERTISING FEES; REPORTS; SECURITY

- 4.1 Compensation. As compensation for Concessionaire's performance of its obligations under this Agreement, the Authority and Concessionaire shall allocate between the parties the Gross Sales generated by Concessionaire's Services. Gross Sales shall be allocated between Concessionaire and the Authority in the following order:

- A. FIRST, [____%]] of Gross Sales (the “Authority Management Fee”) shall be paid to the Authority each month; and
- B. SECOND, [____%]] of Gross Sales (the “Concessionaire Management Fee”) shall be retained by Concessionaire each month.

Except as provided in **Section 9.3**, Concessionaire shall bear, at its own expense, all costs of operating Concessionaire's business under this Agreement.

- 4.2 Monthly Payments and Reports to the Authority. Concessionaire shall pay the amounts owed the Authority under **Section 4.1(A)** on a monthly basis, on or before the 1st of the immediately subsequent month. Notwithstanding anything to the contrary, Concessionaire shall not commingle the Authority’s funds with its own and Concessionaire hereby agrees that it is not the beneficial owner of any of the Gross Sales payments beyond its Management Fee. Monthly Authority Management Fee payments shall be submitted by mail to (or as otherwise instructed by the Authority’s Administrator):

Raleigh-Durham Airport Authority
PO Box 303671
Charlotte, NC 28275-0367

The Concessionaire shall, thereafter, provide to the Authority, by the 20th day of each month (“Statement Due Date”), using the standardized form attached as **Exhibit D**, a “Monthly Statement” showing Concessionaire's total Gross Sales for the preceding month, along with the balance due for the previous month’s Authority Management Fee, if any. Monthly Statements shall be submitted by mail to (or as otherwise instructed by the Authority’s Administrator):

Raleigh-Durham Airport Authority
Finance Office
P. O. Box 80001
RDU Airport, NC 27623

The Authority may, at any time upon written notice to Concessionaire, require Concessionaire to change the timing of the Monthly Statement or modify the form of the Monthly Statement.

- 4.3 Late Payments or Monthly Reports to the Authority.

- A. If Concessionaire is more than ten (10) days delinquent in paying to the Authority any Management Fee owed to the Authority under this Agreement, Concessionaire shall pay to the Authority a late payment charge in an amount equal to four (4%) percent of the delinquent amount. The late payment charge is in addition to the Delinquency Charge defined in **Section 4.3(B)**.

- B. In addition to the late payment charge defined in **Section 4.3(A)**, all Management Fees not paid within ten (10) days of the date due shall bear a “Delinquency Charge” at the rate of eighteen percent (18%) per annum or the maximum rate of interest allowed by law, whichever is less (the “Delinquency Rate”), from the date such Management Fees are due until they are paid in full. The Delinquency Rate is subject to periodic change by the Authority. No change in the Delinquency Rate shall occur, however, without at least thirty (30) days prior written notice to Concessionaire. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Authority for failure to timely pay Management Fees.
- C. If Concessionaire is delinquent for ten (10) days or more in furnishing to the Authority any of the Monthly Statements required under this Agreement, Concessionaire shall pay the Authority, in addition to the Delinquency Rate, a One Hundred Dollar (\$100.00) late fee per delinquent Monthly Statement, for each month or partial month that the Monthly Statement is delinquent, as liquidated damages for the additional administrative costs incurred by the Authority in processing, reviewing, and demanding the delinquent Monthly Statement. The parties have agreed that this is a fair and reasonable estimate of the Authority’s costs incurred in processing delinquent Monthly Statements.
- D. If Concessionaire's check for payment of Rent or Additional Rent due under this Agreement is returned to the Authority for any reason, the payment shall be considered not to have been made and shall be delinquent. In addition to the late payment and Delinquency Charges set forth above, the Authority may charge Concessionaire a returned check fee of One Hundred Dollars (\$100.00) per returned check, which Concessionaire agrees is a reasonable fee for the additional administration time and expense incurred by the Authority in having to deal with the returned check. The Delinquency Charge described in **Section 4.3(B)** shall continue to accrue until the returned check fee is paid, the check has been honored or replaced, and the funds are received by the Authority.
- E. The remedies provided by this Section are in addition to all other rights and remedies that the Authority may have for a breach or violation of this Agreement. Nothing in this Section shall be deemed to be a waiver by the Authority for any breach or violation or to estop the Authority from terminating this Agreement or from asserting any other of its other rights or remedies under this Agreement or at law or in equity. Nothing contained herein shall be construed to require the Authority to accept late Management Fees. Acceptance of full or partial payment of delinquent Authority Management Fees shall not constitute a waiver of any of the Authority's other rights and remedies under **Section 17** of this Agreement.

4.4 Annual Reports to the Authority.

- A. Within 90 days of the end of Contract Year, Concessionaire shall furnish an Annual Report (“Annual Report”) to the Authority audited by an independent certified

public accounting firm. The Annual Report shall contain a Statement of Gross Receipts ("Statement of Gross Sales") in the form attached as **Exhibit E**.

- B. If any Annual Report indicates that Concessionaire underpaid any amounts due the Authority under this Agreement, Concessionaire shall pay to the Authority, within five Business Days after delivery of such Annual Report, the applicable shortfall. Any failure of Concessionaire to make any such payment within such five Business Day period shall be a default by Concessionaire under this Agreement. In the event of such a default, the Authority may, in addition to any other remedies available to it under this Agreement or at law, immediately draw down on the Letter of Credit in the amount of the shortfall.
- C. If Concessionaire is delinquent for 10 days or more in furnishing to the Authority any Annual Report required under this Agreement, Concessionaire shall pay the Authority a \$100.00 late fee for each delinquent Annual Report, for each month or partial month that the Annual Report is delinquent, as liquidated damages for the additional administrative costs incurred by the Authority in processing, reviewing, and demanding the delinquent Annual Report. The parties agree that this fee is a fair and reasonable estimate of the Authority's costs incurred in processing a delinquent Annual Report. Any such fee shall be the sole responsibility of Concessionaire.

- 4.5 Letter of Credit. Concessionaire shall deposit with the Authority, and continuously maintain throughout the term of this Lease, a Security Deposit in an amount equal to approximately three months of the expected Authority Management Fee (the "Security Deposit") and meeting the requirements set forth in **Schedule 4.5** attached hereto. The Security Deposit must be in the form of an irrevocable Stand-by Letter of Credit ("LC") drawn on a bank acceptable to the Authority in a form acceptable to the Authority. The Security Deposit shall be subject to annual increases each Contract Year based on three months of Authority Management Fees and shall be adjusted at the same time each year. Concessionaire shall have thirty (30) days after receipt of the new Security Deposit amount to adjust the Security Deposit by amending the LC. The Security Deposit shall secure Concessionaire's full and faithful performance and observance of all of Concessionaire's obligations under this Agreement and under any other written agreement between Concessionaire and the Authority specifically referring to this Security Deposit. The Security Deposit shall not be considered to be held in trust by the Authority for the benefit of Concessionaire and shall not be considered an advance payment of Authority Management Fees or a measure of the Authority's damages in the case of an event of default by Concessionaire. The Authority may, but shall not be obligated to, draw upon and apply the Security Deposit to: (a) pay any Management Fees not paid on or before the date it is due and the Authority shall not be required to give notice or opportunity to cure before drawing on the Security Deposit; and/or (b) remedy any other violation of this Agreement, after Concessionaire has received notice and opportunity to cure. Further the Authority may draw down the entire Security Deposit immediately, without notice to Concessionaire, upon receipt of a notice of non-renewal of the Letter of Credit. If the Authority applies any of the Security Deposit to any of the above, Concessionaire shall, immediately upon demand, replenish the Security Deposit to its full amount. If

Concessionaire fully performs all of its obligations under this Agreement, the Security Deposit, or any balance remaining, will be released within thirty (30) days from the Expiration Date or termination of this Agreement and delivery of the Advertising Facilities to the Authority. However, if any question exists concerning Concessionaire's full compliance with the Agreement or if there is any obligation under this Agreement to be performed after the Expiration Date or earlier termination of this Agreement, the Authority shall be entitled to require that the Security Deposit remain in place until the Authority is fully satisfied that there has been no violation of the Agreement and all obligations due under this Agreement have been fully performed, even if it takes the Authority longer than thirty (30) days to make such a determination to the Authority's satisfaction.

ARTICLE 5 ADVERTISING RATES AND APPROVALS

- 5.1 Advertising Rates. Concessionaire will make good faith efforts in every proper manner to maintain, develop and increase the sales of advertising developed hereunder throughout the Term of this Contract. Authority and Concessionaire understand that the advertisements in the Advertising Facilities may be subject to quantity purchase and/or other incentive discounts and to standard sales/advertising agency deductions or commissions.

Concessionaire will submit to Authority, upon request, a report indicating the monthly, yearly and multiple year rates charged for each advertising location.

5.2 Approval Of Advertisements/Graphics.

- A. Concessionaire agrees to use the Advertising Facilities solely for the sale and placement of advertisements. All advertisements, advertising copy, advertising materials and manners of commercial presentation and advertising contracts (hereinafter referred to as "Advertisements") will be submitted in advance to Authority for its review and approval. Advertising contracts submitted for approval will designate whether the advertiser is a local, regional or a national company. The Authority will provide written notice to Concessionaire of its approval or disapproval of such Advertisements within ten (10) Authority Business Days of Concessionaire's submission of a graphics sample to Authority. Concessionaire will not display any Advertisements not previously approved by Authority. Authority's approval will not be unreasonably withheld.
- B. Concessionaire will immediately remove upon written demand of Authority, any disapproved or unapproved Advertisements at Concessionaire's sole cost and expense. In the event that any such Advertisement is not removed promptly upon receipt of written demand

by Authority, Authority will have the right, but not the obligation, to remove and store said Advertisement for a period not to exceed ten (10) days, during which time Concessionaire will retrieve and remove such Advertisement or obtain approval to display such Advertisement. Authority will not in any way be held responsible or liable for any damage to or destruction of any Advertisement so removed. Concessionaire will pay all costs associated with the removal and storage of any Advertisement by Authority. In addition, Concessionaire will promptly remove or modify the presentation of any Advertisement if so directed by the Authority. Advertisements that are considered offensive by Authority will not be permitted.

- C. No later than ninety (90) days after the end of each Contract Year of the Term, Concessionaire and Authority will meet to review and evaluate the customer service, equipment, and operational performance of each Advertising Facility. During the course of the review, the Authority may determine, in its sole discretion, that the performance of one or more of the above is unsatisfactory. The Concessionaire will have 30 days to propose a plan to remedy the unsatisfactory area(s).

- 5.3 Unsold Spaces. Concessionaire will advise Authority of any unsold Assigned Areas. Any advertisement location in Concessionaire's unsold Assigned Areas will be made available to Authority for Authority's use, at Authority's expense or for Authority-approved filler which will be installed by Concessionaire at no expense to Authority, until such time as Concessionaire has sold such Advertising Facilities. Authority may select filler for all new air service programs and other Authority initiatives, such as general announcements regarding the Airport and its services and programs, collectively called Authority Content. Selection of filler will be at Authority's discretion. All fillers will be kept fresh and current and will be replaced if requested by Authority. Concessionaire will endeavor to ensure no more than thirty percent (30%) of the advertisement locations in Concessionaire's Advertising Facilities will remain unsold for over thirty (30) days.
- 5.4 Guaranteed Spaces. Authority reserves the right to require Concessionaire to display Authority Content on all digital Assigned Areas. Such Authority Content on digital Assigned Areas will be inserted by Concessionaire within the on-screen rotation, also referred to as the Digital Loop, at a minimum of one spot on the Digital Loop based on paid advertiser occupancy and Authority approval.
- 5.5 Emergency Display. In the event of an Airport-related emergency, Authority reserves the right to display emergency announcements on all digital Advertising Facilities.

ARTICLE 6
RESERVED

ARTICLE 7
CLEANING, MAINTENANCE, AND REPAIR

- 7.1 General Maintenance and Cleaning. Concessionaire is responsible for the cleaning and maintenance of all Advertising Facility equipment and other assets used or installed in connection with the Services provided. Concessionaire will provide sufficient and qualified staff to perform the assigned maintenance and cleaning.
- A. Cleaning. Concessionaire shall keep the Public Areas around the Advertising Facilities free of debris, trash, and hazardous conditions, free of nuisances and hazardous conditions originating from Concessionaire's operations and shall notify the Authority promptly of other hazardous conditions in the Public Areas outside the Advertising Facilities.
- B. Facility Maintenance. Concessionaire shall promptly report all maintenance and repair requirements to the Authority. Concessionaire shall arrange for prompt repair and maintenance of the Advertising Facility assets in order to keep such in the same condition as existed on the Commencement Date (or date of installation of Improvement if after the Commencement Date). If Concessionaire discovers any Improvements and/or Advertising Facility assets have become worn, chipped, dented, or gouged, Concessionaire shall notify Authority of such condition as soon as possible. All repairs shall conform to the RDU Design Standards and all applicable rules and regulations of any federal, state, or local authority having jurisdiction over construction work performed on the Premises. The Authority shall be the sole judge of the quality of the repairs performed.
- 7.2 Authority Rights. The Authority has the right to inspect the Advertising Facilities at any time to determine whether Concessionaire has complied and is complying with the terms of this Agreement. The Authority may, but is not required to, perform maintenance and make repairs and replacements for Advertising Facility assets, regardless of whether such was reported by Concessionaire. The Authority may, but is not required to, perform maintenance to, make repairs to, or replace some or all of, the Advertising Facility assets whenever the Authority determines it necessary or desirable to do so, whether to preserve the safety of the Advertising Facilities or to correct any condition likely to cause injury or damage to persons or property.
- 7.3 Waiver of Claims. Concessionaire waives any claim to lost revenues resulting from the Authority performing repair and maintenance on the Advertising Facility assets.
- 7.4 Damage Caused to Authority or Third Party Property. Subject to **Section 13.4**, any damage caused to the Airport or any Authority property or operations or the property of any other

tenant, person, or entity caused by Concessionaire, or as a result of the operations of Concessionaire, shall be the responsibility of Concessionaire and Concessionaire shall reimburse the Authority for any such damage paid for by the Authority on behalf of Concessionaire within thirty (30) days of billing by the Authority. Any sums so paid by the Authority shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less, from the date paid by the Authority until the Authority has been fully repaid. If the same type of damage is caused by Concessionaire more than once, such as a water leak, electrical service interruption or damage, then the Authority must review and approve Concessionaire's plan of repair or may require that Concessionaire allow the Authority to make the repair and then reimburse the Authority for the cost of such repair.

ARTICLE 8 RELOCATION, TEMPORARY CLOSURE, OR TERMINATION

- 8.1 The Authority's Right to Relocate or Terminate. If, at any time during the Term, the Authority determines, in its sole judgment, that it is necessary for the efficient operation of the Airport that this Agreement be terminated or that Concessionaire's operations be relocated, in whole or in part, the Authority may require Concessionaire to either relocate the affected operation(s) or the Authority may terminate this Agreement.
- 8.2 Temporary Closure. If, at any time during the Term, the Authority determines, in its sole judgment, that it is necessary for the efficient operation of the Airport or for health and safety reasons that Concessionaire close one or more Advertising Facilities for a temporary period, the Authority may provide Concessionaire with written notice directing such closure. If the Authority requires Concessionaire to close one or more Advertising Facilities during the Term, and such closure is for a period longer than 90 days, the Authority will attempt to relocate such asset(s) to another suitable location and the Authority will pay Concessionaire's reasonable out-of-pocket moving expenses, but not lost profits. Payment of any expenses claimed, including reimbursement expenses for moving, is subject to Concessionaire providing the Authority with receipts for such expenses and a showing of all reasonable efforts on the part of Concessionaire to keep its damages and expenses to a minimum. If a temporary closure under this **Section 8.2** lasts for the balance of the Term, **Section 8.3** shall apply.
- 8.3 Reimbursement of Concessionaire Costs. The Authority shall not be liable for or subject to any claim for interruption of business, lost profits, or other similar claims.

ARTICLE 9 ADVERTISING FACILITIES; IMPROVEMENTS

- 9.1 Improvements. Concessionaire acknowledges that the Authority may in its sole discretion determine from time to time that it is necessary to construct certain improvements to the Advertising Facilities, or to refurbish, repair, replace, modify, or upfit certain Advertising Facility assets (the "Improvements"). The Authority will be responsible for constructing

the Improvements except as otherwise described in this Article or as agreed between the parties, including, without limitation, engagement of the architect of record, performing, engaging, or overseeing the engagement of others to perform engineering design services, and managing the design, permitting, and construction of the Improvements, to include any build-outs, infrastructure improvements, finishes, and all furniture, fixtures, and equipment required to fully operate the Advertising Facilities. Once the Improvements are completed and the Authority authorizes their use, Concessionaire may use the Advertising Facilities pursuant to the license described in **Section 2.1**. CONCESSIONAIRE AGREES TO ACCEPT THE ADVERTISING FACILITIES, THE ADVERTISING FACILITY ASSETS, AND ANY FUTURE IMPROVEMENTS “AS IS, WHERE IS.” THE AUTHORITY SHALL NOT BE DEEMED TO HAVE MADE, AND HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE ADVERTISING FACILITIES OR THE IMPROVEMENTS, INCLUDING THEIR DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, ABSENCE OF ANY PATENT, TRADEMARK, OR COPYRIGHT INFRINGEMENT OR LATENT DEFECT (WHETHER OR NOT DISCOVERABLE BY CONCESSIONAIRE), COMPLIANCE OF SUCH ITEM WITH ANY APPLICABLE LAW, OR ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE, NOR SHALL THE AUTHORITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR STRICT OR ABSOLUTE LIABILITY IN TORT, RELATING TO THE CONDITION OF THE ADVERTISING FACILITIES, THE ADVERTISING FACILITY ASSETS, OR THE IMPROVEMENTS, AND CONCESSIONAIRE HEREBY WAIVES ANY CLAIMS ARISING OUT OF ANY OF THE FOREGOING.

- 9.2 Title. All Advertising Facilities, Advertising Facility Assets, and Improvements shall be and remain the property of the Authority.
- 9.3 RESERVED.
- 9.4 Removal and Demolition. Concessionaire shall not replace, remove, or demolish, in whole or in part, any Improvement or Advertising Facility Assets on the Premises without the prior written approval of the Authority. The Authority may, in its sole discretion, condition such approval upon the obligation of Concessionaire to replace the Improvement by a comparable improvement specified by the Authority.

ARTICLE 10 STANDARDS OF SERVICE AND PERSONNEL

- 10.1 Service Standards. It is the policy of the Authority that the Advertising Facilities be operated in an efficient manner, giving the best possible service to the public and all customers using the Advertising Facilities. Concessionaire understands that quality, customer service, and value are important aspects to the operation of the Advertising Facilities, and Concessionaire agrees to cooperate at all times in support of this policy. Concessionaire should anticipate peak travel seasons such as Spring Break, Thanksgiving,

Christmas, and other holidays and special events, and shall operate accordingly. All customers shall receive prompt, attentive, and courteous service.

The Authority may employ service audits to ensure that high quality services are available to Airport customers. The audit may be conducted through random testing, surveying, mystery shopping, or other procedure to be determined by the Authority. The Authority may require that Concessionaires upgrade the quality of its Service and/or products based on the results of the audit. Non-compliance with the operating standards set forth **Exhibit C** may constitute a breach of this Agreement and result in the application of Sanctions as set forth in **Section 10.2**.

- 10.2 Non-Compliance with Service Standards. **Schedule 10.2** attached hereto shall apply in the event that Concessionaire does not comply with the applicable service standards described in this Agreement and listed thereon. Concessionaire and the Authority expressly agree that the amounts payable pursuant to **Schedule 10.2** do not constitute a penalty and that Concessionaire and the Authority, having negotiated in good faith for such specific payments and having agreed that the amount of such payments is reasonable in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience or non-feasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such payments.
- 10.3 Manager. Concessionaire shall employ a qualified employee designated as its local representative (the "Manager"). The Manager shall be authorized to accept service of process and any notice required or allowed by this Agreement and shall have the authority to make all decisions necessary in the day-to-day operations. The Authority shall have the right to require changes in management if, in the reasonable opinion of the Authority, customer service and operating standards are not being consistently met.
- 10.4 Behavior. No employee of Concessionaire, while on the Premises and performing this Agreement, shall use alcohol or other intoxicants or use improper language, act in a loud, boisterous, or otherwise improper way, or solicit business in an inappropriate manner. Concessionaire shall control the actions of its employees and terminate from employment at the Airport any employee who violates the immediately preceding sentence or whose conduct Concessionaire finds detrimental to the best interests of the Authority, the Airport, or the general public, as allowed by law or any applicable collective bargaining agreement.
- 10.5 Independent Contractor. Concessionaire agrees that no authority has been conferred upon it by the Authority to hire any person or persons on behalf of the Authority, and the Authority undertakes no obligation of any sort to Concessionaire's employees. It is understood that Concessionaire shall select, engage, and discharge its employees and agents and otherwise direct and control their services. It is further understood that, for all purposes of this Agreement, Concessionaire is an independent contractor and, as such, Concessionaire agrees to comply with and shall be responsible for all requirements of federal, state, and local laws and regulations, including workers' compensation, and the Rules and Regulations. The Authority shall have no responsibility to Concessionaire or any Concessionaire employee for any compensation, expense reimbursements, or benefits (including, without limitation, vacation and holiday remuneration, healthcare coverage or

insurance, life insurance, pension or profit-sharing benefits, and disability benefits), payroll-related or withholding taxes, or any governmental charges or benefits (including, without limitation, unemployment and disability insurance contributions or benefits and workers' compensation contributions or benefits) that may be imposed upon or be related to the performance by Concessionaire or its employees, agents, or contractors of the obligations under this Agreement, all of which shall be the sole responsibility of Concessionaire. To clarify, the Authority will not withhold any income tax or payroll tax of any kind on behalf of Concessionaire.

- 10.6 Other Operational Covenants. Concessionaire covenants and agrees that it will: (A) not place or maintain any items or other articles in any Public Areas outside the scope of this Agreement without the prior written approval of the Authority; (C) pursuant to **Section 2.2**, keep all mechanical equipment free of vibration and noise and in good working order and condition; (D) not commit or permit waste or a nuisance upon the Airport; (E) not solicit business in the Public Areas, nor distribute advertising matter to, in, or upon any Public Areas outside the scope of this Agreement without the prior written approval of the Authority; (F) not permit any noxious or toxic fumes or odors, dust, or dirt in the Public Areas; (G) not place a load on any floor in the Airport which exceeds the floor load per square foot which such floor was designed to carry; (H) not install any public address or paging or other audio system; and (I) not install any additional locks or security systems of any kind on doors or windows without the prior written consent of the Authority.
- 10.7 Noninterference with Utilities. Concessionaire shall not do anything, and shall not permit anything to be done, that may interfere with the drainage or sewage systems, fire hydrants, heating and air conditioning systems, electrical systems, domestic hot water, domestic cold water, gas, fire suppression systems, fire alarm system, or plumbing in the Advertising Facilities or elsewhere at the Airport.

ARTICLE 11

AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISES (ACDBE)

- 11.1 Policy. The Authority has developed and implemented an Airport Concession Disadvantaged Business Enterprises ("ACDBE") program as required by 49 CFR Part 23 and 49 CFR Part 26. Concessionaire agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and Authority's ACDBE Program, have a fair opportunity to participate in the performance of this Agreement. Concessionaire will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts related to the construction, administration, and operation of the concession continually throughout the term of this Agreement. Concessionaire specifically agrees to comply with all applicable provisions of the Authority's ACDBE Program and any amendments thereto. ACDBE and Non-ACDBE sub-concessionaires shall also be required to agree to comply with all applicable provisions of the Authority's ACDBE Program.
- 11.2 Non-Discrimination.

- A. Concessionaire and any subcontractor of Concessionaire will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Concessionaire will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Authority deems appropriate.
 - B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
 - C. Concessionaire agrees to include the statements in paragraphs (A) and (B) above in any subsequent concessions agreement or contract covered by 49 CFR Part 23 that it enters and shall cause those businesses to similarly include the statements in further agreements.
- 11.3 ACDBE Participation Goal and Good Faith Efforts. Concessionaire agrees that it will provide for a level of ACDBE participation in this Agreement equal to or greater than 29 % of the total annual Gross Sales, or clearly demonstrate in a manner acceptable to the Authority its good faith efforts to do so. Concessionaire will contract with the ACDBEs identified by Concessionaire on the ACDBE Commitment Form approved by the Authority. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable through direct ownership arrangements with ACDBEs. Concessionaire shall not take any action during the term of this Agreement that may have a materially negative impact upon Concessionaire's ability to meet its stated ACDBE goal. Concessionaire has a continuing obligation to meet its ACDBE participation commitment. If amendments or other modifications are made to agreements with ACDBE, Concessionaire shall immediately inform the Authority in writing. Concessionaire must make good faith efforts to maintain its ACDBE participation commitment.
- 11.4 ACDBE Termination and Substitution. Concessionaire will not terminate an ACDBE for convenience without the Authority's prior written consent. If an ACDBE is terminated by Concessionaire with the Authority's consent or, if an ACDBE fails to complete its work on the Agreement for any reason, Concessionaire must follow the provisions herein governing the substitution of ACDBE and make documented good faith efforts to meet its original ACDBE/DBE participation commitments in accordance with the requirements of 49 CFR Part 23.25(e) (1) (iii) and (iv). Concessionaire cannot terminate or otherwise change the terms of its ACDBE commitments without the prior written consent of the Authority. This includes, but is not limited to, instances in which Concessionaire seeks to perform work originally designated for an ACDBE firm with its own forces or those of an affiliate, a non-ACDBE, or another ACDBE.

- 11.5 ACDBE Program Monitoring. The Authority will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. The Authority will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to: records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three years following the termination of this Agreement. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension, or material amendment of this Agreement to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Agreement, the Authority reserves the right to review and approve all subleases or subcontracts utilized by Concessionaire for the achievement of these goals. Concessionaire shall maintain records showing: (A) subcontract/supplier awards, including awards to ACDBE/DBEs; (B) specific efforts to identify and award such contracts to ACDBE/DBEs; and/or (C) executed contracts with ACDBE/DBEs showing actual ACDBE/DBE project participation.
- 11.6 ACDBE Program Reports. Within 30 days of the end of each calendar quarter, Concessionaire shall furnish a report certified by an officer of Concessionaire that indicates the total value of participation from certified ACDBEs during the calendar quarter and for the year to date (using an October 1 through September 30 year). This report should be used to report the ACDBE participation achieved from gross receipts or the use of vendors or contracted service providers, as applicable. Concessionaire shall report this information electronically utilizing the Authority's Contract Compliance System. In the event that ACDBE participation is derived through the activities of a joint venture, Concessionaire shall also submit a quarterly report of the joint ventures activities. Pursuant to 49 CFR Part 23 ("Part 23") and its obligations pursuant to certain grant agreements between the Authority and the FAA, the Authority is required to monitor joint ventures that include an ACDBE partner for compliance with Part 23 and FAA-issued guidance intended to effectuate Part 23. As part of that obligation, this Agreement requires Concessionaire to provide certain reports (the "ACDBE Participation Reports") regarding the activities and finances of the ACDBE and the joint venture to the Authority. Concessionaire acknowledges and agrees that timely delivery of accurate and complete ACDBE Participation Reports is a material obligation of Concessionaire under this Agreement and that each ACDBE Participation Report delivered to the Authority shall be certified by Concessionaire as being accurate and complete under the pains and penalties of perjury.
- 11.7 Compliance. If Concessionaire is delinquent for ten days or more in furnishing to the Authority any of the ACDBE Participation Reports required under this Agreement, Concessionaire shall pay the Authority a \$100.00 late fee for each month or partial month that the ACDBE Participation Report is delinquent, as liquidated damages for the additional administrative costs incurred by the Authority in processing, reviewing, and demanding the ACDBE Participation Report. Failure to comply with the requirements of the ACDBE Program or failure to meet the ACDBE goal set forth above or to demonstrate a good faith effort to do so, shall be a default giving the Authority the right to terminate this Agreement under **Section 17.1(B)** if such default is not cured within the time period set forth therein.

ARTICLE 12
ENVIRONMENTAL REGULATIONS

- 12.1 Environmental Representations. Notwithstanding any other provisions of this Agreement, Concessionaire acknowledges that certain properties and uses of properties within the Airport are subject to Environmental Laws. Concessionaire agrees to observe and abide by these regulations as applicable to its use of the Airport, and to abide by any and all other Agreement requirements, and any other covenants and warranties of Concessionaire. Concessionaire hereby expressly warrants, guarantees, and represents to the Authority that Concessionaire will comply with all applicable federal, state, regional, and local laws, regulations, and ordinances protecting the environmental and natural resources and all rules and regulations promulgated or adapted as some may from time to time be amended and accepts full responsibility and liability for such compliance.
- 12.2 Violations. Concessionaire shall provide any agency's notice of an Environmental Law, or similar enforcement action or notice of noncompliance, to the Authority within 24 hours of receipt by Concessionaire or Concessionaire's agent. Violation of any part of the provisions of this Article or disposition by Concessionaire of any sanitary waste, pollutants, contaminants, Hazardous Waste, toxic waste, industrial cooling water, sewage, or any other materials in violation of the provisions of this **Section** will be deemed to be a default under this Agreement and, unless cured within 10 days of receipt of notice from the Authority, will be grounds for termination of this Agreement, and will also provide the Authority grounds for taking whatever other action it may have in addition to termination based upon default as provided for under this Agreement.
- 12.3 Challenges to Administrative Interpretations. Notwithstanding the provisions of **Section 12.1**, Concessionaire's noncompliance with an administrative interpretation of an Environmental Law shall not constitute a default under this Agreement so long as Concessionaire diligently challenges the validity or application to Concessionaire of such administrative interpretation in a judicial or administrative adjudicatory proceeding (which includes any appellate proceedings regarding the original adjudication). Should Concessionaire prevail in such proceeding, the administrative interpretation so challenged shall not constitute a Law for the purposes of this Agreement. Should the administrative interpretation ultimately be upheld in the adjudicatory proceeding, Concessionaire strictly shall indemnify the Authority pursuant to **Section 13.3** against any Losses or Regulatory Claims incurred by the Authority in connection with Concessionaire's noncompliance with the administrative interpretation.
- 12.4 Storage and Use of Hazardous Substances. Concessionaire shall not handle, store, generate, create, dispose, transport or discharge any Hazardous Substance on, about or from the Premises. This restriction shall not apply, however, to Concessionaire's use of ordinary office and janitorial supplies which are available over the counter for common use by members of the general public so long as such use is in small quantities for normal clean-up activities and in compliance with all Environmental Laws. Nor shall this

prohibition apply to substances fully contained inside of vehicles so long as used in compliance with all Environmental Laws.

- 12.5 Releases. In the event Concessionaire shall Release any Regulated Substance on or from the Premises, Concessionaire immediately shall (1) comply with all applicable Release Notification Requirements, (2) notify the Authority of the Release, and (3) clean up and remediate the Release pursuant to any applicable Environmental Law and to the Authority's satisfaction.

In the event Concessionaire shall discover a Third Party's Release of any Regulated Substance on or from the Premises, Concessionaire immediately shall comply with all applicable Release Notification Requirements and notify the Authority of the Release. This does not limit the parties' rights and obligations to each other with respect to Third Party Parties' Releases of Regulated Substances on or from the Premises. Such rights and obligations shall be determined on incident-specific bases according to the other provisions of this Agreement and according to Law.

- 12.6 Fines Resulting from Violations. Concessionaire is responsible for payment of any and all fines imposed as a result of its acts of non-compliance with Environmental Laws in effect now or in the future.
- 12.7 Stormwater Regulations and Ordinances. Concessionaire agrees to abide by all Laws in effect now or in the future concerning stormwater requirements.
- 12.8 Chemicals. Concessionaire will maintain Safety Data Sheets (SDS) for all chemical-containing products to which its employees are exposed.
- 12.9 Audits. The Authority reserves the right and privilege to audit Concessionaire (including, without limitation, the right to enter onto the Premises at any times to determine Concessionaire's compliance with the environmental requirements set forth in this Agreement. The Authority's failure at any time to audit Concessionaire's environmental compliance, or to identify to or discuss with Concessionaire any condition existing on the Premises, shall not waive the Authority's rights, privileges or remedies under this Agreement. Further, no inspection or audit performed by the Authority shall constitute an approval or representation as to Concessionaire's compliance with this Agreement or with any Environmental Law.
- 12.10 Correspondence. Concessionaire shall copy the Authority simultaneously on all correspondence from Concessionaire to DENR or EPA, which relates to the Advertising Facilities. Within fifteen (15) days of receipt, Concessionaire shall forward to the Authority a copy of any correspondence received from DENR or EPA, which relate to the Advertising Facilities. Concessionaire's obligations under this **Section 12.10** shall survive the expiration or termination of this Agreement.

ARTICLE 13
INSURANCE AND INDEMNIFICATION

- 13.1 General. Concessionaire shall, at its own expense, purchase and maintain insurance to protect Concessionaire and the Authority throughout the duration of this Agreement. Said insurance shall be provided by one or more insurance companies licensed to do business in the state of North Carolina and having an A.M. Best Rating of “A-” or better. All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts consistent with the requirements of **Section 13.2**. Concessionaire shall provide all such insurance policies to the Authority on request.
- 13.2 Insurance Requirements.
- A. Workers’ Compensation Insurance. Concessionaire shall procure and maintain during the Term Workers’ Compensation Insurance, including *Employer’s Liability Coverage*, in accordance with all applicable statutes of the state of North Carolina. The coverage limits shall include \$1,000,000 each accident for Bodily Injury by Accident, \$1,000,000 each accident for Bodily Injury by Disease, and \$1,000,000 policy limit for Bodily Injury by Disease. This requirement does not apply if Concessionaire is a sole proprietor or partnership with no part-time or full-time employees and has chosen not to carry Workers’ Compensation Insurance as allowed under the provisions of the Code of North Carolina. If requested by the Authority, Concessionaire will add the Authority as an “alternate employer” by an endorsement to the Workers’ Compensation policy.
- B. Commercial General Liability Insurance. Concessionaire shall procure and maintain during the Term Commercial General Liability coverage written on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury, and Property Damage. Coverage shall include the following extensions: (i) Contractual Liability, (ii) Premises and Operations, (iii) Products and Completed Operations, (iv) Independent Contractors Coverage, (v) Personal and Advertising Injury, and (vi) deletion of Explosion, Collapse and Underground (XCU), where applicable. Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 00 01, Ed 04/13 with standard exclusions “a” through “q” or any subsequent ISO equivalent or a non-ISO equivalent form). Any additional exclusion shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the Authority. The policy shall be endorsed to provide an Aggregate Per Location Endorsement. Any fellow employee exclusion shall be deleted as it applies to supervisory and managerial personnel.
- C. Hired and Non-Owned Automobile Liability Insurance. Concessionaire shall carry hired and non-owned automobile liability insurance for all hired and non-owned vehicles, with minimum coverage of \$1,000,000 combined single limit each accident.

- D. Umbrella Excess Liability. Concessionaire shall maintain the following coverage: Bodily Injury or Death and Property Damage coverage providing excess coverage on insurance required in **Sections 13.2 (B), (C) and (E)** in the amount of \$1,000,000.
- E. Property Insurance. Concessionaire shall procure and maintain during the Term Property Insurance providing fire and lightning, extended coverage, vandalism, malicious mischief, and “all risk” insurance, excluding earthquake and flood but including debris removal, in a form at least as broad as the standard Insurance Services Office’s Special Cause of Loss form covering all structural or other improvements installed by Concessionaire, and all fixtures, furnishings, equipment, and decorations kept, furnished, or installed by Concessionaire.
- F. Cyber. Operator shall maintain a Cyber Policy with limits of liability not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy shall also include cyber liability, first- and third-party liability including information security, notification cost, regulatory defense and penalties, website liability, cyber extortion, and business interruption.
- G. Business Interruption. Concessionaire shall maintain business interruption insurance coverage for lost business income and extra expenses for a period of restoration of at least 6 months. If Concessionaire receives any proceeds from such insurance, Concessionaire must use such proceeds to make any payments due to the Authority under this Agreement before such proceeds can be used for any other purpose.
- H. Subcontractors. Concessionaire shall require that any of its agents and subcontractors who perform any of Concessionaire’s management and oversight responsibilities pursuant to the provisions of this Agreement meet the same insurance requirements as is required of Concessionaire.
- I. Additional Insured. All insurance policies that the Concessionaire is required to maintain under this Agreement shall specifically name the Authority as an additional insured. The inclusion of the Authority as an Additional Insured is not intended to, and shall not make, the Authority a partner or joint venturer with Concessionaire in its operations at the Airport.
- J. Cancellation or Material Change Notice. Concessionaire shall notify the Authority at least 30 days in advance of any relevant and material changes (including, without limitation, cancellation) in Concessionaire’s insurance coverage required under this Article.
- K. Proof of Insurance. Concessionaire shall provide to the Authority a Certificate(s) of Insurance evidencing all required insurance coverage as provided in (A) through (H) above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under “Description of Operations/ Locations/ Vehicle/Special Items”: (i) the title of the contract or permit or license, etc.; and (ii)

the following statement, *“Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached.”* These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required. Concessionaire may not operate under the terms of the resulting contract or agreement until all required certificates and endorsements have been submitted and approved by the Authority. All certificates and endorsements shall be submitted to the Authority Administrator at least 90 days prior to the anticipated Commencement Date. Proof of insurance should be sent to Raleigh-Durham Airport Authority, PO Box 80001, RDU Airport, NC 27623.

- L. Changes in Coverage Limits. If during the term of this Agreement Authority determines that the limits of coverage are insufficient through either change or erosion due to other losses, the Authority shall provide Concessionaire with 60 days’ written notice of any required changes. Concessionaire shall submit to the Authority President, within 10 days, new Certificate(s) of Insurance indicating that the required changes have been effected.
- M. Concessionaire’s Risk. Concessionaire shall be responsible for obtaining any insurance it deems necessary to cover its own risks. In no event shall the Authority be liable for any: (a) business interruption or other consequential loss sustained by Concessionaire; (b) damage to, or loss of Concessionaire's property of any kind; or (c) damage to, or loss of, an automobile, whether or not such loss is insured, even if such loss is caused by the negligence of the Authority.

13.3 Indemnification.

- A. Concessionaire agrees to defend, pay on behalf of, indemnify, and hold harmless the Authority, its elected and appointed officials, directors, officers, employees, contractors, and others working on behalf of the Authority (collectively, the “Authority Indemnitees”), from and against any and all claims, demands, suits, liability, damage, or loss (collectively, “Losses”), including any and all outlay and expense connected therewith, and for any Losses alleged, asserted, claimed, or recovered against or from the Authority or any Authority Indemnatee, by reason of, caused by, or in connection with: (i) Concessionaire’s violation of, or non-compliance with, any Law; (ii) any personal injury, including bodily injury or death, arising out of or in any way connected or associated with the acts or omissions of Concessionaire, except to the extent caused by the gross negligence of the Authority or any Authority Indemnatee; (iii) any property damage, including loss or use thereof, arising out of or in any way connected or associated with the acts or omissions of Concessionaire, except to the extent caused by the gross negligence of the Authority or any Authority Indemnatee; or (iv) any cessation of the operation of business, except to the extent that the Authority receives proceeds from any insurance policy maintained by Concessionaire with respect to such cessation. It is the intention of the parties that neither the Authority nor any Authority Indemnatee shall be liable or in any way responsible for Losses incurred

by Concessionaire, its officers, directors, employees, contractors, subcontractors, agents, representatives, and others affiliated with Concessionaire (collectively, “Concessionaire’s Representatives”) due to accidents, mishaps, misconduct, negligence, or injuries either in person or property resulting from the Services performed by Concessionaire or any of Concessionaire’s Representatives pursuant to the provisions of this Agreement, except for and to the extent caused by the gross negligence of the Authority or any Authority Indemnitee.

- B. Concessionaire expressly assumes full responsibility for any and all Losses resulting from injury to any person or damage to property by reason of or in connection with any acts or omissions of Concessionaire or any of Concessionaire’s Representatives, and Concessionaire agrees to pay the Authority for all damage caused to the Authority’s Premises as a result of any act or omission of Concessionaire or any of Concessionaire’s Representatives. For the avoidance of doubt, the Losses for which Concessionaire is responsible under this paragraph include, without limitation, any and all fines, assessments, penalties, and judgments arising or resulting from the failure of Concessionaire or any of Concessionaire’s Representatives to comply with any Law in effect now or in the future, including, but not limited to, the provisions in **Articles 11, 12 and 18**.
- C. Concessionaire represents that its activities pursuant to the provisions of this Agreement will be performed and supervised by adequately trained and qualified personnel, and Concessionaire will observe, and cause its officers, employees, subcontractors, and others affiliated with Concessionaire to observe all applicable safety rules.

13.4 Waiver of Subrogation Provision. Concessionaire hereby releases the Authority, its elected and appointed officials, directors, officers, employees, contractors, and others working on behalf of the Authority from and against any and all liability or responsibility to Concessionaire, or anyone claiming through or under Concessionaire by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty, unless, and only to the extent that, such fire or casualty shall have been caused by the negligence or willful misconduct of the Authority, its elected and appointed officials, directors, officers, employees, contractors, and others working on behalf of the Authority. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. Concessionaire’s policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of Concessionaire to recover thereunder.

13.5 Waiver of Premises Liability. Concessionaire hereby expressly waives and releases any and all claims, now known or hereafter known in any jurisdiction throughout the world, against the Authority, and its officers, directors, employees, agents, affiliates, successors, and assigns, on account of injury, death, or property damage occurring at the Airport, except to the extent caused by the gross negligence or intentional misconduct of the Authority.

ARTICLE 14
ACCOUNTING AND RECORDS

14.1 Accounting System.

- A. Concessionaire shall make its books, records, and supporting documentation available to the Authority for at least five (5) years after the termination of this Agreement.
- i. Concessionaire shall store accounting records in such manner so as to provide expeditious access for audit purposes.
 - ii. Concessionaire shall comply with all audit requests from the Authority or its authorized representative within 10 Business Days. In the event that Concessionaire fails to comply, Concessionaire will be responsible for the Authority's cost of the audit, including, but not limited to, the Authority's staff's time. The Authority shall have sole discretion to waive or extend this time frame as circumstances require.
 - iii. Concessionaire shall ensure that its financial or accounting subcontractors (e.g., armored car service, payroll processor, etc.) are required to comply with the requirements of this **Section**.
 - iv. Concessionaire shall pay the Authority \$50.00 every calendar day for any report specified within this Agreement for which Concessionaire is delinquent, including, but not limited to, the audit requests described in **Subsection B.ii** above. The charge will continue until specific performance is accomplished. For the avoidance of doubt, any payments made by Concessionaire pursuant to this paragraph shall be the sole responsibility of Concessionaire.

14.2 Additional Services of Concessionaire. In addition to providing management services and insurance, Concessionaire agrees to perform the following services, at its own expense:

- A. Preparing and holding for review by the Authority the following records and reports for the Advertising Facilities:
- i. Written reports for each damage, theft, or injury claim arising from the operation of the Advertising Facilities, to be submitted to the Authority within 24 hours; and
 - ii. Substantiating records for other expenditures, as may be required for audit purposes by the Authority, to be submitted within 10 days after the Authority has made a request.

- 14.3 Correctness of Reports. Concessionaire is charged with the responsibility of exercising proper care and accuracy in the preparation of required reports and records.
- 14.4 Preservation of Reports. Concessionaire will keep and preserve for a minimum of five years after the termination of this Agreement (or longer if required by law) all evidence of gross sales and business transacted. Concessionaire shall furnish the Authority copies of any such records upon request.
- 14.5 Audit. The Authority may audit Concessionaire's books and records at any time to verify compliance with this Agreement. The Authority may use its own staff to perform audits under this Section, or it may engage an independent certified public accountant to perform the audits. If an audit reveals that Concessionaire has understated its Gross Sales by 2% or more, the entire expense of the audit shall be borne by Concessionaire. In any case, Concessionaire shall immediately pay any additional amounts that the audit determines are due to the Authority, with interest at the Delinquency Rate, accruing from the date the Authority Management Fee was due under this Agreement. If an audit reveals any overpayments by Concessionaire to the Authority under this Agreement, the Authority shall retain such overpayment as a credit and shall apply it to subsequent payments due under this Agreement until such credit is exhausted.

ARTICLE 15 EXPENSES; TAXES

- 15.1 RESERVED.
- 15.2 Public Records. The Authority is subject to the North Carolina Public Records Act, N.C. Gen. Stat. Ch. 132 (the "Public Records Act"), and the parties acknowledge that documents and information provided by Concessionaire to the Authority under this Agreement, including, without limitation, various reports, may become public records under the Public Records Act. Nothing in this Agreement shall abridge or limit the Authority's obligations under the Public Records Act. In the event Concessionaire submits information to the Authority that qualifies as a "trade secret" pursuant to N.C. Gen. Stat. 131-1.2, the Authority will keep that information confidential but can release such information if required by the Public Records Act, applicable law, or by court order. In the event the Authority denies a public records request based on Concessionaire's representation that certain information qualifies as a trade secret pursuant to N.C. Gen. Stat. 131-1.2, and a requestor seeks legal recourse to obtain those records, Concessionaire agrees to indemnify the Authority for any costs incurred as a result and to intervene in any proceedings to defend the position that such materials are not subject to production under the Public Records Act.
- 15.3 Taxes and Assessments. Concessionaire shall be fully responsible for payment of any and all taxes, assessments, and charges levied against any taxable interest of Concessionaire acquired in this Agreement from and after the date of this Agreement. Concessionaire shall also be responsible for payment of any and all personal property taxes levied against any

personal property placed upon the Airport by Concessionaire. Concessionaire shall pay all such taxes, assessments and charges as the same become due and payable. Such taxes, assessments, and charges shall not be included in Operating Expenses. Upon request, Concessionaire shall deliver to the Authority duplicate receipted tax statements showing such taxes, assessments, and charges as having been paid prior to delinquency. Taxes for the fiscal year in which this Agreement is terminated shall be paid upon such termination in a prorated amount equal to 1/12th of the taxes due and payable for the preceding fiscal year multiplied by the number of months in the fiscal year of such termination which elapsed prior to and including the month of such termination.

ARTICLE 16 ASSIGNMENT

- 16.1 Authority Consent. Concessionaire shall not, at any time, assign this Agreement or any part hereof, without the prior written consent of the Authority. Failure to obtain approval will be cause for immediate termination of this Agreement.
- 16.2 Transfer of Stock. A transfer of more than 50% of the equity of Concessionaire, or a transfer of more than 50% of the control of Concessionaire to another individual or entity, is considered an assignment of this Agreement and the Authority's prior written approval of such transfer is required.
- 16.3 Change in Corporate Name. Concessionaire shall notify the Authority in advance of any change in corporate name or adoption of any trade name.
- 16.4 Subcontracting. Concessionaire shall not subcontract for the provision of any management or operation services under this Agreement without the prior written consent of the Authority.

ARTICLE 17 TERMINATION

- 17.1 Termination For Breach. In the event that one of the following occurs, the Authority may at any time terminate this Agreement, in whole or in part, or take such other remedy as the Authority deems appropriate (including without limitation suspending this Agreement in whole or in part), upon giving Concessionaire 10 days' prior written notice that:
- A. the Advertising Facilities are not operated in a professional manner and consistent with industry standards or in accordance with this Agreement, and Concessionaire does not correct the unsatisfactory condition within 10 days after the receipt of written notice of the particulars of the default from the Authority; or
 - B. Concessionaire did not perform any provision or covenant of this Agreement, and Concessionaire did not remedy the default within 10 days after the receipt of written notice of the particulars of the default from the Authority.

In the event that the Authority terminates this Agreement under this **Article**, Concessionaire's license to use the Advertising Facilities will terminate and the Authority shall have the right to prohibit any further use of the Advertising Facility assets by Concessionaire upon the effective date of such termination.

- 17.2 Termination For Facilities Requirements. In addition to the termination rights described in **Section 8.1**, the Authority may at any time terminate this Agreement, in whole or in part, by giving Concessionaire at least 10 days' prior written notice in the event that the Advertising Facilities are required by law or directive issued by a governmental agency to be repurposed for any other use.
- 17.3 Termination For Convenience. The Authority may at any time terminate this Agreement for convenience by giving Concessionaire at least 30 days' prior written notice.
- 17.4 Bankruptcy. If: (A) Concessionaire shall be declared to be bankrupt or insolvent according to law, or (B) a petition in bankruptcy or a petition for a receiver is filed against Concessionaire and such petition, assignment, or attachment is not discharged within 30 days after its effective date, the Authority may terminate this Agreement.
- 17.5 Final Decision. The Authority will not be liable for any loss or damage to Concessionaire arising from any termination of this Agreement, or for the payment of any compensation to Concessionaire following such termination.
- 17.6 Assignment of Franchise Agreements and License. Upon expiration or earlier termination of this Agreement, Concessionaire shall, to the extent assignable, assign to the Authority all:
- A. licenses and permits (including, without limitation, business licenses) then held by Concessionaire with respect to the Advertising Facilities; and
 - B. license agreements and similar agreements between Concessionaire and any party whose trademarks, trade dress, or other intellectual property are then being used by Concessionaire in connection with the operation of the Advertising Facilities.

ARTICLE 18 LEGAL REQUIREMENTS

- 18.1 Compliance with Laws. Concessionaire agrees that it will abide by: (A) all applicable Laws of the United States, the State of North Carolina, and Wake County; and (B) the Rules and Regulations. Concessionaire shall provide any notice of violation, or similar enforcement action or notice of noncompliance, to the Authority within 24 hours of receipt by Concessionaire or Concessionaire's agent. Concessionaire shall provide notice of any fact, condition, or event known to it that would reasonably be expected to be a violation or noncompliance with any requirement of Laws concerning the Agreement, including but not limited to the provisions in **Articles 11, 12, and 18**.
- 18.2 Compliance with Agency Directives. Concessionaire shall at all times fully and promptly observe, obey, and comply with all statutes, laws, ordinance, orders, rules, directives,

regulations, and standards, whether now in effect or hereinafter enacted, adopted, or promulgated by the Authority, any municipal, state, or federal agency, including, without limitation, the FAA, or any other lawful authority having jurisdiction over the Airport, the operation of the Airport, or the business conducted by Concessionaire at or from the Airport, including, but not limited to, those relating to the safety, cleanliness, occupancy, and use of the Airport, to the nature, character, and manner of operation of the business conducted in, at, or from the Airport, and to the conduct of Concessionaire's agents and employees while on Airport property. In particular, but without limitation, each party to this Agreement shall perform its respective responsibilities regarding the provision of accessible facilities and services as required by 49 CFR Part 27 and all other applicable laws and regulations.

18.3 Required Federal Provisions.

- A. Concessionaire agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. If Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as Concessionaire.
- B. This provision obligates Concessionaire for the period during which the property is owned, used, or possessed by Concessionaire, and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
- C. During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees as follows:
 - i. *Compliance with Regulations:* Concessionaire for itself and any contracted parties 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 Agreement.
 - ii. *Non-discrimination:* Concessionaire, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 - iii. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations, either by competitive bidding

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

- iv. *Information and Reports:* Concessionaire will provide all information and reports required by the acts, the regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to the Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- v. *Sanctions for Noncompliance:* In the event of Concessionaire's noncompliance with the nondiscrimination provisions of this Agreement, the Authority will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - (a) withholding payments to Concessionaire under this Agreement until Concessionaire complies; and/or
 - (b) cancelling, terminating, or suspending this Agreement, in whole or in part.
- vi. *Incorporation of Provisions:* Concessionaire will include the provisions of subclauses i. through v. above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the acts, the regulations and directives issued pursuant thereto. Concessionaire will take action with respect to any subcontract or procurement as the Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided that, if Concessionaire becomes involved in, or is threatened with, litigation by a subcontractor or supplier because of such direction, Concessionaire may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

18.4 Non-Discrimination.

- A. Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (i) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (iii) Concessionaire will use the Advertising Facilities in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the license, permit, etc., as appropriate, and to enter or reenter and repossess said land and the facilities thereon, and shall hold the same as if said license, permit, etc., as appropriate, had never been made or issued.
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the deeds will there upon revert to and vest in and become the absolute property of the Authority and its assigns.

18.5 List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with all applicable non-discrimination statutes and authorities, including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- B. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- E. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and concessionaires, whether such programs or activities are Federally funded or not);
- H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- I. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies,

and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Concessionaire must take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100); and
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits Concessionaire from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

18.6 Compliance with Federal Aviation and Transportation Security Regulations.

- A. Concessionaire agrees to comply at all times with FAR Part 139, and TSR Parts 1500, 1520, 1540, and 1542, the Authority's Rules and Regulations, the Authority's Transportation Security Administration approved Airport Security Program, and any other applicable Laws as such currently exist and are amended from time to time. Concessionaire further agrees that any fines levied upon the Authority, its officers, employees, agents, and members of the Authority's Board and commissions and employees, agents, or officers of the Authority's Board and commissions pursuant to enforcement of FAR Part 139 and TSR Parts 1500, 1520, 1540, and 1542 due to acts or omissions by Concessionaire, Concessionaire's agents, servants, officers, employees, independent contractors, or patrons shall be borne by Concessionaire. Concessionaire further agrees to indemnify and hold harmless the Authority, its officers, employees, agents, and members of the Authority's Board and commissions, and employees, agents, or officers of the Authority's Board and commissions from any and all fines so levied and from any and all claims, demands, liabilities, or expenses of every kind or nature related to such levy or defense to such levy (including, but not limited to, salary of attorneys employed by the Authority) which the Authority or any of its officers, employees, or other persons set out above shall or may at any time sustain or incur by reason of or in consequence of such acts or omissions by Concessionaire. Concessionaire further agrees to indemnify and hold harmless the Authority, its officers, employees, agents, and members of the Authority's Board and commissions, and employees, agents, or officers of the Authority's Board and commissions from any and all claims, demands, and/or lawsuits arising out of Concessionaire's or Concessionaire's employees' failure to comply with FAR Part 139 and TSR.
- B. Concessionaire agrees to control all persons and vehicles entering any Airport restricted area (including aircraft movement area) in connection with this Agreement in accordance with the Airport's Security Program and in compliance with TSR Parts 1500, 1520, 1540, and 1542 (as such currently exist and are amended from time to time) and any other applicable airport security law, regulation, or rule.

- 18.7 Federal Fair Labor Standards Act (FLSA). This Agreement incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation and must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
- 18.8 Occupational Safety and Health Act (OSHA). All contracts and subcontracts shall incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration (OSHA).
- 18.9 Subordination to Agreements. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between the Authority and the United States of America or the State of North Carolina relative to the operation, maintenance, development, or administration of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the Authority for Airport purposes, or to the expenditure of federal or State of North Carolina funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, and as said act may be amended from time to time. Concessionaire, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that, in the event improvements are constructed, maintained, or otherwise operated in connection with the Advertising Facilities for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Authority shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, *Nondiscrimination in Federally Assisted Programs of the Department of Transportation*, and as said regulations may be amended.
- 18.10 Exclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, and as said act may be amended from time to time.
- 18.11 Non-Interference. Concessionaire, by accepting this Agreement, expressly agrees for itself and its successors and assigns that it will not take any action that in any manner might interfere with any operations at the Airport under current or future conditions or which might otherwise constitute a hazard.

- 18.12 Security. Concessionaire recognizes its obligations to comply with Federal Airport Security Regulations. Concessionaire will reimburse the Authority, in full, for any fines or penalties levied against the Authority for security violations as a result of any actions on the part of Concessionaire, its agents, contractors, suppliers, guests, customers, or employees and for any attorney fees or related costs paid by the Authority as a result of any such violation.
- 18.13 Affirmative Action. Concessionaire shall, if required, undertake an affirmative action program as provided by 14 CFR Part 152, Subpart E, to insure that no person shall be excluded from participating in any employment activities covered therein on the grounds of race, creed, sex, color, or national origin. Concessionaire assures that no person will be excluded from participating in or receiving the services or benefits of any program or activity covered by said Subpart E on such grounds. Concessionaire further assures that it will require its covered suborganizations to provide similar assurances to Concessionaire that they will similarly undertake affirmative action programs and require assurances from their suborganizations to the same effect.
- 18.14 Modifications Required by FAA. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions or any of the terms, conditions, or requirements of this Agreement as may be required to obtain such funds.
- 18.15 Americans with Disabilities Act. Concessionaire shall comply with the Americans with Disabilities Act and the Rehabilitation Act, and any administrative rules promulgated to implement the Acts, with regard to Concessionaire's operations in the Airport.
- 18.16 OFAC Certification. Concessionaire certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity, or nation. Concessionaire hereby agrees to defend, indemnify, and hold harmless the Authority from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.
- 18.17 War or National Emergency. During the time of war or national emergency, the Authority shall have the right to lease the landing area of the Airport or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended.

- 18.18 Inclusion of Provisions in Concessionaire Agreements. Concessionaire agrees to include the above **Sections 18.1** through **18.17** in any subsequent agreements relating to its operations at the Airport that it enters into with other businesses, and to cause those businesses to similarly include the statements in further agreements.

ARTICLE 19 RESERVED RIGHTS

- 19.1 Reservation of Rights. Any and all rights and privileges not expressly granted to Concessionaire by this Agreement are hereby reserved for and to the Authority.
- 19.2 Right of Development. The Authority reserves the right to further develop or improve the landing area and terminals of the Airport as it sees fit, regardless of the desires or view of Concessionaire, and without interference or hindrance. To facilitate the planning, design, or construction of any such modifications, the Authority may direct the Concessionaire to vacate such portions of the Airport as is necessary. If the Authority shall give notice thereof to Concessionaire, Concessionaire shall promptly thereafter remove all of Concessionaire's trade fixtures and equipment from the Advertising Facilities and for such period of time (including the remainder of the Term) as the Authority shall direct in its said notice. Subject to the provisions of **Section 8.3**, the Authority shall not have any liability for any damages or loss of profits or cost by reason of such removal, relocation of improvements, or restoration.
- 19.3 Right to Maintain. The Authority reserves the right, but shall not be obligated to Concessionaire, to maintain and keep in repair the terminals and landing areas of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
- 19.4 Right of Flight. There is hereby reserved to the Authority, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.
- 19.5 No Limit On The Authority's Powers. Nothing in this Agreement shall limit, in any way, the power and right of the Authority to exercise its governmental rights and powers, including its powers of eminent domain.

ARTICLE 20 GENERAL PROVISIONS

- 20.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Authority and Concessionaire where permitted by this Agreement.
- 20.2 Governing Law, Forum, and Disputes. This Agreement and all claims or disputes arising out of or relating to this Agreement or its subject matter are governed by the laws of the State of North Carolina, without regard to its conflict of laws provisions, and any action,

claim, or proceeding arising out of or relating to this Agreement must be brought only in the North Carolina District Court for Wake County, North Carolina or the United States District Court for the Eastern District of North Carolina. Each party hereby waives any objection, including any objection based upon improper venue or *forum non conveniens*, that it may have, now or in the future, to the bringing of any action, claim, or proceeding in the North Carolina District Court for Wake County, North Carolina or the United States District Court for the Eastern District of North Carolina. Should any dispute arise between the parties to this Agreement other than and excepting disputes regarding failure to pay any amounts due under **Article 4**, such dispute shall be submitted to non-binding mediation prior to any litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in the RDU Center Building of the Authority, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes through the mediation process. If a party requests mediation and the other party fails to respond within 10 days, or if the parties fail to agree on a mediator within 10 days, a mediator shall be appointed by the presiding judge of the Wake County Superior Court upon the request of either party. The parties shall retain all rights at law or in equity with respect to any dispute not covered by this Section and also with respect to those disputes covered by this Section after mediation has been completed.

- 20.3 Attorney's Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the Authority is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Agreement requires Concessionaire to defend the Authority, it is agreed that such defense shall be by legal counsel reasonably acceptable to the Authority, understanding that defense may be supplied through an insurance carrier.
- 20.4 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed by the Authority or Concessionaire, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the Authority and Concessionaire. It is understood and agreed that neither the method of computation of the Concessionaire Management Fee or any other payments, nor any other provision contained in this Agreement, nor any acts of the Authority or Concessionaire creates a relationship other than the relationship of the Authority and Concessionaire as described in this Agreement.
- 20.5 Nonwaiver of Rights. No waiver of default or violation of this Agreement by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent

default or violation of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

- 20.6 Severability. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, such clauses, sections, and provisions shall be construed in a manner to best effectuate the intent of the parties and be lawful, valid, and enforceable, and the remainder of this Agreement and the application of its remaining provisions will not be affected thereby.
- 20.7 Force Majeure. Neither Concessionaire nor the Authority will be liable for delays in performance caused by acts of God or government regulatory authority, war, riot, sabotage, storm, flood, inclement weather, strike or work stoppage, pandemic, epidemic, or other cause beyond the control of Concessionaire or the Authority (each, a “Force Majeure Event”); **however, this provision does not excuse Concessionaire from paying those fees set forth in the Rules and Regulations, nor does it excuse Concessionaire from paying any amounts to be paid by Concessionaire pursuant to Article 15 (Expenses; Taxes).** FOR THE AVOIDANCE OF DOUBT, THE AUTHORITY WILL HAVE NO LIABILITY TO CONCESSIONAIRE FOR ANY LOST REVENUES, LOST BUSINESS, LOST PROFITS, OR ANY OTHER LIABILITIES INCURRED BY CONCESSIONAIRE AS A RESULT OF ANY DECREASE IN CUSTOMERS, PARTIAL OR TEMPORARY CLOSURES, OR OTHER ADVERSE IMPACTS ON CONCESSIONAIRE’S BUSINESS RELATED TO A FORCE MAJEURE EVENT OR ACTIONS TAKEN BY THE AUTHORITY PURSUANT TO **ARTICLE 8** OF THIS AGREEMENT, AND CONCESSIONAIRE AGREES THAT IT WILL NOT BRING ANY CLAIM AGAINST THE AUTHORITY RELATED TO ANY OF THE FOREGOING. CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT THE FOREGOING APPLIES REGARDLESS OF WHETHER CONCESSIONAIRE RECEIVES ANY PROCEEDS FROM A BUSINESS INSURANCE POLICY WITH RESPECT TO SUCH FORCE MAJEURE EVENT OR ANY ACTIONS TAKEN BY THE AUTHORITY PURSUANT TO **ARTICLE 8**. CONCESSIONAIRE ACKNOWLEDGES THAT BUSINESS INSURANCE POLICIES CONTAIN EXCLUSIONS THAT COULD APPLY TO ANY SUCH EVENT, AND THAT CONCESSIONAIRE AGREES THAT THE AUTHORITY SHALL HAVE NO OBLIGATION TO CONCESSIONAIRE SHOULD CONCESSIONAIRE’S CLAIMS UNDER ANY BUSINESS INSURANCE POLICY IT MAINTAINS BE DENIED OR LIMITED IN ANY WAY. CONCESSIONAIRE ACKNOWLEDGES THAT SINCE IT IS SHARING NET REVENUE WITH THE AUTHORITY UNDER THIS AGREEMENT, THAT EACH OF CONCESSIONAIRE AND THE AUTHORITY ARE VOLUNTARILY SHARING IN THE RISK OF ADVERSE ECONOMIC IMPACTS RESULTING FROM FORCE MAJEURE EVENTS.
- 20.8 Entire Agreement. It is understood and agreed that this Agreement (including all exhibits and other documents incorporated by reference) contains the entire agreement between the Authority and Concessionaire as to this Agreement. It is further understood and agreed by Concessionaire that the Authority and the Authority’s agents and employees have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against the Authority for, and

the Authority shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement. Any other written or parole agreement with the Authority is expressly waived by Concessionaire.

20.9 Amendments. Subject to **Sections 18.14** and **20.10(D)**, any amendment, modification, or alteration of this Agreement shall be effective only if mutually agreed upon, reduced to writing, and signed by the appropriate representatives or officers of both parties.

20.10 Subordination to Bond Resolution.

- A. This Agreement is made subject and subordinate to any Airport Bond Resolution enacted by the Authority, whether enacted prior to or as of the time of execution of this Agreement or thereafter.
- B. In the event of conflicts between this Agreement and the Bond Resolution, the Bond Resolution shall govern.
- C. It is mutually understood and agreed that, so long as any bonds secured by a Bond Resolution are outstanding, the deposit and application of Airport revenues shall be governed by the Bond Resolution.
- D. In the event the Advertising Facilities are financed or refinanced by the Authority with the proceeds of tax exempt bonds, for which the interest on said bonds is exempt for federal tax purposes, the parties to this Agreement hereby agree that this Agreement shall be amended to constitute a “qualified management agreement” in compliance with applicable requirements of Section 141 of the Internal Revenue Code, and Rev. Proc. 2017-13 (or any applicable successor Revenue Procedure or United States Treasury Regulation (collectively, the “Revenue Procedure”), and shall be interpreted in accordance with such requirements.

20.11 No Third Party Beneficiaries. This Agreement is for the benefit of Concessionaire and the Authority only. This Agreement shall not create any rights in any person not a party to this Agreement.

20.12 Notices. All notices, consents, and approvals required or authorized by this Agreement to be given by or on behalf of either party to the other shall be in writing and signed by a duly authorized representative of the party by or on behalf of whom the same are given, and shall be deemed complete at the time sent or delivered in accordance with the requirements of this Section.

- A. The Authority’s administrator for this Agreement shall be its Senior Director of Commercial Management_____, who shall communicate and coordinate all matters related to this Agreement through and with Concessionaire’s designated point of contact. The ___ Senior Director of Commercial Management _____ can be reached at the office of the Raleigh-Durham Airport Authority, 1000 Trade Drive, P.O. Box 80001, RDU Airport, North Carolina 27623-0001 or to such other place as the Authority may designate by notice to Concessionaire in writing. In the event of a change to the Authority’s Agreement

administrator, the Authority shall provide notice to Concessionaire of the new Agreement administrator with contact information within 30 days of the change.

- B. Initially, the Concessionaire's administrator for this Agreement shall be its [____], who shall communicate and coordinate all matters related to this Agreement through and with the Authority's designated point of contact. Such person can be reached at [____] or to such other place as Concessionaire may designate by notice to the Authority in writing. In the event of a change to Concessionaire's Agreement administrator, Concessionaire shall provide notice to the Authority of the new Agreement administrator with contact information within 30 days of the change.
- C. Notices to the Authority shall be addressed to President and CEO at the office of the Raleigh-Durham Airport Authority, 1000 Trade Drive, P.O. Box 80001, RDU Airport, North Carolina 27623-0001, and sent by first class U.S. Postal Service mail properly addressed and postage prepaid, sent by registered or certified mail, return receipt required, or by electronic mail to President@rdu.com or by a generally recognized express delivery service or by hand delivery to the address stated hereinabove or to such other place as the Authority may designate by notice to Concessionaire in writing.
- D. Notices to Concessionaire shall be sent by first class U.S. Postal Service mail properly addressed and postage prepaid, sent by registered or certified mail, return receipt required, or by electronic mail sent to the email address(es) provided below or by a generally recognized express delivery service. Initially, notices to Concessionaire shall be addressed to:

Attention: [Concessionaire Name]
Concessionaire Address
Email: _____

With a copy to:

[Concessionaire Legal Counsel]
Address
Email: _____

or to such other place or person as Concessionaire may designate by notice to the Authority in writing.

- 20.13 Captions. The headings and section titles of this Agreement are not part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 20.14 Calculation of Time. Unless referred to as Business Days, all periods of time referred to in this Agreement shall include Saturdays, Sundays, and Legal Holidays; however, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, the period shall be

extended to include the next day which is not a Saturday, Sunday, or Legal Holiday. “Legal Holiday” shall mean any holiday observed by the United States government. “Business Days” shall mean Monday through Friday and shall exclude Saturday, Sunday, and Legal Holidays.

- 20.15 Waiver of Claims. Concessionaire hereby waives any claim against the Authority for loss of anticipated profits caused by any suit or proceedings attacking the validity of this Agreement or any part of this Agreement, or by any judgment or award in any suit declaring this Agreement null, void, or voidable, or delaying the Agreement or any part of it being carried out.
- 20.16 Incorporation of Exhibits and Other Documents. All exhibits and documents attached to or referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.
- 20.17 Time is of the Essence. It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.
- 20.18 Authority Consent or Action. In the event this Agreement is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be the sole and unfettered discretion of the Authority, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Agreement requires the Authority’s consent or approval or permits the Authority to act, such consent, approval, or action may be given or performed by the Authority Board, the Authority President, or the Authority President’s designee. If Concessionaire requests the Authority’s consent or approval pursuant to any provision of the Agreement and the Authority fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. In the event the Authority has expressly agreed, in writing, not to act unreasonably in withholding its consent or may not unreasonably withhold its consent as a matter of law and the Authority has, in fact, acted unreasonably in either of those instances, Concessionaire’s sole remedy shall be an action for specific performance or injunction.
- 20.19 Waiver of Visual Artists Rights. Concessionaire shall not install any object in or on the Advertising Facilities or commence construction of any improvement that constitutes a work of visual art under the Visual Artists Rights Act of 1990 and any corresponding provision of state or local law now in effect or hereafter enacted (“VARA”), unless and until Concessionaire has provided to the Authority either (A) a written opinion in a form and from a law firm reasonably acceptable to the Authority that VARA does not apply; or (B) a written waiver from the author of a work of visual art, in form and substance reasonably satisfactory to the Authority, which identifies specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. §106A(e)(1) and any similar applicable provision of state or local law.
- 20.20 Liens. Neither Concessionaire nor anyone claiming by, through, or under Concessionaire shall have the right to file or place any mechanic’s liens, security interests, or other lien of any kind or character whatsoever, upon the Advertising Facilities or upon any improvement

thereon, or upon any other the Authority property, or upon the interest of Concessionaire, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service, or labor for any improvements, alterations, repairs, or any part thereof shall at any time be or become entitled to any lien on the Advertising Facilities, or any other the Authority property, and for the further security of the Authority, Concessionaire covenants and agrees to give actual notice thereof in advance to any and all contractors, subcontractors, and anyone else who may furnish or agree to furnish any such material, service, or labor.

- 20.21 The Authority's Right to Make Good Default. If Concessionaire should commit any default in the performance of, or compliance with, any of the terms or conditions of this Agreement, then, in addition to all other remedies now or hereafter provided by law, the Authority may, but need not, perform such term or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the maximum rate permitted by law, from date of advance.
- 20.22 Rights and Remedies Cumulative. The various rights, powers, options, elections, and remedies of either party provided in this Agreement shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies, or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged.
- 20.23 Survival. The representations, warranties, and indemnities contained in this Agreement shall survive the termination or expiration of this Agreement. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.
- 20.24 Accord and Satisfaction. The Authority is entitled to accept, receive, and cash or deposit any payment made by Concessionaire for any reason or purpose or in any amount whatsoever, and may apply the same at the Authority's option to any obligation of Concessionaire and the same shall not constitute payment of any amount owed except that to which the Authority has applied the same. No endorsement or statement on any check or letter of Concessionaire shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to the Authority's right to recover any and all amounts owed by Concessionaire hereunder and the Authority's right to pursue any other available remedy.
- 20.25 Interpretation. This Agreement is the result of arm's-length negotiations between the Authority and Concessionaire and shall not be construed against the Authority by reason of its preparation of this Agreement.
- 20.26 Number and Gender. The use herein of a singular term shall include the plural, and use of the masculine, feminine, or neutral genders shall include all others.
- 20.27 Objection to Statements. Concessionaire's failure to object to any statement, invoice, or billing rendered by the Authority within a period of 60 days after receipt thereof shall

constitute Concessionaire's agreement and acceptance with respect to such statement, invoice, or billing, and any claim based in the same shall be time barred.

- 20.28 Joint and Several Liability. If Concessionaire is a partnership or other business organization the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.
- 20.29 Capacity To Execute. The Authority and Concessionaire each warrant and represent to each other that this Agreement constitutes their legal, valid, and binding obligation. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting.
- 20.30 Execution by Electronic Means. The Authority and Concessionaire agree that the parties may execute this Agreement by manual signatures or by any form of electronic signature that is permitted under the Uniform Electronic Transaction Act as enacted and codified in Article 40 of Chapter 66 of the General Statutes of North Carolina.
- 20.31 Counterparts. The Parties may execute this Agreement and any amendment hereto in multiple counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

[Signature page to follow]

[Signature Page to Airport Advertising Program Concession Agreement]

IN WITNESS WHEREOF, the Authority and Concessionaire, by authority duly given, have executed the foregoing Airport Advertising Program Concession Agreement as of the Effective Date.

THE AUTHORITY:

RALEIGH-DURHAM AIRPORT AUTHORITY

By: _____

Michael J. Landguth

President and CEO

Date: _____

Approved as to form.

Erin Locklear, Sr. Vice President and
General Counsel

CONCESSIONAIRE:

[_____]

By: _____

Name: _____

Title: _____

Date: _____

Schedule 4.5

Letter of Credit Requirements

Topic	Requirement
Obligee	Raleigh-Durham Airport Authority
Principal	Concessionaire
Surety	The surety must be a financial institution with at least one office located in North Carolina.
Type of Security Instrument	Letter of Credit or security instrument that modifies the Letter of Credit
Security Instrument Number	Unique identifying number
Agreement the Instrument Secures	Airport Advertising Program Concession Agreement dated _____, 2023
Effective Date & Expiration Date	Coverage shall start on the Commencement Date and shall not expire until on or after the expiration of this Agreement.
Cancellation Notice Period	Minimum of 90 days
Renewal Term	Automatic renewal throughout term of this Agreement
Amount	The amount of the letter of credit shall equal or exceed the total amount of the Authority Management Fee that the Authority projects in its reasonable discretion to receive during the first 3 months of the applicable period. The Authority shall communicate such amount in dollars to Concessionaire on request. Promptly following the submission of each Annual Report, the amount shall be revised if necessary such that the amount shall be equal to or greater than the average monthly Gross Sales for the immediately prior Contract Year (as set forth in the applicable Annual Report).
Authentication	Raised Seal or Security Paper is required for all instruments. Originals must be provided unless a digital distribution letter has been received by the Authority.
Draw Down	<ul style="list-style-type: none">• Authority may immediately draw against Letter of Credit upon default in any payment obligation of Concessionaire under this Agreement.• Authority may, after providing Concessionaire with written notice, draw against Letter of Credit upon any non-payment default committed by Concessionaire under this Agreement.• Authority may draw down via facsimile notice.

Schedule 10.2

Sanctions

Because of the difficulty or impossibility of determining the Authority's damages resulting from Concessionaire's failure to begin performing the Services in a timely manner, unless otherwise agreed to, in writing, by the Authority, if Concessionaire is not displaying client advertisements on the Commencement Date, the Authority may, either in lieu of, or at any time after proceeding with Concessionaire's construction as above, terminate this Agreement, in which event the Authority shall have the right to recover, as liquidated damages and not as a penalty, a sum equal to ...

The concession fees payable for one (1) Lease Year, plus all expenses incurred by the Authority as a result of the termination, plus the cost of any alterations or repairs which the Authority, in its sole discretion, deems advisable to relet the Premises.

Concessionaire agrees that this sum is a fair and reasonable assessment of the Authority's damages. Delays caused by factors beyond the reasonable control of Concessionaire shall be cause for Concessionaire and Authority to reevaluate the "Commencement Date" for each affected concession unit on a unit-by-unit basis.

Exhibit A
Proposal

(to be attached)

Exhibit B

Advertising Facilities

Approved Advertising Locations and Conditions

The drawings attached as **Exhibit B1** depict the primary and secondary advertising locations approved for development and which comprise the Advertising Facilities.

Attachments

The following documents are attached to and incorporated into this **Exhibit B**.

1. B1 – Terminal and Non-Terminal Space Drawings
2. B2 – Chart of Approved Spaces

Exhibit B-1
Terminal and Non-Terminal Space Drawings

Exhibit B-2
Chart of Approved Spaces

Exhibit C

Permitted Uses & Percentage Rents

Permitted Uses

The Authority grants to Concessionaire the following rights:

1. The non-exclusive right to develop, operate and maintain a comprehensive terminal advertising program, the design, quality, and content of which is integrated and coordinated with the associated Airport facility. Display types shall include, but not be limited to, floor exhibits, wall and floor back-lit units, product cases, brochure cases, posters, exposition space, car and boat displays, direct telephone line hotel and transportation displays, electronic displays, computer displays, video displays, and board advertising.
2. The non-exclusive right to operate a non-terminal advertising concession that provides exterior end wraps and interior signs on Authority-owned parking shuttle buses, dioramas in the parking lot bus shelters, light pole banners along inbound and outbound Terminal Boulevard, and banner and floor displays in the main parking garage atrium.
 - a. Concessionaire shall provide written procedures for installing and maintaining graphics on and in buses. Bus wraps may not be sold to Airport tenants. Ads must be sold in blocks that include a minimum of 50% of buses. Concessionaire shall furnish mounting brackets to hold interior signs in the advertising areas.
 - b. Concessionaire may only develop the north end wall of each shelter for advertisements. Additional panels or elements of the shelter may not be used.
 - c. Banner ads along the terminal roads must pertain to a particular entity or company selling a product, event or service. Banner space may be sold in short or long intervals; however, long term contracts must contain provisions to change ad copy and replace banners on a set schedule and/or due to wear and tear. The Authority reserves the right to use all or a portion of the banner space allocated to the Agreement (without compensation to Concessionaire or any affected banner advertiser) for public facility and/or event banners for a maximum of 60 days per calendar year. Such public facility and/or event banners may be provided by non-profit or for-profit agencies to promote a specific event or activity of public importance to the region. Such banner use will be in incremental periods as short as 7 days and as long as 30 days. Concessionaire must preserve this right in its agreements with banner advertisers. Banner ads may not conflict with public facility and/or event banners displayed by the Authority. The Authority will coordinate with Concessionaire on a quarterly basis for the use of banner space.

- d. Parking garage atrium floor and banner display locations do not have access to power or communications. Parking garage access for service of these locations is limited to a 9' height restriction at the entrance to the garage.
 - e. Each banner display area may be used for a single large banner or for multiple small banners that have the same message or represent parts of a single message. Concessionaire shall supply all equipment and hardware needed to install and maintain banners and displays in the Atrium.
3. Specifically granted in the concession rights herein is authorization to use Authority trademarked names (RDU, Raleigh-Durham Airport, Raleigh-Durham International Airport, Raleigh-Durham Airport Authority) for the purpose of generating sales to support the development and administration of an airport literature display program, recognition and endorsements by the Authority of Concessionaire as an approved agent of the Authority authorized to sell space in the terminals for the Airport using approved contracts and rate sheets through said program; and use of letter(s) of endorsement from Authority officials in airport literature promotional materials.

Chart 1 –Percentage Rent Rates and Fees

Room	Concept	% Rent	Brand
Public Areas	Advertising Displays		

Minimum Operational Standards

Concessionaire shall meet the following minimum standards throughout the Term:

1. Ensure that at least 75% of advertisers at the Airport are local and/or regional advertisers;
2. Provide national sales force to ensure that the Airport is a part of the national advertiser sales effort.
3. Provide properties personnel sufficient for display case or floor display relocation at Airport request within a 5 days notice.
4. Provide maintenance staff and scheduling commensurate with needs of the Airport, with on-site availability within 24 hours upon Airport or advertiser request;
5. Provide graphic guidance to advertisers; and

6. Provide team resources to coordinate and affect a reasonably smooth transition and to maintain continuity of the advertising program through construction and renovation during the Term of the Agreement.

Common Use Environment & Authority-Provided Equipment

Terminal 2 is designed to function in a shared-use environment, including a distributed communications network and delivery system designed to support tenant communications in the terminal. Terminal 1 has a similar communications infrastructure. Concessionaire must utilize the Authority's terminal communications wiring infrastructure to provide communications to each advertising location.

Concessionaire must also use the Terminal 2 concourse wall and baggage claim carousel advertising displays devices that are provided by the Authority. Power and data connections are provided to the displays.

EXHIBIT D

Send Report to:
Raleigh-Durham Airport Authority
Finance Office
P. O. Box 80001
RDU Airport, NC 27623

**MONTHLY GROSS SALES REPORT
("MONTHLY STATEMENT")**

**[CONCESSIONAIRE]
RALEIGH-DURHAM INTERNATIONAL AIRPORT**

Month: _____ Year: _____

[This monthly gross receipts report must be submitted to the RDU Authority by the twentieth (20th) of each month.]

Gross Sales ¹	\$ _____
Less Deductions ¹	\$ _____
Adjusted Gross Sales	\$ _____
Authority Management Fee	\$ _____
Concessionaire Management Fee	\$ _____

I certify this amount to be correctly stated to the best of my knowledge.

Signed: _____ Title: _____
Date: _____

¹ Sales and Deductions must be itemized by advertiser and deduction type. Permitted deductions include: advertising agency selling commission not to exceed 15% where paid to or deducted by the agency, and brochure printing, technology fee, telephone fee, sales taxes and/or property taxes where passed through to advertiser.

EXHIBIT E

Send Report to:
Raleigh-Durham Airport Authority
Finance Office
P. O. Box 80001
RDU Airport, NC 27623

STATEMENT OF ANNUAL GROSS SALES
[CONCESSIONAIRE]
RALEIGH-DURHAM INTERNATIONAL AIRPORT
11/01/___ to 10/31/___

[This annual report must be submitted to the Authority by January 1 of each lease year.]

	(Column 1)	(Column 2)	(Column 3)	(Column 4)	(Column 5)	(Column 6)
Month	Gross Sales	Brochure Printing	Technology	Telephone	Adjusted Gross Sales (1 minus 2-4)	Monthly Revenue Paid
October	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
November	_____	_____	_____	_____	_____	_____
December	_____	_____	_____	_____	_____	_____
January	_____	_____	_____	_____	_____	_____
February	_____	_____	_____	_____	_____	_____
March	_____	_____	_____	_____	_____	_____
April	_____	_____	_____	_____	_____	_____
May	_____	_____	_____	_____	_____	_____
June	_____	_____	_____	_____	_____	_____
July	_____	_____	_____	_____	_____	_____
August	_____	_____	_____	_____	_____	_____
September	_____	_____	_____	_____	_____	_____
Totals	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Total Gross Sales¹ \$ _____
Total Adjusted Gross Sales \$ _____
Authority Management Fee \$ _____
Concessionaire Management Fee \$ _____

I certify this amount to be correctly stated to the best of my knowledge and to have been properly calculated and paid in accordance with the terms of the Lease.

Signed: _____ Title: _____ Date: _____

¹ Permitted deductions include: advertising agency selling commission not to exceed 15% where paid to or deducted by the agency, and brochure printing, technology fee, telephone fee, sales taxes and/or property taxes where passed through to advertiser.

Exhibit F

Rate Card
(Attachment)

Exhibit G

Concession Operating Hours/Schedule

Advertising displays shall be available for public viewing 24 hours per day, seven days per week, and 365 days per year. Digital displays shall be available for public viewing on the same schedule, except during routine equipment maintenance or downtime associated with non-operational terminal periods.

Dusting and routine servicing for equipment will occur between the hours of 7:00pm and 9:00pm Monday, Wednesday and Friday excluding weekends and legal holidays.

Exhibit H

RESERVED

Exhibit I

Commercial Advertising Policy
(Attachment)

Exhibit J

Commercial Advertising Goals & Objectives
(Attachment)

EXHIBIT K
Concession Program
Maintenance Matrix

The following information pertains to property within the Leased Premises, as well as systems, utilities and features extending beyond leasehold boundaries which are designated for Concessionaire's specific use.

Concessionaire Responsibility

Concessionaire shall keep all of the systems, utilities and features pertaining to property within the Leased Premises, as well as systems, utilities and features extending beyond leased boundaries, in good maintenance and repair. The Authority shall not have any responsibility for maintenance, repair, or replacement of any system, utility, or feature on the Leased Premises, or for any system, utility or feature extending beyond the leasehold boundaries, unless expressly stated in the Maintenance Matrix.

Those items not expressly assigned to the Authority in the Maintenance Matrix are the exclusive responsibility of the Concessionaire and shall be kept in good maintenance and repair.

		MAINTAINED BY:	
		AUTHORITY	TENANT
1.	CUSTODIAL SERVICE		
	1.1 Windows-interior and exterior of common areas	<input checked="" type="checkbox"/>	
	1.2 Windows-interior and exterior of lease space		<input checked="" type="checkbox"/>
	1.3 Carpets within leased space		<input checked="" type="checkbox"/>
	1.4 Public Restrooms	<input checked="" type="checkbox"/>	
	1.5 Walls, ceiling, floors in leased space		<input checked="" type="checkbox"/>
	1.6 Trash (collection in leased space)		<input checked="" type="checkbox"/>
	1.7 Trash (collection in common areas)	<input checked="" type="checkbox"/>	
	1.8 Trash hauling & recycling	<input checked="" type="checkbox"/>	

2.	ELECTRICAL SYSTEMS		
1.1	Primary electric service, include main conduit, wiring, electric meters, fixtures, power and lighting panels	<input checked="" type="checkbox"/>	
1.2	Power from connection point throughout Concessionaire's space, to include conduit and wiring, sub-panels, power outlets, meters, switches and all interior lamps		<input checked="" type="checkbox"/>
2.3	Area lighting to include all exterior lighting and power distribution	<input checked="" type="checkbox"/>	

		MAINTAINED BY:	
		AUTHORITY	TENANT
	2.4 Lighting within storefront window zone		<input checked="" type="checkbox"/>
	2.5 Authority installed window lighting, as applicable	<input checked="" type="checkbox"/>	
	2.6 Lighting behind lease line within concessionaire's space		<input checked="" type="checkbox"/>
	27 Common area lighting in front of lease line to include lobby and public seating areas	<input checked="" type="checkbox"/>	
3.	FIRE SYSTEM		
	3.1 Sprinklers (heads and piping) in public areas	<input checked="" type="checkbox"/>	
	3.2 Alarm and detection system units in public areas	<input checked="" type="checkbox"/>	
	3.3 Alterations to heads and piping in leased space		<input checked="" type="checkbox"/>
	3.4 Routine dusting of sprinkler heads		<input checked="" type="checkbox"/>
	3.5 Sprinklers (heads and piping) in tenant areas		<input checked="" type="checkbox"/>
	3.6 Alarm and detection system units in tenant areas		<input checked="" type="checkbox"/>
4.	H.V.A.C		
	4.1 Heating, ventilation, air conditioning and associated controls to include central system, package units and window units	<input checked="" type="checkbox"/>	
	4.2 Exhaust system in leased space		<input checked="" type="checkbox"/>
	4.3 Routine cleaning and inspection of fans, louvers, duct work and/or exhaust system components located beyond the lease line, including such components provided by the Authority and used by the tenant		<input checked="" type="checkbox"/>
	4.4 Heating, ventilation, air conditioning and associated controls to include central system, package units and window units in leased space		<input checked="" type="checkbox"/>
5.	SIGNAGE		
	5.1 Regulatory/traffic control	<input checked="" type="checkbox"/>	
	5.2 Non-regulatory/traffic control	<input checked="" type="checkbox"/>	
	5.3 Concession directory	<input checked="" type="checkbox"/>	
	<i>Store Front Signs:</i>		

	5.4	Signage frame, face plate and sign attachments		<input checked="" type="checkbox"/>
	5.5	Artwork design for sign face		<input checked="" type="checkbox"/>
			MAINTAINED BY:	
			AUTHORITY	TENANT
	5.6	Primary signage		<input checked="" type="checkbox"/>
	5.7	Storefront soffit signage		<input checked="" type="checkbox"/>
	5.8	Blade signage		<input checked="" type="checkbox"/>
6.	STRUCTURE			
	6.1	Exterior: to include roofs, sidings, locks, gutters, drains and walkways	<input checked="" type="checkbox"/>	
	6.2	Interior leased premises: to include doors, windows, door operations, ceilings, walls		<input checked="" type="checkbox"/>
	6.3	Security grilles, gates and doors		<input checked="" type="checkbox"/>
	6.4	All locks including exterior and interior	<input checked="" type="checkbox"/>	
	6.5	Duplicate new keys	<input checked="" type="checkbox"/>	
	6.6	Asbestos management	<input checked="" type="checkbox"/>	
	6.6	Asbestos management during unit development		<input checked="" type="checkbox"/>
	6.7	Furniture maintenance in common areas	<input checked="" type="checkbox"/>	
	6.8	Floors in common areas	<input checked="" type="checkbox"/>	
	6.9	Floors in lease area (including water proofing and sealing of all floor penetrations)		<input checked="" type="checkbox"/>
	6.10	Storage area modifications		<input checked="" type="checkbox"/>
7.	WATER SYSTEMS / GROUND UTILITIES			
	7.1	Storm sewers, sanitary sewers, potable water, natural gas meters, and other site utilities	<input checked="" type="checkbox"/>	
	7.2	Common area utility fixtures (sinks, toilets fountains, etc)	<input checked="" type="checkbox"/>	
	7.3	Plumbing system, supply to periphery of leasehold	<input checked="" type="checkbox"/>	
	7.4	Piping within lease space		<input checked="" type="checkbox"/>
	7.5	Natural gas lines from source to connection point	<input checked="" type="checkbox"/>	
	7.6	Gas line from connection point throughout Concessionaire's space		<input checked="" type="checkbox"/>
	7.7	Cold water pipe insulation		<input checked="" type="checkbox"/>

	7.8	Water heater		<input checked="" type="checkbox"/>
	7.9	Floor penetrations		<input checked="" type="checkbox"/>
	7.10	Product distribution lines and conduit		<input checked="" type="checkbox"/>