CONCESSION LEASE AND LICENSE AGREEMENT

BETWEEN

THE CITY OF CHICAGO
(CHICAGO DEPARTMENT OF AVIATION)

AND

[_____]

AT
CHICAGO O'HARE INTERNATIONAL AIRPORT

BRANDON JOHNSON
MAYOR

JAMIE L. RHEE
COMMISSIONER

DRAFT

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: _____
Commissioner of Aviation

Date: _____

By: _____

Its: _____
[Title]

Date: _____

[Notary]

CONCESSION LEASE AND LICENSE AGREEMENT

This Concession Lease and License Agreement ("**Agreement**") is entered into as of_____, 20____ ("**Effective Date**"). The Agreement is by and between _____, a [entity type] ("**Tenant**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

BACKGROUND

The City owns and, through CDA, operates Chicago O'Hare International Airport (**"O'Hare"** or the **"Airport"**). O'Hare includes terminals 1, 2, 3, 5, a multimodal facility and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") on _____ for concessions to be located at the Airport, and Tenant responded with a proposal to operate a concession featuring _____. The City desires to grant Tenant, and Tenant desires to accept, a license to operate such a concession and a lease to operate the concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City and Tenant acknowledge that the continued operation of the Airport as a safe, convenient and attractive facility is vital to the economic health and welfare of the City of Chicago, and that the City's right to supervise performance under this Agreement by Tenant is a valuable right incapable of quantification.

NOW, THEREFORE, the City and Tenant agree as follows:

ARTICLE 1 CITY APPROVAL

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Commissioner. As provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.3, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Commissioner. As further provided in Section 11.3, any substantial amendment of the terms of this Agreement will require approval by the City Council.

ARTICLE 2 INCORPORATION OF BACKGROUND AND EXHIBITS

2.1 **Incorporation of Background.** The background set forth above is incorporated by reference as if fully set forth here.

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

Exhibit 1	Leased Space(s) and Confirmation(s) of DBO
Exhibit 2	Rent
Exhibit 3	Development Plan
Exhibit 4	City's Shell and Core Obligations, if any
Exhibit 5	Products and Price List
Exhibit 6	Form of Letter of Credit
Exhibit 7	Insurance Requirements
Exhibit 8	ACDBE Special Conditions and Related Forms
Exhibit 9	MBE\WBE Special Conditions and Related Forms
Exhibit 10	Design and Construction Standard Operating Procedures-Concessions
Exhibit 11	Economic Disclosure Statements and Affidavits
Exhibit 12	Airport Concessions Program Handbook
Exhibit 13	Liquidated Damages
Exhibit 14	Design Guidelines
Exhibit 15	Incubator Program Plan

ARTICLE 3 DEFINITIONS

3.1 **Interpretation and Conventions**.

A. The term **"include"** in all of its forms, means "include, without limitation," unless the context clearly states otherwise.

B. The term **"person"** includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

C. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies of this Agreement are solely for convenience of reference and do not constitute a part of this Agreement, nor do they affect its meaning, construction or effect.

D. Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders. Wherever an article, section, subsection, paragraph, sentence, exhibit, appendix, or attachment is referred to, the reference is to this Agreement, unless the context clearly indicates otherwise.

E. Where the approval or consent of Tenant is required under this Agreement, it means the approval or consent of the Tenant's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

F. Whenever time for completion or performance is listed as "days", if the number of days is 30 or more, it means calendar days, and if the number of days is less than 30, it means business days per the City of Chicago calendar.

3.2 **Definitions**

In addition to terms defined elsewhere in this Agreement, the following words and phrases, when capitalized, have the following meanings:

"Additional Rent" has the meaning set forth in Section 7.1.

"Additional Space" means Retail Space or Storage Space that is added to Leased Space after the Effective Date pursuant to Section 5.1 but does not include Relocation Space. Additional Space, if any, that is offered to Tenant is solely at the discretion of the Commissioner. Tenant has absolutely no right or entitlement to be offered any Additional Space, and the concept of Additional Space is solely for the benefit of the Airport's concession program.

"Affiliate", except where otherwise defined, means any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Tenant.

"Agreement" has the meaning set forth in the recitals of this Agreement.

"Airport" has the meaning set forth in the recitals of this Agreement.

"Airport Concession Disadvantaged Business Enterprise" or **"ACDBE"** means an entity meeting the definition of airport concession disadvantaged business enterprise, as defined in U.S. Department of Transportation Regulations Title 49, Code of Federal Regulations, Part 23, as amended from time to time, and certified as such in the State of Illinois in accordance with those regulations.

"Airport Concession Program Handbook" means the handbook developed by the CDA to govern the uniform operation of the concessions' programs at the Airports. The Airport Concession Program Handbook is available on the CDA website and may be amended from time to time by the Department. Any amendment of the Airport Concession Program Handbook by the Department during the Term of this Agreement will be binding on Tenant without need for amendment of this Agreement, provided that the amendment of Airport Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

"Airport Transit System" means the automated transit rail system that serves terminals and parking structures.

"Base Rent" means the fee payable by Tenant for the Lease, equal to the amount as set forth on Exhibit 2.

"CDA" has the meaning set forth in the recitals of this Agreement.

"Chief Procurement Officer" means the head of the Department of Procurement Services of the City and any City officer or employee authorized to act on the Chief Procurement Officer's behalf.

"City" has the meaning set forth in the recitals of this Agreement.

"Commissioner" means the head of the Department and any City officer or employee authorized to act on the Commissioner's behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where the Concession Management Representative is expressly authorized to do so.

"Common Areas" means those areas of the Terminals that are not leased, licensed, or otherwise designated or made available by the Department for exclusive or preferential use by specific party or parties.

"Common Area Maintenance Fee" means the fee specified in Section 4.7(c) of this Agreement.

"Comptroller" means the head of the Department of Finance of the City and any City officer or employee authorized to act on the Comptroller's behalf.

"Concession" means Tenant's business of offering the Products identified in Exhibit 5

for sale at retail to the public at the Airport pursuant to this Agreement.

"Concession Management Representative" or "**CMR"** means the entity retained by the City to assist in overseeing Concessions, including the construction of Improvements, at the Airport.

"Concessions Standards" has the meaning set forth in Section 5.5(B)(iii) of this Agreement.

"Construction Documents" means the drawings and specifications for the construction of Improvements, approved by the Commissioner pursuant to Section 5.5.

"Contaminant" means any materials set forth in 415 ILCS 5/3.165, as amended from time to time, that are subject to regulation under any Environmental Law.

"Date of Beneficial Occupancy" or **"DBO"** means, as to each Retail Space, the latest to occur of (A), (B) or (C) as follows:

A. the date that is 180 days after the Delivery Date of the Retail Space in question;

B. the date that is 180 days after the building permit for the Improvements for the Retail Space in question is issued; provided that the Tenant has demonstrated to the satisfaction of the Commissioner that Tenant timely submitted design drawings in accordance with Section 5.5 hereof and promptly applied for, and diligently pursued the issuance of, such building permit; or

C. the date set forth in the Development Plan for the commencement of retail sales in the Retail Space in question; provided, however, that the date set forth in the Development Plan for commencement of retail sales shall be extended one day for each day Tenant has demonstrated to the satisfaction of the Commissioner that Tenant was delayed due to *force majeure* pursuant to Section 11.20 or delays otherwise beyond Tenant's control. Under no circumstance can this date exceed 60 days beyond the date established in A. above.

Notwithstanding the foregoing, if Tenant completes the Improvements in any Retail Space and commences retail sales in such Retail Space before the DBO determined in accordance with the foregoing, the DBO for that Retail Space is the date that retail sales commence.

The DBO for each Retail Space shall be confirmed in writing by the parties, and such written "**Confirmation(s) of DBO**" shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement.

The Date of Beneficial Occupancy for any Storage Space is the Delivery Date for that Storage Space.

"Default Rate" means 12% per annum.

"Delivery Date" means the date upon which the City gives Tenant possession of the Retail Space or Storage Space in question, which such date the City shall set forth in writing.

"Department" has the meaning set forth in the recitals of this Agreement.

"Design and Construction Standard Operating Procedures- Concessions Projects" or "C-SOP" means those certain design standards and policies prepared by the Department for the Concession areas at the Airport, as amended by the Department from time to time.

"Design Guidelines" means the concessions design guidelines promulgated by the Department to cover design of commercial spaces at the Airport, as amended from time to time, the current version of which attached hereto as Exhibit 14.

"Development Plan" means, as further described in Section 5.5, the Tenant's conceptual plans, budget and other design specifications for construction of its Improvements and its schedule for commencement of retail sales in each Retail Space. The Development Plan will also include Tenant's obligations, if any, to design and construct improvements or alterations to terminal space, as agreed by the parties. The Development Plan is attached hereto as Exhibit 3. The Development Plan may be updated from time to time without the need to amend the Agreement.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.11 for the Tenant's use of a centralized distribution and storage facility.

"Effective Date" has the meaning set forth in the recitals of this Agreement.

"Environmental Laws" means any federal, state, or local law, statute, ordinance, code, rule, permit, plan, regulation, license, authorization, order, or injunction which pertains to health, safety, any Hazardous Substance or Other Regulated Material, or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. Section 11001 et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.; the Gasoline Storage Act, 430 ILCS 15/0.01 et seq.; the Sewage and Waste Control Ordinance of the Metropolitan Water Reclamation District of Greater Chicago ("MWRD"); the Municipal Code of Chicago; and any other local,

state, or federal environmental statutes, and all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Event of Default" has the meaning set forth in Article 9.

"Food Court Common Area" means the space immediately adjacent to specific Retail Spaces where shared seating is provided to the public.

"Food Court Common Area Costs" means all costs incurred by the City in the repair and maintenance of the Food Court Common Area, including corridors and seating areas, and including, but not limited to costs of: painting; cleaning; trash and grease removal; operation, maintenance and repair and replacement of all lighting, electrical, plumbing, HVAC and other mechanical and utility systems; cleaning and retrieval of trays; water, power, gas and sewerage charges; wages and salaries (including employee benefits, unemployment, Social Security and Medicare, and any other payroll taxes) for employees performing operation, maintenance and repair of the Food Court Common Area; materials, equipment, supplies and services purchased for operation, maintenance and repair of Food Court Common Area; required permits and licenses; reasonable straight-line depreciation of movable equipment (including tables and chairs) used in the operation, maintenance or repair of the Food Court Common Area; rental of any equipment used in the operation, maintenance or repair of the Food Court Common Area; and all other direct costs and expenses properly changeable to the operation, maintenance or repair of the Food Court Common Area.

"Gross Revenues" or "gross receipts" means the total amount in dollars at the actual sales price of all receipts, whether for cash or on credit, that are derived from business conducted in, on or from the Leased Space, all mail or telephone orders received or filled at or from the Leased Space, all deposits not refunded to purchasers, all orders taken in and from the Leased Space, including catalog and on-line sales whether or not the orders are filled elsewhere, and receipts or sales by Tenant and any other person or persons doing business in or from the Leased Space, including receipts from promotions, advertising, and income derived from retail display advertising or any other use of the Leased Space by Tenant. Gross Revenues do not, however, include the following:

A. any sums collected and paid out by Tenant for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;

B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made in or from the Leased Space and included in Gross Revenue;

C. bona fide transfers of Products to or from the Leased Space to any other stores or warehouses of Tenant;

D. sales of Tenant's fixtures and store equipment not in the ordinary course of Tenant's business;

E. returns to shippers, suppliers or manufacturers;

F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business;

G. receipts from the sale of grease or other scrap material resulting from Tenant's operations at the Leased Space;

H. payments made to Tenant by subtenants for services provided by Tenant for the operation of the Leased Space; for the avoidance of doubt, this provision shall not relieve Tenant from its full obligation to pay to City the agreed Percentage Fee on all Gross Revenues of subtenants or rents paid by subtenants to Tenant;

I. the amount of any tips paid or given by customers to employees of Tenant; and

J. insurance proceeds received from the settlement of claims for loss of or damages to Improvements, Products, fixtures, trade fixtures and other Tenant personal property other than the proceeds of business interruption insurance.

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

"Hazardous Substance" has the meaning set forth in the Illinois Environmental Protection Act, 415 ILCS 5/3.215, as amended from time to time.

"Incubator Program Plan" means, as applicable, the Tenant's conceptual plans, budget, design specifications, outreach obligations, application and selection process, training and mentoring obligations, marketing plan, reporting obligations and other commitments related to Tenant's operation of its incubator program in each Retail Space specified in such plan. The Incubator Program Plan is attached hereto as Exhibit 15. The Incubator Program Plan may be updated from time to time without the need to amend the Agreement.

"Imposition" means real estate taxes, permit fees, license fees, and any other fee or charge not specified in this Agreement but otherwise payable by Tenant pursuant to a statute, ordinance, or regulation in order for Tenant to operate the Concession at the Airport.

"Improvements" means the improvements to be made to the Leased Space by Tenant that add or maintain value to the Leased Space, including fixtures and trade fixtures (but excluding trademarked or proprietary trade fixtures) and any other enhancements of a permanent

or temporary nature made to the Leased Space, other than the Shell and Core, as well as any other improvements specified in the Development Plan, including, as applicable, any obligations related to terminal space, so that the Leased Space and adjacent terminal space can be used for Concession operations. The Improvements must be described, along with a budget of Improvement Costs and depicted conceptually in the Development Plan and must conform to Tenant's response to the RFP.

"Improvement Costs" means the total amount paid by Tenant for categories of labor, services, materials and supplies used in the design, development, installation and construction of the Improvements. The minimum Improvement Costs must not be less than 95% of the budgeted Improvement Costs included in the approved Development Plan. Tenant's actual, reasonable Improvement Costs will be memorialized in the written Confirmation of DBO that will be attached to Exhibit 1 upon approval by the Commissioner. Whenever this Agreement refers to amortization of Improvement Costs for a Leased Space, such amortization will be calculated on a monthly straight-line basis over the term of the Agreement from the DBO of the Leased Space in question, and the amount being amortized will be the actual Improvement Costs for that Leased Space as memorialized in the Confirmation of DBO for that Leased Space.

"In-Line Site" means a Retail Space, other than a Kiosk, that may be permanent or temporary, typically operated as a walk-up, quick serve facility often with other Retail Spaces directly adjacent or in-line to the left or right or both.

"Kiosk" means a Retail Space that is a non-mobile, free-standing, permanent or temporary facility that is not affixed to the Terminals, whether completely free-standing or located against a wall.

"**Lease**" means the lease granted by the City to the Tenant in Section 4.1 to use and occupy the Leased Space in order to conduct and operate the Concession pursuant to the License.

"Leased Space" means the total Retail Space and Storage Space leased to Tenant under this Agreement, identified in Exhibit 1, which may be amended from time to time as space may be added to, deleted from, or relocated during the Term in accordance with the provisions of this Agreement. Leased Space shall be used for operation of the Concession and for no other purpose unless otherwise approved in writing by the Commissioner.

"Lease Year" means

A. for the initial Lease Year of this Agreement, a period beginning on the first Date of Beneficial Occupancy of any Retail Space and ending on December 31 of that calendar year, and

B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the Agreement is otherwise terminated.

"License" means the privilege granted to Tenant under this Agreement to operate the Concession at the Airport.

"License Fee" means the fee payable by Tenant for the License, equal to the greater of the "Percentage Fee" or "Minimum Annual Guarantee" as set forth in Section 7.1 and Exhibit 2.

"Marketing Fee" means the Tenant's contribution for promotions at the Airport, as set forth in Section 4.10.B.

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each Lease Year for the License Fee. If this Agreement covers more than one Retail Space, Exhibit 2 must prorate the MAG for the Agreement among the various Retail Spaces in proportion to their Gross Revenue volumes.

"O'Hare" has the meaning set forth in the recitals of this Agreement.

"Other Regulated Material" shall mean any Waste, Contaminant, or any other material not otherwise specifically listed or designated as a Hazardous Substance, that is or contains: petroleum, including crude oil or any fraction thereof, motor fuel, jet fuel, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas, asbestos or asbestos-containing materials in any form or condition, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material or by-product material, mold, materials known to contain per- and polyfluoroalkyl substances ("PFAS"), or is a hazard to the environment or to the health or safety of persons.

"Percentage Fee" means the product of the Percentage Fee Rate and Gross Revenues.

"Percentage Fee Rate(s)" has the meaning set forth in Exhibit 2.

"Products" means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Tenant is permitted to sell in its Retail Space and maintain in inventory in its Storage Space under the terms of this Agreement, as set forth by category or item in Exhibit 5. As set forth in Article 4, Tenant was selected by the City specifically to sell the Products identified in Exhibit 5 and is not permitted to sell any items or types of items not identified in Exhibit 5 or conduct any other business from the Leased Space unless otherwise agreed in writing by the Commissioner.

"Relocation Space" means space to which Tenant must relocate a Retail Space or Storage Space at the request of the Commissioner pursuant to Section 5.1.

"Rent" means all amounts payable by Tenant in connection with this Agreement, including but not limited to Base Rent, License Fees, Additional Rent and any liquidated damages specified in the Agreement for non-compliance with the City's requirements for Concession operations.

"Retail Space" means a Leased Space used by Tenant for the sale of Products, including any Additional Space or Relocation Space used for that purpose.

"Shell and Core" means those improvements to the Leased Space to be completed by the City as specified in Exhibit 4 and, with respect to Additional Space or Relocation Space, as may be agreed in writing by the Commissioner.

"Storage Space" means a Leased Space used by Tenant for storage of Products inventory to support a Retail Space. No Products may be sold to the public from Storage Space.

"Subcontractor" means all entities providing services and materials to Tenant necessary for its Concession operations or for the construction, repair, and maintenance of the Leased Space and Improvements. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Tenant.

"Subcontracts" means all oral or written agreements with Subcontractors.

"**Sustainable Airport Manual" or "SAM"** means the manual developed by the CDA regarding environmentally sustainable practices in the construction and operation of the Airports. The manual is available on the CDA website and may be updated from time to time by the CDA. Any amendment of the SAM by the Department during the Term of this Agreement will be binding on Tenant without need for amendment of this Agreement, provided that the amendment of SAM does not conflict with the other terms and conditions of this Agreement.

"Tenant" has the meaning set forth in the recitals of this Agreement.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the [Package specific—see Attachment 1 of the RFP] of the DBO of the final Retail Space to be developed in accordance with the Development Plan, excluding any Retail Space that is Additional Space or Relocation Space.

"Terminals" has the meaning set forth in the recitals of this Agreement.

"Third Party Use Agreement" has the meaning set forth in Section 4.4(I).

"Use Agreements" means those certain airport use and facility lease agreements between the City and the airlines operating out of the Airport regarding the use and operation of the Airport, as amended or executed from time to time.

"Value Pricing" has the meaning set forth in Section 4.3.

"Waste" includes those materials defined in the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. as waste and identified subcategories thereof, including but not limited to, construction or demolition debris, garbage, household waste, industrial process waste, landfill waste, landscape waste, municipal waste, pollution control waste, potentially infectious medical

waste, refuse, or special waste.

"Work" means everything necessary for the design, engineering, construction and installation of the Improvements; when referring to restoration of Improvements after Major Damage, it means everything necessary for the replacement, repair, rebuilding, or restoration of the Improvements.

ARTICLE 4 LICENSE, LEASE AND TENANT'S OPERATIONS

4.1 **Concession License and Lease**. As of the Effective Date, the City grants Tenant a License to operate a Concession at the Airport and, upon delivery of the Leased Space or portion thereof, a Lease to operate the Concession from the Leased Space so delivered. Tenant accepts the License and Lease from the City and assumes the duties of Tenant provided in this Agreement and in the Airport Concession Program Handbook. **TENANT ACKNOWLEDGES AND AGREES THAT ALL AMOUNTS PAYABLE TO THE CITY UNDER THIS AGREEMENT CONSTITUTE RENT AND THAT THIS AGREEMENT CREATES A TAXABLE LEASEHOLD UNDER THE ILLINOIS PROPERTY TAX CODE, 35 ILCS 200/1 et seq.** Tenant understands and agrees that both its License to operate a Concession and its right to occupy the Leased Space will terminate upon the expiration or earlier termination of this Agreement. If Tenant complies with the terms of this Agreement, Tenant will have the right of ingress to and egress from the Leased Space, for Tenant, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject, however, to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Tenant must not conduct its Concession operations in a manner that, in the judgment of the Commissioner:

A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of other tenants or licensees at the Airport;

B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;

C. would, or would be likely to, constitute a hazardous condition at the Airport;

D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Tenant pays the increase in insurance premiums occasioned by the operations; or

E. would involve any illegal purposes.

4.2 **No Subleases, Assignments or Other Uses**. Tenant understands and agrees that the Lease and the License granted under this Agreement are interdependent and that the locations of the Retail Spaces were determined by the City so that the Concession operated by Tenant is

an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of the Retail Space(s). Accordingly, Tenant acknowledges that the principal purpose of this Agreement is to provide Tenant a License to operate its Concession, without right of sublease or assignment, from the Leased Space and that any attempted sublease, assignment or other use of the Leased Space without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default.

4.3 **Products and Value Pricing**.

A. Products. Exhibit 5 to this Agreement constitutes the listing, by general category or specific item, of all Products that Tenant is allowed to sell from each Retail Space and the prices to be charged to the public. Those items of Products that Exhibit 5 indicates are mandatory, if any, must be offered for sale to the public by the Tenant as a part of the Airport's overall concession program. If Exhibit 5 is stated in general terms, upon request, Tenant must within 5 days provide the Commissioner with a complete list of all Products and prices. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing as reflected on Exhibit 5 on the Effective Date. Any changes to Exhibit 5 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 5 may be amended without need for formal amendment of this Agreement pursuant to Section 11.3.

B. Product Availability. Tenant must stock a sufficient amount of each item comprising its Products within the Retail Space so as to maximize Gross Revenues, subject to and consistent with Tenant's and the City's desire to accommodate the convenience and needs of the Airport's patrons. The Products must be new, fresh and of top quality. Tenant must store Products inventory in excess of the amount needed to stock displays out of sight of customers before restocking a display.

C. Value Pricing. The City has established a Value Pricing policy for all Tenants at the Airport. The policy generally requires Tenants to charge a price for a product or service at the Airport as the same price charged for the same product or service at similar stores in the City (each hereinafter referred to as a "Benchmark Store"). Benchmark Stores will be proposed by the Tenant subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Stores: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues. Benchmark Store exclusions may change throughout the Term as determined necessary by the City. If the Tenant or its subtenants currently operate the exact proposed concept at other locations in the City of Chicago, then these locations may be designated Benchmark Stores. Otherwise, Benchmark Stores will be selected based on stores that are comparable to the proposed concept. Notwithstanding the aforementioned exclusions, in the case of a news and gift store where Tenant or its subtenant currently operate a same-brand location in the City of Chicago, in a transportation center, and that location has its own customer walk-up street access, the City may consider allowing Tenant to propose that location as a Benchmark Store. In such a case, the Value Pricing policy prohibits mark-up of pricing higher than that of the applicable

Benchmark Store because that store already is in a transportation center.

D. Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Tenant and subtenants shall comply, to restrict overcharging and price gouging by subtenants due to their dominant market position and any exclusive rights granted, but in no event shall the Commissioner require prices lower than the established Value Pricing.

E. Reporting. Tenant must submit to the CMR, within 30 days after the end of each Lease Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Tenant with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Tenant and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Tenant, Tenant shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five days will constitute an Event of Default.

F. Airport Employee Discount. Tenant shall provide all employees at the Airport a discount on Products of at least 10%.

G. Damages. Tenant's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Tenant, as liquidated damages and not as a penalty, in amounts as outlined in Exhibit 13.

H. Quality of Products. At any time, the Commissioner or the CMR may review the quality of the Products then being offered for sale by Tenant and require reasonable improvements in quality of the Products or particular items or may require elimination of particular items that the Commissioner determines to raise safety or security issues. Following the Commissioner's written notice to Tenant, Tenant shall within 5 days rectify or modify the quality of the Products or particular items or eliminate the particular items, as applicable. Failure to comply within five days will constitute an Event of Default. Tenant's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Tenant, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 13.

4.4 **General Requirements for Operation of Concessions**. Tenant has the authority to manage and administer the Concession in the Leased Space, subject to the rights of the City under the law, in equity, and under this Agreement to direct Tenant in order to ensure that the Airport operates in the most effective and efficient way possible and to supervise the Tenant's performance. Tenant covenants to take all commercially reasonable measures to maintain,

develop, facilitate and increase the business of the Concession so as to maximize Gross Revenues. Failure to operate the concession as included in the Development Plan, attached as Exhibit 3, constitutes an Event of Default. Tenant further covenants that neither it nor any Affiliate of Tenant will divert or cause or allow to be diverted any business from the Leased Space to other locations not at the Airport that are operated by Tenant or any Affiliate of Tenant. A material condition of this Agreement is that Tenant must operate the Concession operations in accordance with the Airport Concession Program Handbook, the Sustainable Airport Manual, and the following general requirements:

A. Unless otherwise approved by the Commissioner in writing, Tenant must conduct business in its Retail Space only in the Tenant's trade names, that which is identified in its response to the RFP or other trade name approved by the Commissioner.

B. Due to the nature of the concession, Tenant is not authorized to install and operate any coin, card, token or otherwise activated vending machines as part of the Tenant's Development Plan unless otherwise approved by the Commissioner.

C. Tenant must conduct its Concession operations in a first-class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix 1 of the Airport Concession Program Handbook. The Commissioner or the CMR has the right to make reasonable objections to the appearance and condition of the Leased Space if they do not comply with the Physical Inspection Standards. Tenant must discontinue or remedy any non-compliant practice, appearance or condition within five days following receipt of a written notice by the Commissioner or CMR (or immediately upon receipt of such a notice if the Commissioner or CMR deems non-compliance hazardous or illegal). Tenant's failure to timely cure the non-compliance as required by the Commissioner or CMR would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. Accordingly, if Tenant fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the five-day cure period, Tenant must pay the City, as liquidated damages in connection with the loss of good will among visitors to the Terminals, and not as a penalty, as outlined in Exhibit 13 per Retail Space for each non-compliant practice, appearance or condition specified in the notice that remains uncured after the cure period.

D. Tenant must neither commit nor allow any nuisance, noise or waste in the Leased Space or annoy, disturb or be offensive to others in the Terminals. Tenant must employ all reasonable means to prevent or eliminate unusual, nauseating or objectionable smoke, gases, vapors or odors from emanating from the Leased Space. Tenant must employ all reasonable means to eliminate vibrations and to maintain the lowest possible sound level in the operation of the Concession.

E. Tenant must offer payment systems that are widely accepted in the industry for the sale of all Products. Tenant must offer a receipt, which may be virtual, with each purchase.

Failure to comply with this Section will constitute an Event of Default. Tenant's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, if Tenant is found to prohibit the acceptance of the above payment option, the City may assess, as liquidated damages and not as a penalty for non-compliance as further defined in Exhibit 13.

F. Tenant's Concession must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with PCI Standards in effect and related to the Concession, at such time, must be reported to the City within 24 hours of the Tenant's knowledge of such event.

Tenant's failure to be in compliance with the PCI Standards with respect to its Concession on numerous occurrences (more than one) shall be an Event of Default under this Agreement.

G. Tenant must not place or install any racks, stands, or trade fixtures directly on or over the boundaries of its Leased Space. Tenant must not use any space outside the Leased Space for sale, storage or any other undertaking, other than in connection with deliveries made in a prompt, timely and efficient manner.

H. In its capacity as Tenant under this Agreement, and not as an agent of the City, Tenant must manage the Concession operations and the Leased Space in accordance with this Agreement, in furtherance of which Tenant must, among other things:

(i) use reasonable efforts to remedy problems and issues raised by Airport patrons with respect to the operation of the Leased Space;

(ii) answer in writing all written customer complaints within 72 hours after receipt, furnishing a copy of the complaint and the answer to the Commissioner within that period; and,

(iii) furnish the Commissioner within 72 hours after their receipt copies of all written notices received by Tenant from any governmental authority or any Subcontractor with respect to any part of the Leased Space or any Subcontract.

If Tenant fails to timely respond to customer correspondence or governmental notices and furnish the requisite copies to the Commissioner, Tenant acknowledges that the City may suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess liquidated damages against Tenant, and not as a penalty: as outlined in Exhibit 13. Tenant's failure to perform either (A) or (B) for a period of 30 days or more will be grounds for the City declaring an Event of Default pursuant to Article IX, in which event Tenant will have no longer than 10 days to cure the Event of Default.

I. Tenant, or Tenant's subtenant approved pursuant to Section 4.2, shall at all times operate the Concession. To the extent Tenant utilizes a third party to operate the Concession, Tenant shall, at all times during the Term: (i) be licensed or permitted by such third party to

operate the concession, (ii) provide the City with copies of any agreements or other evidence the City may reasonably request demonstrating such arrangement ("Third Party Use Agreements"), (iii) comply in all material respects with the terms and conditions of Third Party Use Agreements, unless Tenant's compliance with such terms and conditions would cause Tenant to breach its obligations hereunder, (iv) not be in default under any Third Party Use Agreement, (v) notify the City in writing immediately upon notification by any party to a Third Party Use Agreement of Tenant's breach under such or termination of any Third Party Use Agreements. Failure to comply with this Section 4.4(I) shall be an Event of Default under this Agreement.

J. Tenant must maintain the Concession in accordance with the Design Guidelines at all times, except with the written approval of the Commissioner.

K. Tenant must honor all vouchers issued by airlines to passengers for use at airport concessions locations as a result of delayed or cancelled flights or other operational circumstances. It is the responsibility of Tenant to collect all amounts owed to Tenant from the airline that issued such voucher.

L. At the request of Commissioner, Tenant must participate in any mobile or virtual ordering and/or delivery platform in operation during the Term.

M. Tenant's Incubator Program Plan, if applicable and as approved by the Commissioner, is attached hereto as Exhibit 15. Tenant must operate an incubator program in accordance with and in the Retail Spaces specified in the Incubator Program Plan. Tenant's failure to operate an incubator program in accordance it's Incubator Program Plan shall constitute an Event of Default. Following the Commissioner's written notification to Tenant of such Event of Default and allowance of a reasonable opportunity to cure in accordance with Section 9.1 hereof, the City may exercise any and all remedies available to it under Section 9.2 hereof, including but not limited to termination of this Agreement with respect to the affected portion of the Leased Space and the re-leasing of such Leased Space.

4.5 **Hours of Operation**.

A. Tenant must begin conducting its Concession operations in each Retail Space on the Date of Beneficial Occupancy applicable to that Retail Space and continue them uninterrupted after that date during all required hours of operation. The Retail Space shall be open, at a minimum, from 5:30 a.m. until 10:30 p.m. daily, to serve the public seven (7) days per week and three hundred sixty-five (365) days per year; provided, however, the Commissioner may require the Tenant to expand service beyond these hours. From time to time, at the Commissioner's discretion, the Commissioner may require the Tenant to remain open later than standard operating hours, with enough staffing and inventory, at one or more Retail Spaces to accommodate delayed passengers or for other airport operating reasons. Concession may close periodically for restocking, cleaning and routine maintenance. Closure times must be during daily periods of lowest passenger traffic volumes at the Airport. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Lease shall

be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and Airport's flight schedules. The Retail Space must be open, as stated above, unless otherwise approved by the Commissioner or CMR in writing. The Tenant is required to allow access to the Retail Space, 24 hours per day, 365 days per year.

B. Except as otherwise permitted under this Agreement, if Tenant fails to operate its Concession from any portion of the Retail Space during all times that Tenant is required to do so under this Agreement and the failure continues for more than three days after the City gives Tenant notice, it is an Event of Default. In addition, Tenant acknowledges that failure to provide Concession services to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Tenant must pay the City as liquidated damages (and not as a penalty) in connection with such loss of goodwill the amounts as outlined in Exhibit 13 per Retail Space, beginning as of the time that the City first notifies Tenant that it is not operating the Concession in accordance with the time requirements of this Agreement. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Retail Space re-opens for business; (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Retail Space; and (iii) the date that the Commissioner receives possession of the affected portion of the Retail Space.

4.6 **Personnel**.

A. Staff.

(i) Tenant must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Tenant must maintain an adequate sales force so as to maximize Gross Revenues and use the utmost skill and diligence in the conduct of its Concession operations. A staff member for each concession location must be physically available during all hours of operation.

(ii) All employees of Tenant must at all times be clean, courteous, neat in appearance and helpful to the public, whether or not on duty. While on duty, Tenant's employees must wear Airport identification badges (and any other form(s) of identification that may be required by the Commissioner or CMR from time to time) and are required to wear uniforms in good taste, the color and style of which Tenant selects. Tenant may make the arrangements with its own employees as it considers appropriate regarding the purchase and maintenance of standard uniforms. The City is entitled at any time to direct Tenant to require any of its employees not properly attired to immediately conform to the requirements of this Section or leave the Leased Space. Tenant must not permit its employees to use any portion of the Terminal Common Spaces, including the public washrooms located there, for the changing of clothes or the storage of their personal effects, nor may Tenant permit its employees to loiter in the Common Areas of the

Terminals, including but not limited to the Food Court Common Area.

(iii) Tenant and its personnel must at all times participate and cooperate fully in all quality assurance programs that may be instituted by the Commissioner or CMR from time to time. Tenant must cause its personnel to attend all customer service training meetings and participate in such other programs as may be required by the Commissioner or CMR. An appropriate officer or management representative of Tenant must meet with the Commissioner or CMR as requested by the Commissioner or CMR to discuss matters relating to this Agreement, including merchandising and marketing plans. In addition, at the request of the Commissioner or CMR, an appropriate officer or management representative of Tenant must attend other meetings with the City, airlines, other users of the Terminals or any other parties designated by the Commissioner or CMR.

(iv) The Commissioner reserves the right to object to any of the personnel responsible for the day-to-day operation of the Concession. Upon receipt of such objection, Tenant must use its best efforts to resolve the cause for Commissioner's objection or replace the objectionable personnel with personnel satisfactory to the Commissioner.

(v) In the event that Tenant was not the existing tenant in the Leased Space prior to the Effective Date, Tenant and its subtenants, if any, will work cooperatively in attempting to retain existing concession employees working in the Leased Space. This will be accomplished by giving the existing concession employees working in the Lease Space prior to the Effective Date preferential interviews for jobs in the Leased Space during the term of this Agreement.

(vi) Tenant acknowledges that failure to comply with the provisions of this Section 4.6(A) may cause the City to suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess, as liquidated damages against Tenant, and not as a penalty, the amounts outlined in Exhibit 13.

B. General Manager. Tenant must designate a General Manager experienced in management and supervision who has sufficient authority and responsibility to administer and manage the Concession. The General Manager (or authorized representative) must be immediately available to the Department whenever any of the Retail Spaces are open. The base of operations of the General Manager must be at the Airport, and the General Manager must spend substantially all of his or her working hours at the Airport, unless the Commissioner approves in writing another arrangement. The General Manager is subject to removal at the direction of the Commissioner if the Commissioner reasonably determines, in the Commissioner's sole discretion that the General Manager is not performing up to standards consistent with the fulfillment of Tenant's obligations after providing Tenant notice.

C. Salaries. Salaries of all employees of Tenant and its Subcontractors performing services or Work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll

deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Tenant must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering Work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements of this subsection and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, the requirements of them.

4.7 **Operation and Maintenance**.

A. The City, at its sole cost and expense, will keep in good repair the Common Areas, including the roof, structures, foundations and central mechanical, plumbing and electrical systems in the Airport providing heating, ventilation, cooling, water, sewage and electrical service to the terminals, concourses, and other structures at the Airport related to the Concession. The City will provide, without separate charge to Tenant, heating, ventilating and cooling of the Common Areas. The Commissioner reserves the right to interrupt temporarily the heating, air cooling, ventilation, plumbing or electrical services furnished to the Common Areas, the Terminals or the Airport as a whole to make emergency repairs or for other reasonable purposes, and the Commissioner will restore the services as soon as reasonably possible. The City has no responsibility or liability for failure to supply heat, air cooling, ventilation, plumbing, electrical or any other service to the Leased Space, the Common Areas, the Terminal or the Airport, when prevented from doing so by laws, orders or regulations of any federal, state or local governmental requirement (including any requirement of any agency or department of the City) or as a result of the making of repairs or replacements, fire or other casualty, strikes, failure of the utility provider to provide service or due to any other matter not within the City's reasonable control. Tenant must provide all cleaning and janitorial services to the Leased Space. Tenant must clean, maintain and repair (including replacements, where necessary) the Leased Space and Improvements in first-class condition and repair during the entire Term.

(i) Tenant is responsible for pest control within the Leased Space by contracting with a professional pest control service to provide service on a regular basis or as needed, or at the Commissioner's election, the City or CMR may provide or contract for the pest control and charge Tenant a reasonable charge for the service. If the Commissioner so requires, Tenant must coordinate all pest control service with the City's or CMR's pest control contractor. Tenant must furnish the Commissioner and CMR a copy of its pest control contract and service records upon request.

(ii) Tenant must, at its own expense, keep the exhaust system, including all risers, piping and fans used in connection with the exhaust systems, whether located in or outside of the Leased Space, and all other pipes or ducts used by Tenant, including black iron duct, in good repair and so as to meet the highest standards of cleanliness, health, and safety, in a manner consistent with the operation of a first-class Concession and in accordance with all applicable laws, codes and regulations of any governmental authority having jurisdiction. Tenant must not

permit any grease to be discharged into the City's plumbing lines. If fixtures or equipment are installed in or attached to roof vents or other openings in the structure or to ducts that connect with the openings, Tenant must keep the ducts, vents and openings free from the accumulation of grease, dirt and other exhaust matter and must furnish and service any filters or other equipment necessary to prevent such accumulation. Tenant must keep the exhaust fan in good condition and repair so as to provide at least the air flow velocities required by applicable codes and regulations. Without limiting the foregoing, Tenant must clean black iron duct twice yearly, or more often as may be required by any local governmental codes, regulations or officials, insurance requirements or applicable industry standards, whichever is more restrictive.

(iii) Tenant must maintain all fire detection and fire suppression systems and mechanisms in accordance with all applicable laws, codes and the requirements of all applicable policies of insurance and insurance inspectors and of the City. Tenant must not cause or permit any damage to insulation and fire protection materials surrounding the black iron duct. In addition to Tenant's obligation to maintain utility lines in the Leased Space as set forth in Section 4.8 below, Tenant must install and maintain in good working order and in accordance with the rules and regulations of all insurers and applicable laws, codes, and regulations of any governmental authority, all fire extinguishing systems in the Leased Space.

(iv) Upon request, Tenant must provide CMR with monthly repair and maintenance reports detailing all repair and maintenance undertaken with respect to its Leased Space. In the event that such repair and maintenance reports indicate that Tenant is not complying with its repair and maintenance obligations, it shall be an Event of Default. In addition to any other remedies available to the City, if Tenant fails to undertake required repair or maintenance within 5 days after receiving notice from the Commissioner (or such shorter time as may be required due to health or safety reasons) the City may undertake the required repair or maintenance through a City contractor or its own forces and charge Tenant the reasonable cost thereof as Additional Rent.

(v) To the extent any City ordinance imposes a stricter standard than the requirements of this section, the stricter standard must govern. With respect to a Leased Space that has been designated to be relocated, if any, Tenant's obligations with respect to repair and maintenance will continue until such time as Tenant has completed the Improvements in the Relocation Space to which the affected Leased Space is being relocated.

(vi) Any damage to property of the Airport or property of other tenants arising out of Tenant's failure to perform its maintenance obligations is expressly deemed a "Loss" subject to Tenant's indemnification obligations under Section 8.2.

(vii) Tenant acknowledges that failure to comply with the provisions of this Section 4.7(A) may cause the City to suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess, as liquidated damages against Tenant, and not as a penalty, the amounts outlined in Exhibit 13.

B. Food Court Common Areas.

To the extent that any of Tenant's Retail Space is located adjacent to a Food Court Common Area, the following provisions apply to such Retail Space:

(i) Tenant has the non-exclusive right to use the Food Court Common Area, in common with other tenants and their customers, on the terms and conditions established by the City and as may be revised during the Term at the City's sole discretion. That use does not include the right to wait on customers in the Food Court Common Area. The City reserves the right to establish and enforce the policies for the Food Court Common Area and tenants whose customers use the Food Court Common Area that the City determines are in the best interest of the overall operation of the Food Court Common Area, so that the City may properly and efficiently operate and manage it as a whole. Tenant must comply with these policies.

(ii) Tenant must at all times in operating its business in the Retail Space abide by all rules and regulations applicable to tenants whose customers use the Food Court Common Area including those relating to: (a) the health and sanitary conditions of the Retail Space, the Food Court Common Area and the employees of Tenant; (b) standards and quality of Products, services, and merchandising as determined by the City; (c) customer relations; and (d) other matters as the City determines applicable with respect to the operation of the Food Court Common Area and the business conducted by Tenant and all other tenants whose customers use the Food Court Common Area.

(iii) The City will be responsible for the operation, repair and maintenance of the Food Court Common Area. The City, at the Commissioner's discretion, may charge a fee as Additional Rent to recoup Food Court Common Area Costs proportional to Tenant's use of such Food Court Common Area.

(iv) Neither the City nor any company, firm or individual operating, maintaining, managing or supervising the Food Court Common Area, nor any of their respective agents or employees, are or will be liable to Tenant or to any of Tenant's employees, agents, customers or invitees or anyone claiming through or under Tenant, for any damage, injuries, losses expenses, claims or causes of action because of any interruption or discontinuance at any time for any reason in furnishing services relating to operation, maintenance and repair of the Food Court Common Area, nor will any such interruption or discontinuance be deemed a disturbance of Tenant's use or possession of the Leased Space or any part of it; nor will any such interruption or discontinuance relieve Tenant from full performance of Tenant's obligations under this Agreement. Tenant is responsible for providing seating and chairs for Food Court Common Area directly adjacent to Tenant's Leased Space.

C. Common Area Maintenance Fee. To the extent Tenant's Development Plan requires Tenant to use common areas of the Airport for seating, queuing or other purposes, the Commissioner may require Tenant to pay a Common Area Maintenance Fee as Additional Rent for the maintenance of that area, proportional to its usage.

4.8 **Utilities**.

A. Tenant must pay for all utilities furnished to the Leased Space, to the extent separately metered. All utilities must be separately metered for usage within a Leased Space except to the extent that the Commissioner agrees otherwise in writing. Notwithstanding the foregoing, in the event that water/sewage is not separately metered, the City may charge Tenant for water/sewage based on a reasonable estimate of usage given the nature of the Concession.

B. In addition to payment for utility service, Tenant must maintain utility lines to the Leased Space as follows:

(i) where the utility lines, including gas, electrical, telephone, hot and cold water, fire sprinkler, gas, and sewer serve both the Leased Space and other areas of the Terminals, Tenant is only obligated to maintain those branch lines and facilities that exclusively serve the Leased Space; and

(ii) where such utility lines are entirely for the exclusive service of the Leased Space, Tenant is obligated to maintain the utility lines from the Leased Space up to the main entry point of the utility to the Terminal(s). Alternatively, the City may, at the Commissioner's sole discretion, maintain such utility lines and charge Tenant the reasonable cost of the maintenance.

(iii) Tenant must maintain all electrical cables, conduits, wiring, fire alarm systems, electrical panels and associated equipment located within and serving the Leased Space.

C. If, prior to the Date of Beneficial Occupancy for any portion of the Leased Space, the City determines that utility infrastructure (such as makeup air equipment, domestic water pipes, and sanitary waste lines) requires replacement or upgrading due to age or prior use of equipment, the Tenant may be required to perform the work and will in that case be reimbursed by the City through payment or rent credit. However, if the Tenant's Leased Space requires improvements or enhancements to the standard utilities provided by the City, such improvements or enhancements will be at the sole cost of the Tenant.

4.9 **Refuse Handling**.

A. Tenant, at its own cost and expense, must provide for the handling of all refuse, including trash, garbage, recycling and other waste created by its Concession operations and for their disposal at a centrally located collection area within the Airport designated by the Commissioner from time to time, unless otherwise directed by the Commissioner. Within its Leased Space, Tenant must provide a complete and proper arrangement for the adequate sanitary handling and disposal of trash, garbage, recycling and other refuse resulting from its Concession operations. Tenant must provide and use suitable covered metal receptacles for all trash, garbage, recycling and other refuse in accessible locations within the boundaries of each Leased Space. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Leased Space or the Common Areas is forbidden. The Commissioner reserves the right, from time to time, to establish time periods or schedules during which Tenant must remove refuse

from the Leased Space.

B. Tenant must comply with all present and future laws, orders and regulations and any rules and regulations promulgated by the Commissioner regarding the separation, sorting and recycling of garbage, refuse and trash, including but not limited to those policies, rules and regulations incorporated in the Airport Concessions Program Handbook and the Sustainable Airport Manual. Tenant must separate and appropriately dispose of recyclable and non- recyclable waste, including organic materials. Recyclable waste includes newspaper, unsoiled paper products, cardboard, plastic, aluminum and glass. Tenant is encouraged to use service goods made from recycled and recyclable materials. All recyclable waste will be disposed at the direction of the CDA. The CDA may also require sorting and disposal of compostable/organic wastes, including food scraps and soiled paper products. Tenants must therefore also provide for the separation of pre-consumer compostable\organic waste for composting. Tenants are expected to fully comply with CDA's waste recovery program by sorting, to the maximum extent possible, recyclable and compostable waste from that which will be sent to landfill.

C. Tenant acknowledges that any failure to comply with the provisions of this Section 4.9 may cause the City to suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess as liquidated damages against Tenant, and not as a penalty, the amounts outlined in Exhibit 13.

4.10 **Promotion**.

A. Signs and Advertising. Tenant may, at its own expense and subject to obtaining any necessary permits, install and operate necessary and appropriate identification signs in and on the Retail Space for its promotional use (identifying the Concession operations at the Retail Space in question or the Products sold there). All such signage (especially all signage visible from the Common Areas) must be in compliance with signage and other applicable criteria adopted by the Commissioner or other City agencies from time to time and subject to the prior written approval of the Commissioner as to the number, size, height, location and design (as applicable). Tenant must not install, affix, or display any signage outside the Retail Space except as permitted by the Department. Without the prior written consent of the Commissioner, Tenant and its Subcontractors must not distribute any advertising, promotional or informational pamphlets, circulars, brochures or similar materials at the Airport except within the Retail Space and except as are related to Tenant's Concession. Tenant acknowledges that any failure to comply with this Section 4.10(A) may cause the City to suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess, as liquidated damages against Tenant, and not as a penalty, the amounts outlined in Exhibit 13.

B. Marketing and Advertising Fund. The Department operates a marketing fund ("**Fund")** for the purpose of financing a program for advertising and promoting Concessions at the Airport. The Program may include advertising, media placements, special events, promotional

events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from the Tenant and other tenants at the Airport. Tenant will contribute an amount of one-quarter of one percent (0.25%) of Gross Revenues per Lease Year to the Fund. During the Term, upon written notice to Tenant by the Commissioner and without need to amend this Agreement, the City may increase the required contribution to a maximum of one-half of one percent (0.5%) of Gross Revenues per Lease Year. All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Tenant shall make its contributions to the Fund monthly in arrears concurrently with its Rent payment under this Agreement. The City may, but is not required to, contribute to the Fund. Tenant has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

4.11 **Distribution and Storage; Deliveries**.

A. It is necessary, due to the number of Concession tenants in the Airport, that the Commissioner protect the Common Areas and the Terminal curb front for the flow of airline passengers. Therefore, Concession deliveries must be made only within the times and at the locations authorized by the Commissioner or the Commissioner's designated representative and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area (**"AOA"**) must be made by vehicles and drivers qualified and permitted to drive over AOA roadways.

B. O'Hare. There is currently no central distribution and storage facility at O'Hare; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Tenant, the Commissioner may require Tenant to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third-party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party contractor selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Tenant must pay the City, or the third-party operator, Tenant's proportional share of the cost for deliveries to and distribution from the facility ("**Distribution Fee**") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and will be considered to be Additional Rent.

C. Tenant acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at either Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

4.12 **Certain Rights Reserved By the City**.

A. Except as expressly provided otherwise in this Agreement, the City has the rights set forth below, each of which the City may exercise with notice to Tenant and without liability to Tenant for damage or injury to property, person or business on account of exercising them; the City's exercise of any such rights is not deemed to constitute a breach of this Agreement or a disturbance of Tenant's use or possession of or Lease to the Leased Space; the City's exercise does not give rise to any claim, including for set-off or abatement of Rent; the City's exercise also does not relieve Tenant of any obligation to pay all Rent when due. The rights include the rights to:

(i) Install, affix and maintain any and all signs on the exterior and on the interior of the Terminals;

(ii) Decorate or to make repairs, inspections, alterations, additions, or improvements, whether structural or otherwise, in and about the Terminals, or any part of them, and for such purposes to enter upon the Leased Space, and during the continuance of any of the work, to temporarily close doors, entryways, public space and corridors in the Terminals, and to interrupt or temporarily suspend services or use of facilities, all without affecting any of Tenant's obligations under this Agreement, so long as the Leased Space is reasonably accessible and usable;

(iii) Upon request, require Tenant to furnish the Department with copies of door keys for the entry doors of the Leased Space, where applicable, and to retain them at all times, and to use in appropriate instances, keys, including master keys and passkeys, to all doors within and into the Leased Space, but the keys will at all times be kept under adequate and appropriate security by the Department. Tenant must not change any locks, nor affix locks on doors without the prior written consent of the Commissioner. Notwithstanding the provisions for the Department's access to the Leased Space, Tenant releases the City from all responsibility arising out of theft, robbery, pilferage and personal assault unless the same results from the City's gross negligence or willful misconduct. Upon the expiration of the Term of this Agreement or Tenant's right to possession of the Leased Space, Tenant must return all keys to the Concession Management Representative and must disclose the combination of any safes, cabinets or vaults left in the Leased Space;

(iv) Approve the weight, size and location of safes, vaults and other heavy equipment and articles in and about the Leased Space and the Terminals so as not to exceed the legal load per square foot designated by the structural engineers for the Airport, and to require all such items and furniture and similar items to be moved into or out of the Terminals and the Leased Space only at the times and in the manner as the Commissioner directs in writing. Tenant must not install or operate machinery, or any mechanical devices of a nature not directly related to Tenant's ordinary use of the Leased Space without the prior written consent of the Commissioner. Movements of Tenant property into or out of the Terminals or the Leased Space and within the Terminals are entirely at the risk and responsibility of Tenant, and the Commissioner reserves the right to require permits before allowing any property to be moved into or out of the Terminals or the Leased Space;

(v) Establish controls for the purpose of regulating all property and packages, both personal and otherwise, to be moved into or out of the Terminals and the Leased Space;

(vi) Regulate delivery and service of supplies and the usage of the apron area, loading docks, receiving areas and freight elevators and designate the times within which, and the locations at which, deliveries may be made to or by Tenant;

(vii) Show the Leased Space to prospective Tenants and subtenants at reasonable times and, if vacated or abandoned, prepare the Leased Space for re-occupancy;

(viii) Erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances to them, in and through the Leased Space at reasonable locations;

(ix) Enter the Leased Space for the purpose of periodic inspection for fire protection, maintenance and compliance with the terms of this Agreement, including but not limited to the Airport Concession Handbook, and exercise any rights granted to City or retained by City in this Agreement; except in the case of emergency, however, the right must be exercised upon reasonable prior notice to Tenant and with an opportunity for Tenant to have an employee or agent present;

(x) Grant to any person the right to conduct any business or render any service in or to the Terminals or the Airport;

(xi) Promulgate from time-to-time rules and regulations regarding the operations at the Airport; and

(xii) Maintain newspaper vending machines at any location in the Airport.

B. If Tenant is required to perform any sprinkler Work, City reserves the right to perform the Work and charge the Tenant for the cost of the sprinkler Work and specify charges as Additional Rent under the Agreement or to approve Tenant's proposed sprinkler contractor, at the Commissioner's sole option. If any sprinkler work requires a temporary shut-down and/or drainage of the sprinkler system or portion thereof in the Terminal, Tenant must pay an up-front fee of $500 per occurrence in the form of a certified check or money order.

ARTICLE 5 LEASED SPACE AND IMPROVEMENTS

5.1 **Leased Space**. As provided in Section 4.1, the City grants Tenant the right to use the Leased Space identified in Exhibit 1, or portions thereof, from the date of delivery of each portion of the Leased Space through the remainder of the Term of this Agreement for the operation of the Concession, except as otherwise provided for herein. Exhibit 1 may be amended by agreement of the Tenant and the Commissioner from time to time to reflect changes in Leased Space, including but not limited to any Additional Space or Relocation Space. As of the Effective Date, all square footage identified in Exhibit 1 is approximate, and is subject to final correction

in accordance with field measurements to be taken after completion of the Improvements. All such measurements relating to the Leased Space will be made to and from the "lease lines" as identified on Exhibit 1. Tenant must confine all of its Concession operations to its Leased Space. Any conduct of Concession operations outside of Tenant's Leased Space is an Event of Default.

A. Retail Space. The Leased Space includes the Retail Space identified in Exhibit 1. Retail Space is to be used for the sale of Products at retail to the public.

B. Storage Space. The Leased Space includes the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies for use in the Retail Space. It may be used for other purposes relating to the Concession with the consent of the Commissioner, but not as a point of retail sale of Products. If the Commissioner determines that Tenant is using Storage Space for purposes unrelated to the Concession, the Commissioner may unilaterally delete the Storage Space from the Leased Space. If the Commissioner determines that the size of the Storage Space exceeds the needs of the Tenant, the Commissioner may unilaterally reduce the size of the Storage Space.

C. Additional Space.

(i) During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Tenant's Concession operations. In such event, the Commissioner will send written notice to Tenant to advise Tenant of the following:

a. size and location of the Additional Space being offered, if any;

b. whether the Additional Space is being offered as Retail Space or Storage Space; and

c. the City's Shell and Core obligations and Tenant's Improvement obligations for the Additional Space.

Within 30 days after receiving the notice from the Commissioner, Tenant must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space is Retail Space, the proposed Improvements and the amount by which Tenant proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Tenant to the Commissioner that Tenant accepts the Additional Space and, if the Additional Space is Retail Space, acceptance by the Commissioner of the proposed Improvements and increase in the Minimum Annual Guarantee, the square footage will be added to the Retail Space or Storage Space, as applicable, under this Agreement and Exhibits 1 and 2 modified accordingly. Upon notification from Tenant to the Commissioner that it rejects the Additional Space or if Tenant fails to notify the Commissioner within 30 days that it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(ii) Nothing in (i) above requires the Commissioner to offer any Additional Space to Tenant or limits or restricts the Commissioner's or the City's right to enter into any Concession agreement with any third party for such space. **Additional Space, if any, offered to Tenant is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer**

such Additional Space to Tenant is at the Commissioner's sole and absolute discretion. TENANT HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE.

(iii) The Commissioner reserves the right to limit the maximum aggregate amount of Retail Space that may be offered to a Tenant as Additional Space.

D. Relocation Space. The Commissioner may at any time during the Term require Tenant to relocate all or portion of the Leased Space to another location within the Airport and terminate the Lease with respect to the Leased Space being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event:

(i) The Commissioner will notify Tenant in writing within a reasonable period of time prior to the relocation of all or part of the Leased Space. Such notice will be not less than 90 days in advance of the relocation but, in any event, notice is not required more than 180 days in advance.

(ii) If a Retail Space is being relocated and the Relocation Space has, in Tenant's reasonable business judgment, diminished size, visibility, and/or exposure to passenger traffic in comparison to the Retail Space being vacated, Tenant may so notify the Commissioner in writing no later than 15 days after Tenant receives the Commissioner's notice. Such notice must detail with reasonable specificity why Tenant believes that the Relocation Space is not comparable to the Retail Space being vacated and the projected adverse impact on Tenant's sales. Tenant and Commissioner may thereafter negotiate an adjustment in the Percentage Fee and/or the Minimum Annual Guarantee for the Relocation Space to reflect the differences in size, visibility, and/or passenger traffic. If the Tenant and Commissioner fail to agree on such an adjustment or if Tenant otherwise rejects the Relocation Space, then the Lease for the Retail Space being vacated will terminate on the date for the relocation set forth in the Commissioner's notice, and the Minimum Annual Guarantee as of such date will be adjusted in proportion to the percentage of Tenant's Gross Revenues from prior Lease Year that were generated at the Retail Space being vacated. Further, if the Lease of the Retail Space being vacated is terminated, Tenant is entitled to a credit, equal to the unamortized portion of Tenant's actual Improvement Costs for the Retail Space being vacated (but excluding any Improvement Costs for Tenant personal property or any portion of the Improvements that can be moved and used by Tenant elsewhere), against Rent due and owing to the City from Tenant until the full amount of the credit has been applied against Rent.

(iii) Except when Tenant rejects Relocation Space pursuant to (ii) above, the City is responsible for costs incurred in the relocation or replication of the Improvements in the Leased Space being vacated, including the cost of moving Tenant's equipment and inventory and the cost of constructing replacement Improvements comparable to the condition of the Improvements in the Leased Space being vacated as of the date of relocation, to the extent comparable Improvements do not already exist in the Relocation Space. In the case of a relocation, Tenant must promptly vacate the portion of the Leased Space required to be vacated and as to which this Agreement is being terminated and return the portion of the Leased Space in as good or better condition as existed as of the date that the City gave Tenant possession of the Leased Space being vacated, unless the Commissioner otherwise agrees in writing. The City will endeavor not to

require Tenant to move from the Leased Space being vacated to the Relocation Space before Work on Improvements in the Relocation Space is completed, but the Leased Space being vacated may be needed for other Airport purposes prior to the completion of Improvements in the Relocation Space. Because the City is replacing Improvements in kind, Tenant is not entitled to any credit for unamortized Improvement Costs for the Leased Space being vacated, and the unamortized Improvement Costs for the Leased Space being vacated will deemed to be the unamortized Improvement Costs for the Relocation Space and continue to be amortized on the same schedule as the original Leased Space.

5.2 **Title to Property in the Leased Space**. Tenant shall retain title and ownership to all Products and other Tenant personal property and proprietary trade fixtures in the Leased Space, except in the event of deemed abandonment, as provided in Section 6.3. The City owns all other property in the Leased Space, including the Shell and Core and, upon completion, Tenant Improvements.

5.3 **Shell and Core**. The City is responsible for providing Shell and Core, if any are specified in Exhibit 4, for the Leased Space. The City makes no warranty, either express or implied, as to the design or condition of the Leased Space, including the Shell and Core, or the suitability of the Leased Space, including the Shell and Core, for the Tenant's purposes or needs. The City is not responsible for any patent or latent defect, and Tenant must not, under any circumstances, withhold any amounts payable to the City under this Agreement on account of any defect in the Leased Space, including the Shell and Core; if feasible, however, the City will assign to Tenant any warranties obtained from the City's contractor for the Shell and Core and/or the right to enforce City's rights under its contract for the Shell and Core. After the City delivers the Shell and Core to Tenant, Tenant must immediately notify the Commissioner of any defects in the Shell and Core.

5.4 **Tenant's Improvement Obligations**.

A. Retail Space and Storage Space. Unless otherwise agreed in writing by the Commissioner, Tenant must complete, or cause to be completed, the Improvements as described in the Development Plan. Improvements shall be at Tenant's sole cost and expense and must be completed on or before the Date of Beneficial Occupancy set forth for each portion of the Leased Space in accordance with the schedule set forth in the Development Plan, subject to Section 11.20, "Force Majeure". Failure to achieve DBO for the Improvements in accordance with the schedule in the Development Plan will result in liquidated damages pursuant to Section 5.5(I).

B. Additional Space. Tenant must complete or cause to be completed, at Tenant's sole cost and expense, the Improvements for each Additional Space approved by the Commissioner by the proposed Date of Beneficial Occupancy applicable to each such Additional Space, at a total investment in Improvement Costs for each permanent Additional Space of at least 95% of the budget approved by the Commissioner.

C. Temporary Relocation Space and Additional Space. The Commissioner may require Tenant to operate the Concession, prior to the Date of Beneficial Occupancy applicable to any Relocation Space and Additional Space, from a temporary Relocation Space, at City's sole cost and expense. If approved by the Commissioner, Tenant may use temporary or used

fixtures, trade fixtures and equipment and is not required to install Improvements except to the extent necessary to make the temporary Relocation Space or Additional Space useable.

D. Improvement Costs. Only Improvement Costs of the types set forth in the budget in the Development Plan are deemed to be validly incurred Improvement Costs for purposes of this Agreement. Tenant must provide the Commissioner with a statement certified by Tenant, setting forth the aggregate amount of the Improvement Costs expended by Tenant for each Leased Space, with such detail as may be reasonably requested by the Commissioner. The certified statement must be submitted at the same time as the "as-built" drawings for the Leased Space. Tenant must make available to the Commissioner, at the Commissioner's request, receipted invoices for labor and materials covering all Improvement Costs. The Commissioner has the right to audit the Improvement Costs. If there is a discrepancy of 5% or more, the cost of the audit must be paid promptly by Tenant upon request. If the Tenant's actual Improvement Costs for any portion of the Leased Space are less than 95% of the amount set forth in the Development Plan for said portion of the Leased Space, Tenant must, within 30 days after the date of completion of the Work or the Date of Beneficial Occupancy, whichever is earlier, pay the City the difference between 95% of the amount set forth in the Development Plan and the actual Improvement Cost for said portion of the Leased Space. The actual Improvement Costs, as approved by the Commissioner, will be memorialized in the confirmation of DBO for the Leased Space in question and attached to Exhibit 1.

5.5 **Work Requirements**.

A. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF WORK UNDER THIS AGREEMENT.

B. Compliance with Standards. Tenant must comply in its design, construction, use, occupancy and operation of the Leased Space, at its own cost, with:

(i) all regulations and directives now or later promulgated by the United States Federal Aviation Administration (**"FAA"**) or Transportation Security Administration (**"TSA"**) pertaining to airport security, as such regulations and directives may be amended or modified from time to time during the Term of this Agreement;

(ii) all federal, State of Illinois, and City laws, rules, regulations and ordinances, including all building, zoning and health codes and all Environmental Laws; and

(iii) the Design and Construction Standard Operating Procedures- Concessions Projects ("C-SOP"), the Design Guidelines (except as otherwise approved by the Commissioner in writing), the Airport Concession Program Handbook, and the Sustainable Airport Manual or demonstrate best efforts to comply with the Sustainable Airport Manual (the requirements set forth in this Section 5.5(B)(iii), collectively, the **"Concessions Standards"**).

Tenant must complete or cause to be completed all Improvements in accordance with all rules, regulations and standards, including the Concessions Standards, and the approved Construction Documents (as defined below) for any Improvements. If there is a conflict between work requirements stated in this Agreement and those set forth in the Concessions Standards, the Commissioner has the sole discretion to determine which prevails. No construction must take

place until the Commissioner has approved the Construction Documents.

Tenant must provide for any supplemental heating, cooling and exhaust facilities that Tenant may require to properly heat, cool, ventilate and exhaust air in the Leased Space. All such supplemental facilities must be designed and installed in accordance with the Concessions Standards and applicable building codes and must be approved by the Commissioner prior to installation. If at any time the Tenant's supplemental heating, cooling and exhaust facilities fail to comply with the design and operational standards set forth in the Concessions Standards, Tenant must, on notice from the City, cause repairs to be made so that Tenant is in compliance with this requirement.

In addition to the requirements set forth in the Concessions Standards, Tenant acknowledges the City's goal to incorporate environmentally sustainable design in building, infrastructure, and tenant improvements at the Airport. Accordingly, Tenant must comply with the requirements of the Sustainable Airport Manual. Further, Tenant agrees to use best efforts to incorporate sustainable design practices in the development and build out of the Leased Space, to engage a LEED® (Leadership in Energy and Environmental Design) accredited professional on its architectural team, to create an operational plan that incorporates sustainable practices in all aspects of the daily operation of the Leased Space.

C. Development Plan. Tenant's Development Plan, as approved by the Commissioner, is attached hereto as Exhibit 3. It describes and depicts the Tenant's thematic concept for the Retail Space (including storefront design images, as appropriate), floor plan(s) of the Retail Space, its plan and schedule for implementing the Improvements and commencing Concession operations in the Leased Space, temporary facilities that may be necessary to meet the requirements of this Agreement, and its other submission requirements as set forth in the Concessions Standards. The Development Plan must include the anticipated Date of Beneficial Occupancy of each Retail Space, the budgeted Improvement Costs for each Retail Space, and the dates by which City must complete the Shell and Core and the Delivery Date necessary in order to achieve the anticipated DBO for each Retail Space. If a Development Plan is not submitted to the satisfaction of the City within 180 days of the Effective Date of this Agreement, the City may assess liquidated damages of $500/day until a Development Plan satisfactory to the City is submitted or take other action including termination of this Agreement without compensation to the Tenant.

D. 30, 60, 90 and 100 Percent Design Phase. Tenant must submit to the Commissioner its proposed 30, 60, 90, 100 Percent design drawings and specifications prepared as required under the C-SOP. The C-SOP outlines the timing and expectations for submissions at each percentage of the design phase. The C-SOP also provides the timing of the review by the Commissioner. Tenant must adhere to the time required to respond to the Commissioner's comments as outlined in the C-SOP. If Tenant fails to provide acceptable designs, after 5 attempts, an Event of Default can be declared by the Commissioner.

E. Start of Construction. For each portion of the Leased Space, within 10 days after the latest of occur of: 1) the date the City delivers to Tenant possession of said portion of the Leased Space, 2) the date Tenant has obtained applicable building permits for said portion of

the Leased Space, and 3) the date of commencement of construction set forth in the Development Plan, Tenant must begin construction of the Improvements under and consistent with the approved Construction Documents, in a diligent, first-class and workmanlike manner. Commissioner may require Tenant and its Subcontractors to meet with the Department's construction manager and Concessions Management Representative prior to starting construction. Among other requirements, the Improvements:

(i) Must conform with all architectural, fire, safety, zoning and electrical codes and all federal, State, City and other local laws, regulations and ordinances pertaining to them, including the ADA, and all Airport standards, procedures and regulations.

(ii) Must be free and clear of any mechanics' or materialmen's liens or similar liens or encumbrances.

(iii) Except as otherwise provided in this Agreement, must be completed entirely at Tenant's cost and expense and in accordance with the requirements of this Agreement including, but not limited to, the requirements and procedures set forth in the Concessions Standards.

(iv) Upon the request of the Commissioner, Tenant must purchase and install a security camera and connect the camera feed into a junction box at a location to be determined by the Commissioner. Tenant will permit the Commissioner to connect the security camera to the Airport security system.

Approval of the Construction Documents by the Commissioner does not constitute the Commissioner's or the City's representation or warranty as to their conformity with any architectural, fire, safety, zoning, electrical or building code, and responsibility therefore at all times remains with Tenant. Tenant must not permit its design and construction Subcontractors to make any modifications to base building systems without prior written consent of the Commissioner.

F. Change Order Review. Tenant must cause all Work to be performed in a first class, good and workmanlike manner and in accordance with the Construction Documents. Tenant may request in writing that change orders relating to the Work be responded to by the City, and the City will so respond within 10 days, unless a response within 10 days is unreasonable in the circumstances, in which case the response period will be as reasonably determined by the City but in no event longer than 20 days. At all times during the Work, Tenant must have on file with the Commissioner and on the construction site for inspection by the Commissioner, a copy of the approved Construction Documents. Tenant must immediately begin to reconstruct or replace and diligently pursue to completion, at its sole cost and expense, before or after completion of the Work, any Work that is not performed in accordance with the Construction Documents as approved by the Commissioner.

G. Inspection of Improvements in Progress. The Department has the right to enter upon the Leased Space for the purposes of inspecting and recording the Improvements in progress, ensuring that Tenant's construction complies with the Construction Documents, and rejecting any such construction that does not so conform.

H. Notice of Substantial Completion and Inspection. At least 10 days prior to

anticipated substantial completion of the construction of a Leased Space, Tenant must deliver to the Commissioner a "**notice of substantial completion**" in order for the Commissioner to schedule a representative to inspect the Improvements. On the date specified in the notice of substantial completion, the Department will perform a final inspection of the Improvements for compliance with the Construction Documents for the Improvements, and will, not later than 10 days after inspection, provide a punch list to Tenant describing in sufficient detail any discrepancies between the Improvements and the Construction Documents. Tenant must cause all discrepancies (other than those approved by the Commissioner as variances) to be reconstructed, replaced or repaired in substantial accordance with the Construction Documents. Within 10 days after the date of substantial completion and prior to commencing Concession operations in Leased Space, Tenant must provide, as evidence of the substantial completion of the Work, copies of any and all Certificates of Occupancy and other approvals, if any, necessary for Tenant to occupy the portion of the Leased Space for its intended use. Tenant shall not commence Concession operations in the Leased Space until such documents have been received by the Commissioner and until authorized to do so by the Commissioner.

I. Timeliness - Punch Lists; Opening for Business. Tenant acknowledges that if it fails to comply with Construction Document requirements (including all tasks necessary to satisfy them, such as, but not limited to, applying at the earliest possible time for and diligently pursuing all necessary building permits), the delay may cause the City to suffer substantial damages, including loss of goodwill, that might be difficult to ascertain or prove. For that reason, but subject to extensions that may be approved by the Commissioner, or day-to-day extensions for delays caused by a force majeure event pursuant to Section 11.20, if Tenant has not caused the Improvements to be substantially completed in accordance with the Construction Documents and Retail Space to be open to the public for business not later than the scheduled Date of Beneficial Occupancy in the Development Plan:

(i) Tenant must pay the City liquidated damages at the rate of $500 per day for each day from and after the Date of Beneficial Occupancy, until the date on which the Retail Space actually opens to the public for business; and

(ii) Tenant must cooperate with the Commissioner in providing the interim Concession operations from Kiosks or other temporary locations, as the Commissioner may reasonably require, to serve the patrons of the Terminals until the applicable Improvements have been completed and the Retail Space is open to the public for business; and

(iii) if, for any reason, Tenant fails to substantially complete the Improvements in accordance with the approved Construction Documents relating to them and open the Retail Space to the public for business within 30 days after the Date of Beneficial Occupancy, the failure is an Event of Default, and the City has the right to exercise any and all remedies under this Agreement, at law or in equity; and further,

(iv) if Tenant is permitted to open for business in accordance with the schedule in the Construction Documents but any punch list items are not completed within 30 days following the date on which Tenant opens to the public for business, the Commissioner will assess liquidated damages against Tenant at the rate of $200 per day per punch list item not timely

completed; and

(v) if Tenant is permitted to open for business but any punch list items are not completed within 60 days following the date on which Tenant opens to the public for business, the City reserves the right, at the Commissioner's sole discretion, to either:

a. complete the punch list Work at the City's cost and bill the Tenant for this Work, in which case the charges are considered Additional Rent; or

b. close the affected Retail Space until all outstanding punch list items are completed.

J. Post-construction Documentation. Tenant must submit a complete set of **"as-built" drawings** and documentation as outlined in the C-SOP to the Commissioner within 30 days after the date the Commissioner authorizes Tenant to begin Concession operations in the Leased Space. The as-built drawings and documentation are and become the property of the City, except to the extent of any intellectual property reflecting Tenant's trademarks, trade names or trade dress contained in them.

K. Mechanics' Liens. Tenant must not permit any mechanics' lien for labor or materials furnished or alleged to have been furnished to it to attach to any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement in any way relating to any work performed by or at the direction of Tenant. Upon making payments to Subcontractors, Tenant must obtain from each Subcontractor a waiver of mechanics' liens against any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement arising out of any Work done by the Subcontractor and each and every of the Subcontractor's materialmen and workmen. If, nonetheless, any such mechanics' lien is filed upon any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement, Tenant must indemnify, protect, defend and save harmless the City against any loss, liability or expense whatsoever by reason of the mechanic's lien and must promptly and diligently proceed with or defend, at its own expense, the action or proceedings as may be necessary to remove the lien. Tenant must deliver notice to the Commissioner of any such lien or claim within 15 days after Tenant has knowledge of it. Tenant may permit the mechanics to remain undischarged and unsatisfied during the period of the contest and appeal; provided that, upon request by the Commissioner, Tenant must post a bond with the City equal to 150% of the amount of the lien. If the lien is stayed and the stay later expires or if by nonpayment of any lien any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement will be, or is claimed to be, subject to loss or forfeiture, then Tenant must immediately pay and cause to be satisfied and discharged the lien. If Tenant fails to do so, the Commissioner may, in his or her sole discretion, draw on the bond and make such payment. If the Commissioner has not requested a bond, then the Commissioner may, in the Commissioner's sole discretion, make such payment out of legally available Airport funds and, in such event, the amount paid shall immediately be payable by Tenant as Additional Rent. Failure to post a bond when requested by the Commissioner or pay such Additional Rent shall be an Event of Default.

L. Annual Maintenance Plan. In lieu of a mid-term refurbishment requirement, Tenant must make regular improvements to each Retail Space sufficient to ensure each Retail

Space is up-to-date, attractive and is optimizing customer appeal and operational efficiency. Tenant must submit for approval by the Commissioner an annual maintenance plan on the yearly anniversary of the Date of Beneficial Occupancy, or such other date as determined by the Commissioner. Failure to obtain approval of an annual maintenance plan may constitute an Event of Default.

5.6 **Damage or Destruction of Improvements**.

A. Insubstantial Damage. If Improvements to any Leased Space are damaged, in whole or in part, by fire or casualty, and there is no Major Damage (as defined below) to the portion of the Terminals served by the damaged Improvements, then the City will repair any damage to the Shell and Core at the City's expense, and Tenant must repair the damage to the Improvements as soon as reasonably possible (after completion of the Shell and Core) at Tenant's expense.

B. Major Damage.

(i) **"Major Damage"** means any damage or destruction that, based on reasonable estimates made by the Department within 60 days after the occurrence of the damage or destruction, in order to be repaired to the condition existing before the damage or destruction:

a. would cost, with respect to the Improvements, in excess of 50% of the replacement cost value of all Improvements; and

b. would cost, with respect to the Shell and Core, in excess of 50% of the replacement cost of the Shell and Core, or would require, in the sole judgment of the Commissioner, more than nine months to complete.

(ii) If any part of the Terminals suffers Major Damage, whether or not including any portion of the Leased Space located in them, in whole or in part by fire or other casualty, the Commissioner has the right, for a period of six months starting on the date of the occurrence, to elect not to repair the Major Damage as otherwise required under this section, by giving written notice of the election to Tenant. If the Commissioner notifies Tenant of the Commissioner's election not to repair the Major Damage, this Agreement will terminate as to the affected Leased Space effective as of the date of the Major Damage, all Rent due under this Agreement will be prorated to the date of termination, and Tenant must surrender the affected portion of the Leased Space to the City.

(iii) If any portion of the Leased Space suffers Major Damage, and if after the occurrence of the damage the Agreement is not terminated, the Commissioner and the Airport architect will estimate the cost of restoration and the length of time that will be required to repair the damage and will notify Tenant of the estimate. If the damage can be repaired and the Improvements restored before the Term expires, then Tenant must repair the damage and restore the Improvements. If repair and restoration cannot be substantially completed before the Term expires, then this Agreement terminates as to the portion of the Leased Space as of the date of the Major Damage.

(iv) If this Agreement is not terminated in accordance with paragraphs (B) (ii) or (iii) and a casualty has damaged or destroyed any portion of the Shell and Core involving the Leased

Space, the City will restore the Shell and Core to the condition existing on the Delivery Date, according to the original as-built plans and specifications. Upon completion of the City's Shell and Core restoration work, if any, Tenant must proceed to rebuild the Improvements as nearly as possible to the character of Improvements existing immediately before the occurrence.

(v) Before beginning to replace, repair, rebuild or restore Improvements, Tenant must deliver to the Commissioner a report of an independent consultant acceptable to the Commissioner setting forth:

a. an estimate of the total cost of the Work;

b. the estimated date upon which the Work will be substantially completed; and

c. a statement to the effect that insurance proceeds are projected to be sufficient to pay the costs of the Work.

(vi) The Commissioner will use commercially reasonable efforts to provide suitable temporary Relocation Space during the period of restoration subject to the reasonable approval of Tenant. Tenant must relocate the Concession operations to the temporary Relocation Space, and the costs associated with any such relocation, including moving expenses and the cost of reconstructing the Improvements in the temporary Relocation Space, must be borne by Tenant.

C. Tenant's Option. If the Leased Space or a portion of it is subject to Major Damage during the final three years of the Term, Tenant has the right, for a period of 60 days beginning on the date of the occurrence, to elect not to restore the affected Improvements as otherwise required under this Agreement by giving the Commissioner written notice of the election, in which event this Agreement will, as to the portion of the Leased Space, terminate upon the notice. If Tenant desires to rebuild the affected Leased Space, it may do so only upon the written approval of the Commissioner.

D. Insufficient Insurance. In no event will the City be obligated to repair, alter, replace, restore, or rebuild any Improvements, or any portion of them, nor to pay any of the costs or expenses for them. If Tenant's available insurance proceeds are not sufficient to cover the cost of the restoration as required under this Section, then Tenant is liable to complete the repairs at its own cost and expense, except as provided in (C) above.

5.7 **City Resident Construction Worker Employment Requirement**.

A. Use of Residents. In connection with and during the construction of any Work in excess of $100,000 in Improvement Costs, Tenant and its Subcontractors must comply with the provisions of § 2-92-330 of the Municipal Code of the City of Chicago ("**Municipal Code**"), as amended from time to time concerning the minimum percentage of total construction worker hours performed by actual residents of the City. At least 50% of the total construction worker hours worked by persons on the site of the Work must be performed by actual residents of the City, and 7.5% of the total work hours (which may be included on the 50%) must be performed

by project area residents: residents of neighborhoods surrounding the Airport. Tenant may request a reduction or waiver of this minimum percentage level of Chicagoans in accordance with standards and procedures developed by the Chief Procurement Officer of the City. In addition to complying with this percentage, Tenant and its Subcontractors are required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. **"Actual residents of the City"** means persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment. Tenant and each Subcontractor (for purposes of this subsection, **"Employer"**) must provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed. Each Employer will maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

B. Certified Payroll Reports. Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) must be submitted by hard copy or electronically to the Commissioner and must identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

C. Inspection of Records. Each Employer must provide full access to its employment records to the Chief Procurement Officer, the Commissioner, and the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Each Employer must maintain all relevant personnel data and records for a period of at least 3 years after final acceptance of the Work. At the direction of the Commissioner, affidavits and other supporting documentation may be required of each Employer to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

D. Level of Effort. Efforts on the part of each Employer to provide utilization of actual Chicago residents that are not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer will not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by actual Chicago residents.

E. Shortfalls; Liquidated Damages. When the Work is completed, in the event that the City has determined that Tenant has failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1% of the aggregate hard construction costs of the Improvement Costs (the product of .0005 x such aggregate hard construction costs) (as evidenced by approved contract value for the actual contracts) must be surrendered by Tenant to the City as liquidated damages, and not as a penalty, in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Tenant and/or the

Subcontractors to prosecution. The City may draw against the security any amounts that appear to be due to the City under this provision pending the City's determination as to the full amount of liquidated damages due on completion of the Work.

F. Nothing set forth in this section acts as a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents, as applicable.

G. Inclusion in Subcontracts. Tenant must cause or require the provisions of this section to be included in all construction Subcontracts related to the Work.

5.8 **Licensing of General Contractor**. This Agreement is subject to Chapter 4-36 of the Municipal Code which requires all persons acting as a general contractor (as defined in Chapter 4-36) to be licensed as a general contractor by the City. Tenant's failure to ensure that any general contractor working on Improvements complies with Chapter 4-36 will be an Event of Default.

5.9 **Prevailing Wages**. In connection with the construction, repair, and maintenance of Improvements, Tenant must comply with the applicable provisions of 820 ILCS 130/0.01 et seq. regarding the payment of prevailing wages, and the most recent Illinois Department of Labor schedule of prevailing wages, and any successors to them. Tenant must insert appropriate provisions in all Subcontracts covering construction work under this Agreement to ensure compliance of all construction Subcontractors with the foregoing wage statutes and regulations.

5.10 **Subcontractor Certifications**. Tenant must require all Subcontractors performing Work in connection with this Agreement to be bound by the following provision and Tenant must cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

> "Subcontractor certifies and represents that Subcontractor and any entity or individual that owns or controls, or is controlled or owned by, or is under common control or ownership with Subcontractor is not currently indebted to the City and will not at any time during the Term be indebted to the City, for or on account of any delinquent taxes, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if the breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against the payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case

Subcontractor will be liable for all excess costs and other damages resulting from the termination.)"

5.11 **MBE/WBE Compliance**. Tenant shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("MBE/WBE") in the design (including professional services) and construction of Tenant's Improvements, respectively: (i) Design: 26% MBE and 6% WBE; and (ii) Construction: 26% MBE, and 6% WBE. However, in consideration of the anticipated costs of the design and construction of the Concession, the City will accept a participation plan that meets a combined single *Design and Construction* goal of 26% MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 9 and should be used by Tenant's Contractors. Tenant must submit to the CMR completed Schedules C's and D's from its design and construction Contractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Tenant must submit periodic reports to the CMR, in a form and frequency determined by the Commissioner, documenting its Contractors' compliance with their commitments.

ARTICLE 6 TERM OF AGREEMENT

6.1 **Term**. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier in accordance with its terms.

6.2 **Holding Over**.

A. With consent. Any holding over after expiration of the Term with the written consent of the Commissioner constitutes a month-to-month lease on the same terms and conditions as this Agreement, including payment of the Rent attributable to the portion or portions of the Leased Space that Tenant continues to occupy. Thereafter, Tenant must surrender and vacate the Leased Space no later than the 30th day following notice from the Commissioner that the month-to-month holdover is terminated; Tenant's failure to do so shall be deemed a holding over without consent under (B).

B. Without consent. If Tenant continues to occupy all or a portion of the Leased Space without the written consent of the Commissioner after expiration or termination of this Agreement in its entirety, or as to any such portion of the Leased Space where the Lease under this Agreement has expired or terminated, the holding over constitutes a month-to-month lease on the same terms and conditions as this Agreement, except that Tenant must pay Rent for the entire holdover period for the Leased Space where the Lease has expired or been terminated at double the annual rate of the Rent payable for that Leased Space during the immediately preceding Lease Year. No occupancy of Leased Space by Tenant after the expiration or other termination of the Lease under this Agreement with respect to such Leased Space extends the

Term of this Agreement or the Lease, except as a holdover tenancy. Also, in the event of such holdover tenancy, Tenant shall indemnify the City against all damages arising out of the Tenant's retention of occupancy, including but not limited to any costs incurred by the City to evict Tenant, and all insurance policies and letters of credit required to be obtained and maintained by Tenant as set forth in this Agreement shall continue in effect.

6.3 **Return of the Leased Space and Removal of Improvements**.

A. At the termination or expiration for any reason of this Agreement or the Lease as to any portion of the Leased Space, Tenant must promptly, peaceably, quietly and in good order quit, deliver up and return the Leased Space (or that portion as to which the Lease has terminated, in the case of a partial termination) in good condition and repair, ordinary wear and tear and damage by fire or other casualty excepted.

B. Tenant must remove all Tenant personal property and proprietary trade fixtures from the Leased Space or the portions of the Leased Space before the date of termination or expiration. Any personal property or trade fixtures remaining in the Leased Space 48 hours after the date of termination or expiration shall be deemed abandoned, and the City may dispose of such personal property or trade fixtures in the Commissioner's sole discretion, and Tenant shall have no claim to the proceeds, if any, from such disposition.

C. Further, at the Commissioner's request (which request will be given in writing at least 30 days before the termination or expiration of the Term), Tenant must remove all Improvements installed by or for Tenant, or Tenant's agents, employees or Subcontractors, except for Improvements that the Commissioner may elect to require Tenant to leave in place (excluding proprietary property which Tenant shall retain and remove). As provided in Section 5.2, all Improvements are City property and, if not requested to be removed by the Commissioner, may be used by the City or a replacement tenant; provided, however, that all of Tenant's trade dress, service marks, trademarks and trade names shall be removed, obliterated or painted out in a commercially reasonable manner at Tenant's cost. If directed by the Commissioner to remove Improvements, Tenant must also cap off any plumbing or drains and remove, obliterate or paint out any and all of its signs, advertising and displays as the Commissioner or his designated representative may direct, and repair any holes or other damage left or caused by Tenant.

D. Tenant must repair any damage to the Leased Space caused by Tenant's removal of Tenant personal property, trade fixtures and Improvements. All the removal and repair required of Tenant under this section are at Tenant's sole cost and expense.

E. If Tenant fails to perform any of its foregoing obligations, then the Commissioner may cause the obligations to be performed by Department personnel or City contractors, and Tenant must pay the cost of the performance, together with interest thereon at the Default Rate from and after the date the costs were incurred until receipt of full payment therefor.

6.4 **Termination Due to Change in Airport Operations**. This Agreement, or the Lease of any affected Leased Space, is subject to termination by either party on 60 days' written

notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party in the Leased Space impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least 90 days, so long as the action or order is not the result of any Event of Default of Tenant.

6.5 **Eminent Domain**.

A. If the entirety of the Terminals or a substantial part of them, including the entire Leased Space, is taken by eminent domain by an authority other than the City, the Term of this Agreement will end upon the earlier of the date when possession is required by the condemning authority or the effective date of the taking.

B. If any eminent domain proceeding is instituted by an authority other than the City in which it is sought to take any part of the Airport or the Terminals, the taking of which would, in the good faith judgment of the Commissioner or Tenant, render it impractical or undesirable to conduct Concession operations on the remaining portion of the Leased Space for the intended purposes, the Commissioner and Tenant will each have the right to terminate this Agreement upon not less than 90 days' written notice to the other.

C. In the event of termination of this Agreement under either (A) or (B), all Rent accrued for the Leased Space in question prior to the termination date is payable to the City. However, the City shall have no obligation to pay Tenant any unamortized Improvement Costs for such Leased Space, and Tenant shall look solely to the condemning authority for any award of damages.

6.6 **Early Termination**. Notwithstanding anything to the contrary set forth in this Lease, the Commissioner may terminate this Agreement with respect to any or all of the Leased Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Tenant. Upon the effective date set forth in such notice, Tenant shall surrender and vacate that portion of Leased Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Leased Space. In the event of such early termination, the City shall pay to Tenant a "Leased Space Termination Payment", which shall be defined herein to include the following: (i) a sum equal to the unamortized balance of Tenant's Improvement Costs with respect to the Leased Space being terminated, depreciated using the monthly straight-line method over the term of the lease commencing on the Date of Beneficial Occupancy of the Leased Space being terminated; and (ii) a sum equal to Gross Revenues earned by Tenant from the Leased Space being terminated during the four (4)-month period immediately preceding the termination date, less the Rent payable to the City for that period. Upon Tenant's receipt of the Leased Space Termination Payment and vacation of the Leased Space, the City and Tenant shall thereafter be released from any and all obligations under this Agreement with respect to the Leased Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this

Agreement.

ARTICLE 7 RENT AND FEES

7.1 **Rent Payable**.

A. In consideration of Tenant's Lease of the Leased Space and the License to operate its Concession in the Leased Space and the associated rights and privileges granted in this Agreement, Tenant must pay the following, without notice or demand, as rent and fees (collectively, **"Rent"**) as follows:

(i) Base Rent: Beginning as of the Delivery Date of any portion of the Leased Space, the Base Rent for such Leased Space as set forth on Exhibit 2. The initial Base Rent applicable to each Leased Space will increase in each succeeding License Year by 3% following the initial License Year compounded annually. The annual Base Rent is payable in monthly installments and will be prorated for any partial Lease Year.

(ii) License Fee. Beginning as of the earlier of: (1) the first Date of Beneficial Occupancy of a Retail Space, (2) the date that retail sales commence in any Retail Space, or (3) 120 days after the Delivery Date of any portion of the Leased Space, an amount equal to the greater of a. or b.:

a. Percentage Fee. The **"Percentage Fee"** is an amount equal to the product of the Percentage Fee Rates and Gross Revenues.

b. Minimum Annual Guarantee. There is no **"Minimum Annual Guarantee (MAG)"** or **"MAG"** for the first and second Lease Years of the Term. The Minimum Annual Guarantee will be established beginning in the third Lease Year at an amount equal to 85% of the Percentage Fee payable in the second Lease Year. In the subsequent Lease Years of the Term, the MAG will equal 85% of the License Fee calculated for the prior Lease Year but will never be less than the MAG established in the third Lease Year.

In the event the Leased Space is comprised of two or more distinct Retail Spaces that are opening for Concession operations on different dates, then Exhibit 2 must apportion the MAG payable for the entire Agreement among the various Retail Spaces.

(iii) Pre-Construction License Fee. In the event Tenant conducts, with the Commissioner's approval, concession operations in any portion of the Retail Space prior to the construction of the Improvements, then the **"Pre-Construction License Fee"** is an amount equal to the product of the Percentage Fee Rates and Gross Revenues during each calendar month (or portion thereof) from the Delivery Date through the DBO of the Retail Space.

(iv) Additional Rent. The Marketing Fee and Distribution Fee, if any, and any other charges payable to the City under this Agreement that are identified as Additional Rent. Failure

by Tenant to pay Rent, or any portion thereof, when due is an Event of Default.

B. Impositions. Tenant must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, the Leased Space, Tenant's leasehold, Tenant's Concession business or upon Tenant's personal property, including but not limited to all permit fees and charges of a similar nature for Tenant's conduct of any business or undertaking in the Leased Space (collectively, **"Impositions"**). Tenant must provide the Concession Management Representative with copies of any business licenses or permits required for the Tenant to operate the Concession. Tenant must provide Commissioner a copy of all notices relating to leasehold taxes on the Leased Space within 30 days after receipt and must provide the Commissioner with a receipt indicating payment of leasehold taxes on the Leased Space when due. Nothing in this Agreement precludes Tenant from contesting the amount of an Imposition, including those taxes or charges enacted or promulgated by the City, but unless otherwise allowed by the entity imposing the tax or charge, Tenant must pay the tax or charge pending the judicial or administrative decision on the Tenant's contest. Failure of Tenant to pay any Imposition when due, except to the extent that Tenant is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default. As provided in Section 4.1, Tenant acknowledges that the leasehold created under this Agreement is taxable, and while Tenant may contest the amount of the leasehold tax, Tenant shall not contest its applicability.

C. Rent under this Agreement is not considered to be a tax and is independent of any Imposition levied by the City on the Tenant's business. Further, the payment of the Rent under this Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Tenant must pay all Rent without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement. If Tenant is directed to move its Concession operations to a Relocation Space, and the City determines that the affected Retail Space is to be closed before completion of the Improvements in the Relocation Space, then adjustments will be made to the Minimum Annual Guarantee until Tenant begins Concession operations in the Relocation Space. Such adjustments will be in the same proportion as the Gross Revenues attributable to the Retail Space to be closed bears to the Gross Revenues for the entire Retail Space to which the Minimum Annual Guarantee applies.

7.2 **Time of Payments**.

A. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the Delivery Date of the first Leased Space and continuing throughout the Term, Tenant must pay to the City the monthly installment of Base Rent owed pursuant to Section 7.1(A)(i).

B. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first month of the third Lease Year and continuing throughout the Term, Tenant must pay to the City:

(i) that portion of the Minimum Annual Guarantee as may be due pursuant to Section

7.1(A)(ii)(b);

C. On or before the 15th day of each month, beginning on the earlier of: (1) the first Date of Beneficial Occupancy of a Retail Space, (2) the date that retail sales commence in any Retail Space, or (3) 120 days after the Delivery Date of any portion of the Leased Space, and continuing throughout the Term, Tenant must pay the City:

(i) the amount, if any, by which the actual Percentage Fee for the preceding month pursuant to Section 7.1(A)(ii)(a) exceeds the Minimum Annual Guarantee payment, if any, that was made on the first day of the month;

(ii) the Marketing Fee, Distribution Fee and Additional Rent, if any, based on the Gross Revenues of the preceding month or pre-determined amount; and

(iii) any other charges payable to the City.

D. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding Lease Year exceeds the amount of all payments made by Tenant to the City for the Lease Year in question, then Tenant must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding Lease Year is less than the amount of all License Fee payments made by Tenant to the City for the period in question, but the Percentage Fee still exceeds the MAG for that Lease Year, then Tenant will receive a credit against the next License Fee payment due under this Agreement for the amount by which the License Fee actually paid by Tenant exceeded the Percentage Fee attributable to the period.

7.3 **Material Underpayment or Late Payment**. Without waiving any other remedies available to the City, if:

(i) Tenant underpaid Rent due in any calendar year by more than 5%, or

(ii) Tenant failed to make any Rent payments within 5 days of the date due, then Tenant must pay, in addition to the amount due the City as Rent, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered Additional Rent. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

7.4 **Reports**.

A. Monthly. Tenant must furnish to the Commissioner on or before the 15th day of each calendar month falling wholly or in part within the Term of this Agreement a complete statement, certified by Tenant, of the amount of Gross Revenues derived from each Retail Space by Tenant during the preceding month.

B. Daily and/or Weekly. Tenant will furnish to the Commissioner daily and/or weekly sales reports, if requested, breaking down all sales and Gross Revenues by day, daypart (breakfast, lunch, dinner and late/overnight), selling category and by each separate Retail Space. If so requested, Tenant will provide Commissioner with statistical information regarding the number and type of transactions occurring at each Retail Space, in the form specified by the Commissioner. In addition to providing the City the foregoing daily and/or weekly reports, if requested, Tenant shall make all such reports available in an electronic, searchable format acceptable to the City. The City may require Tenant to provide such electronic, searchable reports more or less frequently than other reports requested pursuant to this subsection.

C. Annually or more often.

(i) Tenant also must furnish to Commissioner no later than March 1 of each Lease Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Tenant, showing in all reasonable detail the amount of Gross Revenues made by Tenant in, on or from the Leased Space during the preceding Lease Year and copies of all returns and other information filed with respect to Illinois sales and use taxes as well as such other reasonable financial and statistical reports as the Commissioner may, from time to time, require by written notice to Tenant.

(ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

> "We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by [_____] for the year ended _____ relating to its operations at the Terminals pursuant to an Agreement dated_, . Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.
>
> In our opinion, the accompanying statement showing gross revenues of $_ _____presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended_."

D. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Tenant fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Tenant's books and records and to prepare the statements at Tenant's expense. Tenant must also provide the Commissioner with

such other financial or statistical reports and information concerning the Leased Space or any part thereof, in the form as may be reasonably required from time to time by the Commissioner.

7.5 **Books, Records and Audits**.

A. Except as provided below, Tenant must prepare and maintain at its office full, complete and proper books, records and accounts in accordance with generally accepted accounting procedures relating to and setting forth the Gross Revenues, including but not limited to Gross Revenues generated by sales of Products for cash, debit, check, gift certificate, credit, or any other form of compensation, and must require and cause its operations personnel to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Tenant. The books and source documents to be kept by Tenant must include true copies of all federal, state and local tax returns filed with respect to Tenant's Concession operation and reports, records of inventories and receipts of Products, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Leased Space by Tenant and any other persons conducting business in or from the Leased Space. Pertinent original sales records must include the following documents or their auditable electronic equivalents:

(i) cash register tapes, including tapes from temporary registers,

(ii) serially pre-numbered sales slips,

(iii) the original records of all mail and telephone orders at and to the Leased Space,

(iv) original records indicating that Products returned by customers was purchased at the Leased Space by the customers,

(v) memorandum receipts or other records of Products taken out on approval,

(vi) detailed original records of any exclusions or deductions from Gross Revenues,

(vii) sales tax records, and

(viii) such other sales records, if any, that would normally be examined by an independent accountant under accepted auditing standards in performing an audit of Tenant's Gross Revenues.

B. Tenant must record at the time of each sale or other transaction, all receipts, whether in physical form or electronic, from the sale or other transaction. The books, records and accounts, including any sales tax reports that Tenant may be required to furnish to any government or governmental agency, must at all reasonable times be open to the inspection (including the making of copies or extracts) of the Commissioner, the Commissioner's auditor or other authorized representative or agent at the Leased Space or Tenant's other offices in Chicago for a period of at least three (3) years after the expiration of each calendar year falling wholly or in part within the Term.

C. The acceptance by the Commissioner of payments of any Percentage Fee is

without prejudice to the Commissioner's right to conduct an examination of the Tenant's books and records relating to Gross Revenues and of inventories of Products at the Retail Space, in order to verify the amount of Gross Revenues made in and from the Retail Space.

D. After providing Tenant at least 3 days prior oral or written notice, the Commissioner may inspect the books and records of Tenant. Further, at its option, the Commissioner may at any reasonable time, upon no less than 10 days prior written notice to Tenant cause a complete audit to be made of Tenant's entire records relating to the Retail Space for the period covered by any statement issued by Tenant as above set forth. If the audit discloses that Tenant's statement of Gross Revenues is understated to the extent of:

(i) 3% or more, Tenant must promptly pay the City the cost of the audit in addition to the deficiency (and any interest on the deficiency at the Default Rate), which deficiency is payable in any event, and if

(ii) 5% or more, an Event of Default is considered to have occurred, and in addition to all other remedies available under this Agreement, at law, or in equity, the Commissioner has the right to terminate this Agreement immediately upon giving notice to Tenant, without any opportunity for Tenant to cure.

In addition to the foregoing, and in addition to all other remedies available to the City, if Tenant or the City's auditor schedules a date for an audit of Tenant's records and Tenant fails to be available or otherwise fails to comply with the reasonable requirements for the audit, Tenant must pay all reasonable costs and expenses associated with the scheduled audit.

7.6 **Revenue Control**. Upon the request of the Commissioner Tenant must make available monthly sales data for each Retail Space ("**Point of Sale Data**"), reflecting the amount of each sales transaction, items sold per transaction, time and date of the transaction, and specifying the sales category applicable to each item sold. At such time, if any, as computerized Point of Sale Data systems ("**POS Systems**") have been developed to a point where the Commissioner deems it necessary or desirable to install such a POS System, then Tenant must upon request and at its own expense, install such a POS System in the Retail Space or, if it already uses such a system, must use reasonable efforts to promptly cause the system to conform to the City's POS System, provided, in no event shall Tenant be required to disclose customer data in contravention of applicable laws. Tenant shall be given a reasonable amount of time, not to exceed one year, to accomplish the foregoing.

7.7 **Lien**. In addition to any liens as may arise under Illinois law, the City has a contractual lien under this Agreement on all property, including Tenant personal property located on the Leased Space, but excluding any Products that is subject to floor plan financing, as security for non-payment of any Rent due.

ARTICLE 8 INSURANCE, INDEMNITY AND SECURITY

8.1 **Insurance**. Tenant must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Tenant is holding over or Tenant is required to

return to the Leased Space for any reason whatsoever, the types of insurance specified in Exhibit 7 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.2 **Indemnification**.

A. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. (**"Anti-Indemnity Act"**), Tenant must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

B. **"Losses"** means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Tenant, its employees, agents, subtenants, and Subcontractors.

C. At the City Corporation Counsel's option, Tenant must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Tenant of any of its obligations under this Agreement. Tenant must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involving the Airport.

D. To the extent permissible by law, Tenant waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any limits applicable to a claim by any employee of Tenant that may be subject to the Workers' Compensation Act, 820 ILCS 305/1 et seq or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The waiver, however, does not require Tenant to indemnify the City for the City's own negligence to the extent doing so would violate the Anti-Indemnity Act. The City, however, does not waive any limitations it may have on its liability under the Worker's Compensation Act or under the Illinois Pension Code.

E. The indemnities contained in this section survive expiration or termination of this Agreement, for matters occurring or arising during the Term of this Agreement or as the result of or during the holding over of Tenant beyond the Term. Tenant acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by the Tenant's duties under this Agreement, including the insurance and Security requirements.

8.3 **Security**

A. Form of Security.

(i) Tenant must deliver to the City no later than the earlier to occur of: a) 30 business

days after the Effective Date or b) the Delivery Date for the first Leased Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Tenant, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must equal a) until the third full Lease Year of the Term, $25,000 per Retail Space, and b) during and after the third full Lease Year of the Term, 25% of MAG established in the prior Lease Year in the form of an irrevocable letter of credit issued in favor of the City or a cash deposit. If a letter of credit is provided as the form security, it will be required to be adjusted throughout the Term, as the MAG increases or decreases. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Tenant may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "**Security**." The original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Tenant of all of Tenant's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least 30 days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Tenant's obligations under this Agreement. The Commissioner is not obligated to pay or credit Tenant with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, which such Event of Default remains uncured after any applicable cure period, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Tenant and held by the City for the payment of any obligation of Tenant arising before or after the Event of Default; provided, the Commissioner is not entitled to draw on the Letter of Credit if such Event of Default permits cure and has been cured.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Tenant must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within 5 days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

B. Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least $500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Tenant to immediately close some or all of the Leased Space until the Letter of Credit is in place and effective.

C. Right to Require Replacement of Letter of Credit. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

D. No Excuse from Performance. None of the provisions contained in this Agreement nor in the Letter of Credit required under this Agreement excuse Tenant from faithfully performing in accordance with the terms and conditions of this Agreement or limit the liability of Tenant under this Agreement for any and all damages in excess of the amounts of the Letter of Credit.

E. Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Tenant to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Tenant to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

ARTICLE 9 DEFAULT, REMEDIES AND TERMINATION

9.1 **Events of Default**. The following (A) through (N) constitute Events of Default by Tenant under this Agreement. The Commissioner will notify Tenant in writing of any event that the Commissioner believes to be an Event of Default. Tenant will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed 30 days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not expressly allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Tenant promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within 45 days from delivery of the notice, Tenant will have the additional time, not in any event to exceed 45 days, to cure the failure.

A. Any material misrepresentation made by Tenant to the City in the inducement to

City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.

B. Tenant's failure to make any payment in full when due under this Agreement and failure to cure the default within five days after the City gives written notice of the non-payment to Tenant. In addition, Tenant's failure to make any such payment within five days after the written notice more than three times in any Lease Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Tenant or allowing Tenant any opportunity to cure it.

C. Tenant's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Tenant contained in this Agreement.

D. Tenant's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Tenant contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Tenant's rights or interests in this Agreement or of the ownership of Tenant.

E. Tenant's failure to provide or maintain the insurance coverage required under this Agreement (including any material non-compliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is non-material, the failure to cure the Event of Default within 20 days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

F. Tenant's failure to conduct Concession operations in any Retail Space at all times Tenant is required to do so under this Agreement.

G. Tenant's failure to comply with the Value Pricing policy.

H. Tenant's failure to begin or to complete its Improvements on a timely basis or to timely open for business in the Leased Space or any portion of it as required herein.

I. An Event of Default by Tenant or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.

J. Tenant or Guarantor, if any, does any of the following and the action affects Tenant's ability to carry out the terms of this Agreement:

(i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time; or

(ii) fails to pay its debts generally as they mature; or

(iii) seeks the benefit of any present or future federal, state or foreign insolvency statute; or

(iv) makes a general assignment for the benefit of creditors, or

(v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or

(vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.

K. An order for relief is entered by or against Tenant or Guarantor (if any) under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within 60 days following its issuance.

L. Tenant is dissolved.

M. A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Tenant, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Tenant's performance of this Agreement in accordance with its terms.

N. Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.

9.2 **Remedies**.

If an Event of Default occurs and is not cured by Tenant in the time allowed, in addition to any other remedies provided for in this Agreement, including the remedy of Self-help as provided in Section 9.3, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

A. Terminate this Agreement with respect to all or a portion of the Leased Space and exclude Tenant from that part of the Leased Space affected by the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Tenant that this Agreement ceases and expires and becomes absolutely void with respect to the Leased Space or that part identified in the notice on the date specified in the notice, to be no less than five days after the date of the notice, without any right on the part of Tenant after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Tenant under this Agreement, wholly ceases and expires and becomes void with respect to the Leased Space identified in such notice in the same manner

and with the same force and effect (except as to Tenant's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Leased Space identified in such notice.

B. Recover all Rent, including Additional Rent and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Leased Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Tenant would have been obligated to pay for the balance of the Term with respect to the Leased Space, or if this Agreement is terminated with respect to a portion of the Leased Space, that portion of the Leased Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Leased Space. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full Lease Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Leased Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.

C. At any time after the occurrence of any uncured Event of Default, whether or not the Lease under this Agreement has been terminated, reenter and repossess the Leased Space and/or any part of it with or without process of law, so long as no undue force is used, and the City has the option, but not the obligation, to re-lease all or any part of the Leased Space. The City, however, is not required to accept any Tenant proposed by Tenant or to observe any instruction given the City about such a re-lease. The failure of the City to re-lease the Leased Space or any part or parts of it does not relieve or affect Tenant's liability under this Agreement nor is the City liable for failure to re-lease. Reentry or taking possession of the Leased Space does not constitute an election on the City's part to terminate this Agreement unless a written notice of the election by the Commissioner is given to Tenant. Even if the City re-leases without termination, the Commissioner may at any time thereafter elect to terminate this Agreement for any previous uncured Event of Default. For the purpose of re-leasing, the Commissioner may decorate or make repairs, changes, alterations or additions in or to the Leased Space to the extent deemed by the Commissioner to be desirable or convenient, and the cost of the decoration, repairs, changes, alterations or additions will be charged to and payable by Tenant as Additional Rent under this Agreement. Any sums collected by the City from any new Tenant obtained on account of Tenant will be credited against the balance of the Rent due under this Agreement. Tenant must pay the City monthly, on the days when payments of Rent would have been payable under this Agreement, the amount due under this Agreement less the amount obtained by the City from the new Tenant, if any.

D. Enter upon the Leased Space, distrain upon and remove from it all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Tenant or by others, and to proceed without judicial decree, writ of execution or

assistance or involvement of constables or the City's and Tenant's officers, to conduct a private sale, by auction or sealed bid without restriction. Tenant waives the benefit of all laws, whether now in force or later enacted, exempting any of Tenant's property on the Leased Space or elsewhere from distraint, levy or sale in any legal proceedings taken by the City to enforce any rights under this Agreement.

E. Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.

F. Seek and obtain money damages; including special, exemplary, incidental and consequential damages.

G. Deem Tenant and Affiliates non-responsible in future contracts or concessions to be awarded by the City.

H. Declare Tenant and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.

I. Accept the assignment of any and all Subcontracts between Tenant and the design and construction Subcontractors.

J. Require Tenant to terminate a Subcontractor that is causing breaches of this Agreement.

9.3 **Commissioner's Right to Perform Tenant's Obligations**.

A. Upon the occurrence of an Event of Default that Tenant has failed to cure in the time provided, the Commissioner may, but is not obligated to, make any payment or perform any act required to be performed by Tenant under this Agreement in any manner deemed expedient by the Commissioner for the purpose of correcting the condition that gave rise to the Event of Default (**"Self-help"**). The Commissioner's inaction never constitutes a waiver of any right accruing to the City under this Agreement nor do the provisions of this section or any exercise by the Commissioner of Self-help under this Agreement cure any Event of Default. Any exercise of Self-help does not limit the right of any other City department or agency to enforce applicable City ordinances or regulations.

B. The Commissioner, in making any payment that Tenant has failed to pay:

(i) relating to taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim;

(ii) for the discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien that may be asserted; and

(iii) in connection with the completion of construction, furnishing or equipping of the Leased Space or the licensing, operation or management of the Leased Space or the payment of any of its operating costs, may do so in such amounts and to such persons as the Commissioner may deem appropriate.

Nothing contained in this Agreement requires the Commissioner to advance monies for any purpose.

C. If Tenant fails to perform its obligations under this Agreement to maintain and operate the Leased Space in accordance with specified standards within 3 days following written notice from the Commissioner, or in the event of a serious health or safety concern or in an emergency (in which case no notice is required) the Commissioner may, but is not obligated to, direct the Department to perform or cause the performance of any such obligation in any manner deemed expedient by the Commissioner for the purpose of correcting the condition in question.

D. All sums paid by the City under the provisions of this Section and all necessary and incidental costs, expenses and reasonable attorneys' fees in connection with the performance of any such act by the Commissioner, together with interest thereon at the Default Rate, from the date of the City's payment until the date paid by Tenant, are deemed Additional Rent under this Agreement and are payable to the City within 10 days after demand therefor, or at the option of the Commissioner, may be added to any Rent then due or later becoming due under this Agreement, and Tenant covenants to pay any such sum or sums with interest at the Default Rate.

9.4 <u>Effect of Default and Remedies</u>

A. Tenant, for itself and on behalf of any and all persons claiming through or under it (including creditors of all kinds), waives and surrenders all right and privilege that they or any of them might have under or by reason of any present or future law, to redeem the Leased Space or to have a continuance of this Agreement for the Term, as it may have been extended, after having been dispossessed or ejected by process of law or under the terms of this Agreement or after the termination of this Agreement as provided in this Agreement.

B. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Tenant will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Tenant

has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

C. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or the taking or recovery of the Leased Space deprives the City of any of its remedies against Tenant for Rent, including Additional Rent or other amounts due or for damages for the Tenant's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

ARTICLE 10 SPECIAL CONDITIONS

10.1 **Warranties and Representations**. In connection with the execution of this Agreement, Tenant warrants and represents statements (A) through (L) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Tenant must promptly notify the Commissioner in writing. Failure to do so will constitute an Event of Default. Tenant must incorporate all of the provisions set forth in this Section 10.1 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontractors, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Tenant as to the matters set forth in this Section. Tenant must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontractor is a partnership or joint venture, Tenant must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

A. Tenant is financially solvent; Tenant holds itself to very high standards of quality and professionalism; Tenant and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Tenant in accordance with all of its provisions and requirements; Tenant has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Tenant can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement.

B. Tenant is qualified to do business in the State of Illinois; and Tenant has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

C. The person signing this Agreement on behalf of Tenant has been duly authorized to do so by Tenant; all approvals or consents necessary in order for Tenant to execute and deliver

this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

(i) conflict with or result in a breach, default or violations of: Tenant's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Tenant is now a party or by which it is bound; or

(ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Tenant under the terms of any instrument or agreement.

D. There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Tenant's knowledge after due and complete investigation, threatened, challenging the existence or powers of Tenant, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Tenant.

E. This Agreement constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

F. No officer, agent or employee of the City is employed by Tenant or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

G. Tenant has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

H. There was no broker instrumental in consummating this Agreement and no conversations or prior negotiations were had with any broker concerning the rights granted in this Agreement with respect to the Leased Space. Tenant shall hold the City harmless against any claims for brokerage commission arising out of any conversations or negotiations had by Tenant with any broker.

I. Neither Tenant nor any Affiliate of Tenant is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or

on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

J. Tenant, and to the best of Tenant's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Tenant's directors, officers, members, or partners:

(i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Tenant's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Tenant's performance under this Agreement;

(ii) have no outstanding parking violation complaints or debts, as the terms are defined in § 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;

(iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;

(iv) are not in violation of the provisions of § 2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

(v) are not delinquent in the payment of any taxes due to the City; and

(vi) will not make use of the Leased Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

K. Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Tenant to enter into this Agreement or has been relied upon by Tenant, including any with reference to:

(i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;

(ii) the nature of the Concession license being granted;

(iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;

(iv) the general conditions that may in any way affect this Agreement or its performance;

(v) the compensation provisions of this Agreement; or

(vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

10.2 **Business Documents, Disclosure of Ownership Interests and Maintenance of Existence**.

A. Tenant must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Tenant.

B. Tenant has provided the Commissioner with an Economic Disclosure Statement and Affidavit ("**EDS**") for itself and EDS(s) for all entities with an ownership interest of 7.5 percent or more in Tenant, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Tenant must further cause its Subcontractors, subtenants, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Tenant must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Tenant must provide the City revised and accurate EDS(s) within 30 days of any event or change in circumstance that renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

10.3 **Licenses and Permits**. Tenant must in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained at its expense, the permits, licenses, authorizations and approvals as are necessary under federal, state or local law for Tenant, its subtenants (if any), and Subcontractors: to operate the Concession; to construct, operate, use and maintain the Leased Space; and otherwise to comply with the terms of this Agreement and the privileges granted under this Agreement. Tenant must promptly provide copies of any required licenses and permits to the Commissioner and to the Concession Management Representative.

10.4 **Confidentiality**. Except as may be required by law during or after the performance of this Agreement, Tenant will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the

Commissioner, which consent will not be unreasonably withheld or delayed. If Tenant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Tenant must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Tenant, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, and unless the subpoena or request is quashed or the time to produce is otherwise extended. Tenant must require each prospective Subcontractor to abide by such restrictions in connection with their respective Subcontracts.

10.5 **Subcontracts and Assignments**.

A. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

B. Limits on Tenant's transfers and changes in ownership:

(i) Tenant may not sell, assign, sublease, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Leased Space, the Term, or otherwise permit any third party to use the Leased Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Consent by the City does not relieve Tenant from obtaining further consent from the City for any subsequent Transfer. Transfers involving all of Tenant's interest in this Agreement require approval of the City Council. Transfers of less than all of Tenant's interest in this Agreement require approval of the Commissioner. Consent by the City to any Transfer does not relieve Tenant from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or the Leased Space as collateral for Tenant financing are strictly prohibited and, if entered into by Tenant, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Tenant, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Tenant, or any merger or consolidation of Tenant (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

a. City Council, in its sole discretion, if the Change in Ownership involves a 100% Change in Ownership of Tenant, or

b. the Commissioner, in the Commissioner's reasonable discretion, if the

Change in Ownership involves less than a 100% Change in Ownership of Tenant.

(iii) If Tenant (or, if Tenant is a joint venture or other entity comprised of other entities, any of the entities comprising Tenant) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving **5%** or more of the shares of Tenant's (or if Tenant is a joint venture or other entity comprised of other entities, of any of the entities comprising Tenant) stock is subject to the City's consent as set forth above. In that event, Tenant must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Tenant must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Tenant (or if Tenant is a joint venture or other entity comprised of other entities, of any of the entities comprising Tenant) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more.

(iv) Consent by the City to any Change in Ownership does not relieve Tenant (or if Tenant is a joint venture, any of the entities comprising Tenant) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Tenant of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Tenant or to take any other action as provided in this Agreement be deemed or construed to constitute consent to the Tenant's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Tenant's sole remedy is to terminate this Agreement without liability to either the City or Tenant.

(vi) Notwithstanding any permitted Transfer by Tenant of any rights under this Agreement, Tenant remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or all or any portion of the Leased Space or Transfer of all or any portion of the Term, where the fees payable to Tenant exceed the Rent or pro rata portion of the Rent under this Agreement, as the case may be, for the License, Leased Space or Term, Tenant must pay the City monthly, as Additional Rent, at the same time as the monthly installments of other Rent under this Agreement that are payable in monthly installments, the excess of the fees payable to Tenant pursuant to the Transfer over the Rent payable to the City under this Agreement.

(vii) Any or all of the requests by Tenant for consents under this Section must be made in writing and provided to the Commissioner (a) at least 60 days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least 120 days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed Economic Disclosure Statements and Affidavits for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Tenant in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Tenant that, notwithstanding the proposed Transfer or Change in Ownership, Tenant remains fully and completely liable for all obligations of Tenant under this Agreement; however, Tenant shall remain so liable regardless of whether or not the City requests a written acknowledgement.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Rent payable under this Agreement from any transferee of Tenant and in that event will apply the net amount collected to the amounts payable by Tenant under this Agreement without, by doing so, releasing Tenant from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Tenant and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Tenant and are payable to the City as Additional Rent.

C. The provisions of this Agreement, to the extent applicable, are deemed a part of any sublease or contract between Tenant and a subtenant or Subcontractor.

D. Assignment of Subleases, Sublicenses and Subcontracts.

(i) Tenant shall assign to the City all of Tenant's right, title and interest in and to each and every permitted sublease and sublicense and each and every Subcontract with a design and construction Subcontractor, now or later executed by Tenant in connection with the License or the Leased Space or any part of it. In connection with the assignment, Tenant must deliver all originally executed subleases, sublicenses and Subcontracts to the Commissioner. Any such assignment will become operative and effective only when and if the City accepts the assignment by giving written notice to Tenant and:

a. either this Agreement and the Term of this Agreement or Tenant's right to possession under this Agreement are terminated pursuant to Article 9; or

b. in the event of the issuance and execution of a dispossess warrant or of any other re-entry or repossession by the City under the provisions of this Agreement; or

c. if an Event of Default exists.

(ii) At the time, if any, that the assignment becomes effective as provided above, the subtenants or Subcontractors will be deemed to have waived all claims, suits, and causes of action against the City arising out of or relating to the period before the effective date of the assignment. Further, in no instance will the City be responsible for any claims by a subtenant or Subcontractor arising from or related to any fraud, misrepresentation, negligence or willful or intentionally tortious conduct by Tenant, its officials, employees, or agents.

10.6 **Compliance with Laws**. Tenant must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, **"Laws"**), and must not use the Leased Space, or allow the Leased Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Tenant under any Laws. Tenant must notify the City within seven days of receiving notice from a competent governmental authority that Tenant or any of its Subcontractors may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Tenant covenants that it will comply with all Laws, including but not limited to the following:

A. In connection with § 2-92-320 of the Municipal Code, Tenant has executed an Economic Disclosure Statement and Affidavit which is attached to this Agreement as Exhibit 11 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under § 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the conduct. If, after Tenant enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection,

Tenant must immediately cease to use the Subcontractor. All Subcontracts must provide that Tenant is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

B. It is the duty of Tenant and all officers, directors, agents, partners, and employees of Tenant to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2-55 of the Municipal Code, respectively. Tenant understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Tenant must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractor as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

C. Tenant must not use or allow the Leased Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Tenant must not use or allow the Leased Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Tenant must surrender the Leased Space to the City free from the presence and contamination of any hazardous substances.

D. In accordance with § 11-4-1600(e) of the Municipal Code, Tenant warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

7-28-390 Dumping on public way—Violation—Penalty;
7-28-440 Dumping on real estate without permit;
11-4-1410 Disposal in waters prohibited;
11-4-1420 Ballast tank, bilge tank or other discharge;
11-4-1450 Gas manufacturing residue;
11-4-1500 Treatment and disposal of solid or liquid waste;
11-4-1530 Compliance with rules and regulations required;
11-4-1550 Operational requirements;
11-4-1560 Screening requirements; and
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Tenant's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if

curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit the Tenant's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect the Tenant's eligibility for future City agreements.

E. Section 2-92-586 of the Municipal Code: The City encourages Tenant to use contractors and subcontractors that are firms owned or operated by individuals with disabilities, as defined by § 2-92-586 of the Municipal Code, where not otherwise prohibited by federal or state law.

F. Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):

1. Licensee agrees that Tenant, any person or entity who directly or indirectly has an ownership or beneficial interest in Tenant of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Tenant's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Tenant and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to the Mayor's political fund-raising committee (i) after execution of this bid, proposal or Agreement by Tenant, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Tenant and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

2. Tenant represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Tenant or the date the Tenant approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

3. Tenant agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to the Mayor's political fund-raising committee.

4. Tenant agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

5. Tenant agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

6. If Tenant violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Tenant's bid.

7. For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.

"Other Contract" means any other agreement with the City of Chicago to which Tenant is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

(a) they are each other's sole domestic partner, responsible for each other's common welfare;

(b) neither party is married;

(c) the partners are not related by blood closer than would bar marriage in the State of Illinois;

(d) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and

(e) two of the following four conditions exist for the partners:

(i) The partners have been residing together for at least 12 months.

(ii) The partners have common or joint ownership of a residence.

(iii) The partners have at least two of the following arrangements:

a. joint ownership of a motor vehicle;

b. a joint credit account;

c. a joint checking account;

d. a lease for a residence identifying both domestic partners as tenants.

(iv) Each partner identifies the other partner as a primary beneficiary in a will.

"Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal Code, as amended.

G. Tenant covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Tenant further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

H. Pursuant to § 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of § 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a **"business relationship**" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of $2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

I. Labor Peace Agreement.

Tenant has an ongoing obligation to comply with, and ensure that all subtenants and subleases comply with, the Labor Peace Agreement ("LPA") Ordinance, MCC 10-36-210.

J. Visual Rights Act.

(i) The Tenant will cause any artist who creates artwork for the Leased Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "Artwork") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 et seq.) (the "*Copyright Act*"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. The Tenant acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, the Tenant acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) The Tenant represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and subcontractors, or any other artists. Tenant must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Leased Space.

10.7 **Airport Security**.

A. This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Tenant is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Tenant must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Tenant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement. The drawings, plans, and specifications provided by Tenant under this Agreement must comply with those guidelines for airport security developed by the City, the TSA and the FAA and in effect at the time of their submission.

B. Further, Tenant must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA

and the Commissioner, Tenant must adopt procedures to control and limit access to the Airport and the Leased Space by Tenant and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Tenant must have in place and in operation a security program for the Leased Space that complies with all applicable laws and regulations.

C. Gates and doors located on the Leased Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Tenant at all times when not in use or under Tenant's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Tenant until the malfunction is remedied.

D. In connection with the implementation of its security program, Tenant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Tenant acknowledges that all such knowledge and information is of a highly confidential nature. Tenant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Tenant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Tenant's covenants and agreements as set forth in this section.

E. Tenant understands that fines and/or penalties may be assessed by the TSA or FAA for Tenant's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Tenant's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Tenant, or any party for which Tenant is liable under this Agreement, is responsible for all or part of the fine or penalty, the Tenant shall pay said amount of the fine or penalty as Additional Rent.

F. Except for authorized members of the Chicago Police Department and State and Federal Law Enforcement officers, or certain authorized armed security or armored vehicle services employees as identified by CDA while in performance of their work, (and air travelers with weapons in locked checked luggage in accordance with TSA regulations), no one is permitted to carry a firearm or any other weapon on or into any building, real property, or parking area under the control of O'Hare or Midway International Airports. Under 430 ILCS 66 (the "Illinois Concealed Carry Act"), a license to carry a concealed firearm does NOT entitle the licensee to carry a firearm on or into any building, real property, or parking area under the control of an airport and doing so is a violation of the Concealed Carry Act and other laws, rules, and regulations. Violation of the Illinois Concealed Carry Act and carrying a firearm or other

weapons on or into any building, real property, or parking area under the control of O'Hare or Midway Airports may result in severe penalties, including but not limited to imprisonment and permanent revocation of the violator's access to restricted areas of O'Hare and Midway International Airports.

10.8 **Non-Discrimination**.

A. Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Space; (ii) in the construction of any Improvements on, over, or under the Leased Space and the furnishing of services in them, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Tenant will use the Leased Space in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv)Tenant shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Tenant is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Tenant assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

B. It is an unlawful practice for Tenant to, and Tenant must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the Leased Space, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Tenant must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non- discrimination clause.

C. Tenant must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375,

32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

D. Tenant must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code § 750 Appendix A. Furthermore, Tenant must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.

E. Tenant must comply with the Chicago Human Rights Ordinance, § 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Tenant must furnish or must cause each of its Subcontractors) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

F. The Tenant 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 the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant.

This provision obligates the Tenant for the period during which the property is owned, used or possessed by the Tenant 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.

G. During the performance of this contract, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

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

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

H. The Tenant for himself/herself, his/her 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 (1) 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, (2) that 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, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

With respect to Tenant, in the event of breach of any of the above nondiscrimination covenants, the City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

I. In all its activities within the scope of its airport program, the Tenant agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

J. During the performance of this contract, the Tenant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

• Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

• 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);

• The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

• Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);

• The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

• 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);

• The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition

of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

• 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

• The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

• Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination 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;

• Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

• Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

K. Tenant must insert these non-discrimination provisions in any agreement by which Tenant grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Leased Space. Tenant must incorporate all of the above provisions in all agreements entered into with any subtenants, suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Tenant must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Tenant for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Tenant of the Tenant's obligations under this Agreement relative to nondiscrimination.

L. Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Tenant authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Tenant's noncompliance with the nondiscrimination provisions of this Agreement,

the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

M. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant.

The above provision obligates the Tenant for the period during which the property is owned, used or possessed by the Tenant and the airport remains obligated to the Federal Aviation Administration.

N. Tenant must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the federal government to be pertinent to ascertain compliance with the terms of this Section. Tenant must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

O. The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Tenant must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

10.9 **Airport Concession Disadvantaged Business Enterprises (ACDBEs).** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23. Tenant 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 order or other agreement covered by 49 CFR Part 23. Tenant agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements. Tenant must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 8 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

10.10 **No Exclusive Rights**. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Tenant that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft

with its own regular employees (including maintenance and repair) that it may choose to perform.

10.11 **Airport Landing Area**. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Tenant, and without interference or hindrance. The City reserves the right, but is not obligated to Tenant, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Tenant in this regard.

10.12 **No Obstructions**. Tenant must comply with applicable notification and review requirements covered in Part 77 of the Federal Aviation Regulations if any future structure or building is planned for the Leased Space, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Space. Tenant, by accepting the Lease, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Leased Space above the applicable mean sea level elevation set forth in Part 77 of the Federal Aviation Regulations. If these covenants are breached, the City serves the right to enter upon the Leased Space and to remove the offending structure or object and/or cut down the offending tree, all of which will be at the expense of Tenant.

10.13 **Avigation Easement**. There is reserved to the City, 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 Leased Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Tenant by accepting this Lease agrees for itself, its successors, and assigns that it will not make use of the Leased Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Leased Space and cause the abatement of the interference at the expense of Tenant.

10.14 **National Emergency**. This Agreement and all the provisions of this Agreement are subject to whatever right the United States government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.15 **Policy Prohibiting Sexual Harassment (Section 2-92-612 of the MCC)**. For purposes of this section, "Sexual Harassment" is as defined in MCC 6-10-020. For the avoidance of doubt, Tenant will be considered an "Employer" as defined in MCC 6-10-020.

In accordance with MCC 2-92-612, Tenant must attest by affidavit that Tenant has a written policy, compliant with the requirements of MCC 6-10-040, prohibiting Sexual Harassment. The affidavit must be in a form acceptable to the Commissioner.

Tenant's failure to have a written policy prohibiting Sexual Harassment as provided above shall constitute an event of default. In the event of default, the Commissioner shall notify Tenant of such noncompliance and may, as appropriate: (i) issue Tenant an opportunity to cure consistent with the default provisions in this Agreement; (ii) terminate the contract; or (iii) take any other action consistent with the default provisions in the contract. This section shall not be construed to prohibit the City from prosecuting any person who knowingly makes a false statement of material fact to the city pursuant to Chapter 1-21 of the MCC, or from availing itself of any other remedies under contract or law.

10.16 **2014 Hiring Prohibitions**.

(A) The City is subject to the June 16, 2014 "City of Chicago Hiring Plan" (the "2014 City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(B) Tenant is aware that City policy prohibits City employees from directing any individual to apply for a position with Tenant, either as an employee or as a subcontractor, and from directing Tenant to hire an individual as an employee or as a subcontractor. Accordingly, Tenant must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Tenant in connection with this Lease are employees or subcontractors of Tenant, not employees of the City of Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel of Tenant.

(C) Tenant will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Lease, or offer employment to any individual to provide services associated with this Lease, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Lease, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(D) In the event of any communication to Tenant by a City employee or City official in violation of Section 15.5(b) above, or advocating a violation of Section 15.5(c) above, Tenant will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

ARTICLE 11 GENERAL CONDITIONS

11.1 **Entire Agreement**. This Agreement contains all the terms, covenants, conditions and agreements between the City and Tenant relating in any manner to the use and occupancy of the Leased Space and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Tenant to enter into this Agreement, and Tenant acknowledges, represents and warrants that Tenant has entered into this Agreement under and by virtue of Tenant's own independent investigation.

11.2 **Counterparts**. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 **Amendments**. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may by amended only by a written agreement signed by the City and Tenant. No review or approval by the Commissioner, including approval of Construction Documents, constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), nor excuse Tenant from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Commissioner. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 **Severability**. Whenever possible, each provision of this Agreement must be interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 **Covenants in Subcontracts**. All obligations imposed on Tenant under this Agreement pertaining to the maintenance and operation of the Leased Space and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Tenant to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 **Governing Law**. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Tenant irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Tenant consents to service of process on Tenant, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Tenant, or by personal delivery on any officer, director, or managing or general agent of Tenant. If any action is brought by Tenant against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 **Notices**. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, 3 days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Tenant in writing, all notices or communications from City to Tenant will be addressed to the person identified as the Tenant's contact person in the Tenant's Economic Disclosure Statement and Affidavit, as attached as Exhibit 11. All notices or communications from Tenant to the City must be addressed to:

Commissioner, Chicago Department of Aviation
City of Chicago
O'Hare International Airport 10510 W. Zemke Rd Chicago, Illinois 60666
(Tenant)
(Address)

and with a copy to: Deputy Commissioner of Concessions at the same address.

If the notice or communication relates to payment of Rent or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller City of Chicago
City Hall - Room 501 121 N. LaSalle Street Chicago, Illinois 60602

(Tenant)
(Address)

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law
Regulatory and Contracts Division
2 North LaSalle Street, Suite 540
Chicago, Illinois 60602
Attn: Deputy Corporation Counsel

(Tenant)
(Address)

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 **Successors and Assigns; No Third-Party Beneficiaries**. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Tenant not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Tenant for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Tenant or any third party claiming by or through Tenant or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 **Subordination**.

A. This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Tenant consents to the changes to this Agreement.

B. This Agreement and all rights granted to Tenant under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline

consortium pertaining to the operation of the Airport, including the Terminals.

C. To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs A. and B. above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs A. and B.

11.10 **Conflict**. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any sublease or Subcontract between Tenant and third parties, the terms and provisions of this Agreement govern and control.

11.11 **Offset by Tenant**. Whenever in this Agreement the City is obligated to pay Tenant an amount, then the City Comptroller may elect to require Tenant to offset the amount due against Rent or other payments owed by Tenant to the City, in lieu of requiring the City to pay such amount. Tenant shall have no right to offset any amount due to City under this Agreement against amounts due to Tenant by City unless so directed in writing by the City Comptroller.

11.12 **Waiver; Remedies**. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Tenant for any consequential damages whatsoever related to this Agreement.

11.13 **Authority of Commissioner**. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner or by such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 **Estoppel Certificate**. From time to time upon not less than 15 days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

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

B. the dates to which Rent, including Additional Rent, have been paid and the amounts of the Rent most recently paid;

C. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;

D. that, to its knowledge, the requesting party has completed all required improvements in accordance with the terms of this Agreement, and Tenant is in occupancy and paying Rent on a current basis with no offsets or claims; and

E. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 **No Personal Liability**. Tenant, or any subtenant, sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Tenant, subtenant, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 **Limitation of City's Liability**. Tenant, its subtenants and Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Tenant, subtenant, and Subcontractor personal property upon the Leased Space or upon any other part of the Airport, is at the risk of Tenant, subtenant, or Subcontractor respectively only, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Tenant, its subtenants or Subcontractors, and Tenant waives, and will cause its subtenants and Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Leased Space, or repair or of this Agreement that the City is required to perform and, notwithstanding the foregoing, Tenant recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Rent and alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition other monies payable by Tenant to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 **Joint and Several Liability**. If Tenant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Tenant is the joint and several obligation or undertaking of each such individual or other legal entity.

11.18 **Non-Recordation**. Tenant must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.19 **Survival**. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 **Force Majeure**. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure* event"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within 20 days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Tenant be entitled to an extension of more than 60 days due to a *force majeure* event, without the express written consent of the Commissioner.

EXHIBIT 1

LEASED SPACE

(INCLUDING CONFIRMATION OF DBO AND ACTUAL IMPROVEMENT COSTS)

The Leased Space is located at ORD and consists of ____ location(s) with a total of approximately TBD square feet of Retail Space as further depicted in the lease outline drawings attached hereto and not more than TBD square feet of Storage Space.

and approximately TBD square feet of Storage Space

The Date of Beneficial Occupancy is: TBD

EXHIBIT 2

RENT

1. Base Rent: The annual Base Rent equals $55 per square foot of Leased Space and shall be increased 3.0% annually as of January 1st of each calendar year during the Term. For purposes of determining Base Rent, Leased Space includes Retail Space and Storage Space.

2. Percentage Fee: The Percentage Fee shall be due and paid monthly as per the terms of the Agreement.

3. Percentage Fee Rate: The Percentage Fee Rate shall be equal to:

4. Minimum Annual Guarantee. There is no **"Minimum Annual Guarantee (MAG)"** or **"MAG"** for the first and second Lease Year of the Term. The Minimum Annual Guarantee will be established beginning in third Lease Year of the Term at an amount equal to 85% of the Percentage Fee payable for the second Lease Year. In each subsequent Lease Year of the Term, the MAG will equal 85% of the License Fee calculated for the prior Lease Year but will never be less than the MAG established in the third Lease Year. In the event the Leased Space is comprised of two or more distinct Retail Spaces that are opening for Concession operations on different dates, then the MAG payable for the entire Agreement will be apportioned among the various Retail Spaces based on actual annualized Gross Revenue.

EXHIBIT 3

DEVELOPMENT PLAN

EXHIBIT 4

CITY'S SHELL AND CORE OBLIGATIONS

EXHIBIT 5

PRODUCTS AND PRICE LIST

EXHIBIT 6

FORM OF LETTER OF CREDIT

SAMPLE FORM OF LETTER OF CREDIT

Issuing Bank Letterhead

(must be a bank located in the Chicago metropolitan

area) Irrevocable Standby Letter of Credit

Letter of Credit No.

Date: , 20__

Chicago Department of Aviation
Chicago's O'Hare International Airport P.O. Box
66142 Chicago, Illinois 60666
Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed $ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.
2. Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.
3. Partial and multiple drawings are permitted hereunder.
4. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.
5. This credit shall expire on , 20___, unless extended as provided herein.
6. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration

date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

7. Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. ."

8. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.

9. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

10. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.

11. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name:

Title:

THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT NO. ___

EXHIBIT A

CERTIFICATE FOR DRAWING

The undersigned, the Commissioner of the Chicago Department of Aviation, represents, warrants and certifies to _____ (the "Bank") with reference to Letter of Credit No. ____ Chicago (the "Beneficiary") that: issued by the Bank in favor of the City of

A breach of the Lease and License Agreement ("Agreement") dated as of_____ , 20 , as amended, modified or supplemented, between the City of Chicago ("City") and_____, an _____, has occurred, or a replacement Letter of Credit in a form and substance satisfactory to the City Comptroller has not been issued to the City by a Financial Institution meeting the requirements set forth in the Agreement. As a result, the City is making demand under the Letter of Credit t o pay _____dollars ($____) on the _____, day of 20___.

1. Payment of the draft shall be made by bank wire paid to our account as per our wire instructions below:
   _____ (Name of Bank)
   _____ (City & State)
   _____ (ABA No.)
   _____ (Account Name)
   _____ (Account No.)
   _____ (Reference No., if any)

2. All defined terms used but not defined herein shall have the meaning assigned hereto in the Letter of Credit.

In witness hereof, the City has executed this certificate as of this_____day of_____, 20____.

CITY OF CHICAGO

BY: _____

Its: Commissioner of Aviation

EXHIBIT 7

INSURANCE REQUIREMENTS

Chicago Department of Aviation
[TENANT NAME]

Concession Lease and License Agreement
O'Hare International Airport

A. INSURANCE REQUIRED

Tenant must provide and maintain at Tenant's own expense, during the term of the Agreement and during the time period following expiration if Tenant is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

1) Workers Compensation and Employers Liability (Primary and Umbrella)
Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than $1,000,000 each accident; $1,000,000 disease-policy limit; and $1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Tenant may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) Commercial General Liability (Primary and Umbrella)
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than $1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: Leased Space and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Tenant's work, services or operations performed. The City's additional insured status must apply to liability and defense of suits arising out of Tenant's acts or omissions,

whether such liability is attributable to the Tenant or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Tenant's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Tenant may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Tenant with limits of not less than $1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Tenant may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than $4,000,000 and airside access or $9,000,000 for airfield access per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Tenant may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Property

The Tenant must maintain All Risk Property Insurance for the Leased Space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Tenant is responsible for all loss or damage to personal property including equipment, fixtures and contents.

6) Liquor Liability

When applicable, Respondent must maintain Liquor Liability Insurance with limits of not less than $1,000,000 per occurrence. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

7) Professional Liability

Professional Liability Insurance must be maintained with limits of not less than $5,000,000 covering acts, errors, or omissions. Coverage must include, but not be limited to, technology errors and omissions. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work on the Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

8) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than $5,000,000 for each occurrence or claim if coverage is commercially available and financially feasible as deemed by the City. Coverage must be sufficiently broad to respond to the duties and obligations as is undertaken by Tenant in this Agreement and must include, but not be limited to, the following: invasion of privacy violations, information theft, release of private information, extortion and network security, breach response coverage and cost, regulatory liability, including fines and penalties and credit monitoring expenses, denial or loss of service, unauthorized access to or use of computer systems., no exclusion/restriction for unencrypted portable devices/media may be on the policy and introduction, implantation, and/or spread of malicious software code and property damage liability in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information property of the City that will be in the care, custody or control of Tenant must also be included. The City must be named as an indemnified party or additional insured. Should the City be named as an additional insured and the policy contains an insured versus insured exclusion, the exclusion must be amended and not be applicable to the City

9) Commercial Crime Insurance

The Tenant must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Tenant at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

10) Builders Risk

When Tenant undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Tenant must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/Leased Space Property. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Tenant is responsible for all loss or damage to City of Chicago property at full replacement cost.

B. Additional Requirements

Evidence of Insurance. Tenant must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Tenant must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Tenant, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Tenant must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Tenant for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Tenant to comply with required coverage and terms and conditions outlined herein will not limit Tenant's liability or responsibility nor does it relieve Tenant of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Tenant must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Tenant.

Waiver of Subrogation. Tenant hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

herein for any loss arising from or relating to this Agreement. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Tenant's insurer(s).

Tenant's Insurance Primary. All insurance required of Tenant under this Agreement must be endorsed to state that Tenant's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Tenant's Liabilities. The coverages and limits furnished by Tenant in no way limit the Tenant's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Tenant under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Tenant maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Tenant is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Tenant. If Tenant desires additional coverages, the Tenant will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Tenant must name the Subcontractor(s) as a named insured(s) under Tenant's insurance or Tenant will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Tenant but be no less than $2,000,000 per occurrence for landside, $5,000,000 per occurrence for access to airside and $10,000,000 per occurrence for access to landside for Commercial General Liability and Auto Liability. Tenant must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Tenant is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Tenant is

also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Tenant must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Tenant's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

EXHIBIT 8

ACDBE SPECIAL CONDITIONS AND RELATED FORMS

City of Chicago Department of Aviation

Special Conditions Regarding
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment

I. POLICY AND PROGRAM

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at https://www.ecfr.gov/current/title-49/subtitle-A/part-23.

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below. As part of its effort to meet its goals, the City may have established an aspirational contract-specific ACDBE goal for this Agreement at the time that the City issued the Request for Proposals for the concession ("RFP"); if there is a goal it is listed in section 3.2. "Definitions," of this Agreement under ""Airport Concession Disadvantaged Business Enterprise Agreement Goal." If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. A summary of guidance from Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

Concessionaires subject to ACDBE goals (except for rental car companies), must make good faith efforts to explore all available options to meet contract-specific goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs.

III. CONCESSIONAIRE'S ACDBE COMMITMENT

A. INITIAL ACDBE COMMITMENT

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and\or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, either (a) the RFP contained no contract-specific goal or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain any such participation. In either such event, there will be

no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation is in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s). If ACDBE participation is to be achieved through the participation of contracted providers of goods and/or services, additional documentation may be required as identified by the City to document the nature of the commitment throughout the life of the agreement.

B. CHANGES IN ACDBE PARTICIPATION

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted by the Concessionaire,

(iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBEs participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential noncompliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim.

Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

IV. COUNTING ACDBE PARTICIPATION

A. CONCESSIONS OTHER THAN RENTAL CAR

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted. Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted . Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE*. When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not counted.
2. *Separate locations*. When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations*. When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation*. When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted. Note: subcontractor participation is calculated as a percentage of expenses rather than as a percentage of gross receipts.
    a. 100% of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive

as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial, as provided in 49 CFR § 23.55(e) .

b. 100% of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).

c. 100% of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).

d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, , as provided in 49 CFR § 23.55(h):

    i. 100% of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

    ii. 100% of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;
2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

V. CERTIFICATION, RECORDS, REPORTS AND MONITORING

A. CERTIFICATION

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

B. RECORDKEEPING

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized representatives.

C. REPORTING

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

VI. GOOD FAITH EFFORTS

A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession, or otherwise meaningfully participate in the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages ACDBE participation.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in responding to a solicitation.
4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in

comparison to non-ACDBEs is excessive or unreasonable.

6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection. Another practice considered to be an insufficient good faith effort is rejection of an ACDBE because its price or fee was not the lowest or highest (as applicable) received. However, nothing in this paragraph shall be construed to require the concessionaire to accept unreasonable quotes in order to satisfy contract goals.
7. In the event of replacement of an ACDBE participant, a concessionaire's inability to find a replacement ACDBE at the same price or fee alone is not sufficient to support a finding that good faith efforts have been made.
8. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
9. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
10. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
   a) names, address and telephone numbers of ACDBE firms contacted;
   b) date and time of contact;
   c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
   d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:

   a) concession identification and location;
   b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
   c) date, time and location for submittal of bids or proposals.

3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.

4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.

5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.

6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.

7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.

9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.

11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:

    a) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.

    b) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.

    c) Prices quoted by all such potential business partners or subcontractors for that opportunity.

    d) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, determinations regarding a Concessionaire's good faith efforts will be made by the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago
Department of Aviation

10510 West Zemke Road
Chicago, Illinois 60666
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago
Department of Procurement Services
City Hall, Room 806
121 N. LaSalle Street
Chicago, Illinois 60602
Attention: Chief Procurement Officer

City of Chicago
Department of Aviation
10510 West Zemke Road
Chicago, Illinois 60666
Attention: Deputy Commissioner for Concessions

City of Chicago
Department of Law
2 North LaSalle Street, Suite 540
Chicago, Illinois 60602
Attention: Deputy Corporation Counsel, Aviation, Environmental, Regulatory, and Contracts.

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

VII. NON-COMPLIANCE AND DAMAGES

A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option

the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

B. NON-COMPLIANCE WITH ACDBE AGREEMENT

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE(s) may seek to recover from Concessionaire damages suffered by the ACDBE(s) as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.

EXHIBIT 9

MBE\WBE SPECIAL CONDITIONS AND RELATED FORMS

SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION CONTRACTS

I. Policy and Terms

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

Contract Specific Goals and Bids

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

I. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or

II. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find

MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

MBE Contract Specific Goal: 26%
WBE Contract Specific Goal: 6%

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

Contract Specific Goals and Contract Modifications

I. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub) contract with MBEs and WBEs to meet the Contract Specific Goals.

1. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
2. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.

II. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or
$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

II. Definitions

"Area of Specialty" means the description of a MBE's or WBE's activity that has been

determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject

matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm certified as a women owned business enterprise in accordance with City Ordinances and Regulations.

III. Joint Ventures

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

I. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;

2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;

3. Each joint venture partner executes the bid to the City; and

4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

II. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

III. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

IV. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding; and/or work to be performed by employees of the newly formed joint venture entity;

1. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and

2. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

NOTE: Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

IV. Counting MBE and WBE Participation Towards the Contract Specific Goals

Work items to be performed by the MBE'□s or WBE'□s own forces

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will

be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual- certified firm chooses to count itself as.

A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.
B. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.

A. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.

- Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.

- If the MBE or WBE performs the work itself:
  - 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces**.** 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals

- If the MBE or WBE is a manufacturer:
  - 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.

- If the MBE or WBE is a distributor or supplier:
  - 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.

- If the MBE or WBE is a broker:
  - 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  - As defined above, Brokers provide no commercially useful function.

- If the MBE or WBE is a member of the joint venture contractor/bidder:
  - A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  - Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

C. If the MBE or WBE subcontracts out any of its work:

1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar

services.

4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

V. Procedure to Determine Bid Compliance

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

- Schedule B: MBE/WBE Affidavit of Joint Venture
  - Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

- Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, http://cityofchicago.org/forms. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

D. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, http://cityofchicago.org/forms. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

E. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

F. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

G. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

H. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.

I. Documentation must include but is not necessarily limited to:

1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;

2. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:

    - Names, addresses, emails and telephone numbers of firms solicited;
    - Date and time of contact;
    - Person contacted;
    - Method of contact (letter, telephone call, facsimile, electronic mail, etc.).

3. Evidence of contact, including:
    - Project identification and location;
    - Classification/commodity of work items for which quotations were sought;
    - Date, item, and location for acceptance of subcontractor bids;
    - Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - Bids received from all subcontractors.

4. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.

- Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.

- Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.

- If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.

- No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

VI. Demonstration of Good Faith Efforts

I. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.

II. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:

1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.

2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.

3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.

4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.

5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.

6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.

7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.

8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

J. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.

K. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and

L. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.

1. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting

Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

VII. Changes to Compliance Plan

- No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

- Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:

  - Unavailability after receipt of reasonable notice to proceed;
  - Failure of performance;
  - Financial incapacity;
  - Refusal by the subcontractor to honor the bid or proposal price or scope;
  - Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  - Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  - The subcontractor's withdrawal of its bid or proposal; or
  - De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.

- If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

  M. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its

scope of work must be submitted with the request.

N. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.

O. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non- MBE or non-WBE.

P. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

Q. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

VIII. Reporting and Record Keeping

- During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.

- The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit

notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15^{th}) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20^{th} day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25^{th} of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: http://chicago.mwdbe.com

R. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.

S. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

IX. Non-Compliance

- Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or

WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.

- Payments due to the contractor may be withheld until corrective action is taken.

- Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

- The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740 of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

X. Arbitration

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

XI. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

EXHIBIT 10

DESIGN AND CONSTRUCTION STANDARD OPERATING PROCEDURES – CONCESSIONS

CDA
Chicago Department of Aviation

Concessionaire Projects Standard Operating Procedures (C-SOP)

Design and Construction Standard Operating Procedures

O'Hare International Airport

Midway International Airport

Chicago Department of Aviation
August 15, 2024

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Definitions

In additional to the terms defined elsewhere, the following words, phrases, when capitalized, have the following meanings:

Airport: refers to O'Hare International Airport and/or Midway International Airport.

Airport Concession Program Handbook: refers to the manual created by CDA to coordinate operations of the Concession location with the CDA, including inspections, daily operations, and construction.

Architect of Record/ Engineer of Record (AOR/EOR): refers to the Concessionaire's Licensed Architect and/or Engineer of Record.

Architect Point of Contact (Architect-POC): refers to the architects, engineers and/or consultants working on a concession project.

As-Builts: refers to the drawings that document on-site changes to the original construction documents. The initial plan markups are submitted by the General Contractor to the Architect or Engineer of Record for submission to CDA. These drawings are required by Chicago Department of Aviation as part of the close out documentation package and include both print and electronic formats.

Business Day: refers to a measurement of time that typically is a day in which normal business is conducted Monday through Friday; excluding Saturday, Sunday and City of Chicago holidays for all documentation and design submittals.

CDA CAD / BIM Standards: refers to the standards created by the Chicago Department of Aviation describing requirements for drawings.

CDA's Coordinating Architect of Design and Construction: refers to the designee appointed by the CDA to oversee the design creation and review process. This entity may also be involved in the review of the construction process to ensure coordination with the design.

Chicago Department of Aviation (CDA): refers to the managing entity for the Airports on behalf of the City of Chicago.

CDA Concessions Point of Contact (CDA-POC): refers to the department within CDA responsible for the oversight of the concessions program or it`s Concessions Management Representative (CMR)

CDA Construction Safety Manual: refers to the manual created by the City of Chicago and the Chicago Department of Aviation (CDA) to incorporate health and safety regulations as the responsibility of the Contractor working on Airport premises.

CDA Concessions Project Administrator (CDA-CPA): refers to a CDA Project Administrator or a designated representative assigned by CDA who will oversee the development of the construction project on behalf of CDA.

CDA Project Number: refers to CDA project identification number that is required to be included on all correspondence and applications submitted throughout the design and construction process.

CDA Safety: refers to any party working for, or on behalf of, the CDA in regard to safety, security, or similar airport operations.

Chicago Department of Public Health (CDPH): refers to the City of Chicago entity responsible for enforcing Chicago Health Codes, by performing inspections and administering permits. "Concessionaire" refers to the leaseholder or tenant in the business of selling products or services to the public at the Airport.

Concessionaire: refers to the entity with a legal right to occupy Airport property including airlines, concessionaires, government agencies or other entities operating on Airport property, who desire to perform construction or renovation on Airport property.

Concessionaire Point of Contact (Concessionaire-POC): refers to any party working on behalf of a concessionaire, which will include architects and their engineers and consultants (Architect-POC), and the general contractors and their subcontractors (Contractor-POC).

Concessions: refers to non-rental car concession businesses at the Airport selling products or services to the public.

Concessions Design Guidelines for Midway: refers to the guidelines established by the CDA regarding overall design intent and to provide quality, material, signage, lighting and system standards for concessions development at Chicago Midway International Airport (MDW).

Concessions Design Guidelines for O'Hare: refers to the guidelines established by the CDA regarding overall design intent and to provide quality, material, signage, lighting and system standards for concessions development at Chicago O'Hare International Airport (ORD).

Concessions Management Representative: (CMR) refers to the entity or entities retained by the CDA to assist in overseeing Concessions, including construction of Improvements at the airport.

Codes: refers to all applicable CDA standards, specifications, and building codes including but not limited to the Chicago Building Code, Chicago Electric Code, Chicago Mechanical Code, Chicago Plumbing Code, Chicago Fire Prevention Code, Chicago Fire Prevention Code, Illinois Plumbing Code, International Fire Code(s), NFPA Code(s), Life Safety Code(s), the Illinois Accessibility Code, Federal ADA Accessibility Guidelines, and FAA & DOT regulations. Concessionaire AOR and EOR are responsible for identifying and confirming all applicable standards, regulations and codes.

Construction Services: refers to the portion of the project involving construction, including but not limited to trade labor, material purchase, equipment purchase, tool or equipment rentals, support services such as safety monitoring, clean up labor, delivery costs, taxes, etc. that directly results in a code compliant concession location.

Contractor Point of Contact (Contractor-POC): refers to the general contractor and any subcontractors working on a concession project.

Department of Buildings: refers to the City of Chicago entity responsible for enforcing Chicago Building Codes, by performing inspections and administering permits.

Design and Construction Standard Operating Procedures; Concessions Projects (C-SOP): refers to the guidelines established by CDA and CDA Concessions as the process by which all Concessions projects are reviewed and approved For O'Hare International Airport and Midway International Airport.

Design Documents/Construction Documents: refers to the documents that illustrate and describe the project design by defining scope, relationships, forms, size, and appearance of the project with specifications, plans, sections, elevations, perspectives, typical sectional details, diagrams, equipment layouts, furniture, and graphics.

Liquor License: refers to the City of Chicago entity responsible for enforcing the Chicago Liquor Licensure by performing inspections and administering permits.

MEPFP: refers to mechanical, electrical, plumbing, and fire protection/ fire alarm equipment and/or other systems.

MOPD: Mayor's Office for People with Disabilities.

MDW: refers to Midway International Airport.

ORD: refers to O'Hare International Airport.

Pre-Construction Meeting: refers to the mandatory meeting held prior to project construction.

Project Initiation Letter (PIL): refers to the Concessionaire's formal letter submittal to CDA Design and Construction requesting a CDA Project Number. The Project Initiation Letter shall clearly define the project and scope.

Professional Services: refers to the portion of the project involving design, coordination, or post-construction work including but not limited to design, code review, project or program coordination, etc. that is associated with, but not necessarily required for the concession location.

PLEASE NOTE that work performed by an employee of the Concessionaire does not count as Professional Services.

Record Drawings: refers to the drawings submitted by the AOR or EOR to CDA that document the final built conditions of the project, which have incorporated all As-Builts from the General Contractor. These drawings are required by CDA as part of the close-out documentation package and include both print and electronic formats.

Retail Management System (RMS): refers to the CDA's secure concessions portal, AirportWare™ Software Suite, for Capital Program Management, Lease Management, Aviation Statistics, and Facilities Inspection.

Review Comments Form: refers to the CDA template used to document all reviewing parties' comments regarding the drawing submittal.

Review and Conditions Letter: refers to the document that is issued by CDA and used at all submittals throughout the drawing review process as a communication and response tool between review parties and the Concessionaire.

Sustainable Airport Manual (SAM™): refers to the manual created by CDA to incorporate and track sustainability in administrative procedures, planning, design and construction, operations and maintenance, and concessions and tenants with minimal impact to project schedules or budgets.

Introduction

The City of Chicago, acting through the CDA, is responsible for the management and operation of ORD and MDW. CDA reserves the right to review and approve the construction and/or modification of any Concession on Airport property. CDA, through its Design and Construction Division, reviews, oversees, and approves design and work for all new construction, renovation, and remodeling projects at the Airports.

The procedures, submission requirements, and deadlines set forth in this C-SOP document are mandatory and may only be waived in unique circumstances upon written approval by CDA Concessions. CDA reserves the right to modify the requirements at any time.

The Concessionaire shall provide evidence of professional services throughout all stages of work. All project documentation shall be prepared, signed, and stamped by a licensed design professional. Throughout the design process, the Concessionaire is to utilize the most sustainable design practices in the industry with reference to the Sustainable Airport Manual (SAM™) to the extent dictated in the Concessionaire's signed Lease and License Agreement. The CDA, through its Design and Construction Division & CDA Concessions, reviews, oversees, and approves design and work for all new construction, renovation, and remodeling projects at the Airports.

All Concessionaires who desire to perform construction or renovation on Airport property shall use the following procedures.

Please refer to:

- **Common Exhibit (CE)-1**: Development Process Overview Average Timeline

STEP 1.0: Post Award and Pre-Design

1.1: Concept Design and Project Initiation Letter

After the Concession Request for proposal (RFP) is awarded and prior to the submittal of any major design submittal, the Concessionaire must submit to the CDA Concessions Point of Contact (CDA-POC) a Concept Design and Project Initiation Letter (PIL) on the Concessionaire letterhead.
Please refer to the C-SOP Exhibits & PIL Submittal Check List, and address all design submittals as identified below, and copy them as indicated in all emails:

- **CDA Point of Contact, Design and Construction**

  Chicago Department of Aviation
  Aviation Administration Building (AAB)
  10510 West Zemke Road
  Chicago, IL 60666
  Email (as applicable):
  ordtenantconstruction@cityofchicago.org
  mdwtenantconstruction@cityofchicago.org

1.2: Concept Design and Project Initiation Letter Response

Within ten (10) Business Days of receiving the Concept Design and the Project Initiation Letter, CDA will send a"Response to the Concessionaire's Concept Design and Project Initiation Letter" to the Concessionaire with comments and direction regarding the design submittals, including the Concessionaire's assigned Project Number which must be included on all future project correspondence, design and construction submittals, and permit submittals. The letter will identify the CDA Concession Project Administrator (CDA-CPA) for the design phase of the project. The Project Initiation Letter Response will also provide notice of the SAM™ checklist requirement, which will be necessary for all Concession work. All Concessionaire questions, concerns, or requests for information or project coordination shall be directed to CDA Concession Project Administrator (CDA-CPA). The Project Initiation Letter Response will include a response to the Concessionaire's proposed plan for creating and submitting digital design and construction documentation. The "Response to Project Initiation Letter" is informative only and identifies the proposed LOD. It does not represent any type of approval of the Concessionaire project.

1.3: Request for Drawings / As-Builts / CADD Files

Concessionaires requesting documentation from CDA for use in their design shall use the link below for the "Document Request Form" and submit it to (CDA-CPA) for required approvals. Drawings, CADD files, or BIM models will not be available until the form is signed by (CDA-CPA). The concessionaire will be notified by CDA Concessions Project Administrator when the documents are available. The concessionaire must request the As-Builts as early as possible so that all relevant information and the existing drawings shall be incorporated in their drawing set. Please refer to:

- **Common Exhibit (CE)-2: CDA Standard Electronic Copy Document Request Form**

1.4: Document Management System

CDA may determine to give Concessionaire access to a project folder in its internal Document Management System for ease of sharing information**.** The concessionaire and (Architect-POC) must follow all instructions for the use of the system.

- **Common Exhibit (CE)-3:** Digital Deliverables Table.

End of STEP 1.0

STEP 2.0: Design Review

2.1: Design Overview

All Concession improvement projects require review by CDA Design and Construction. The design review process includes design document submittals, review, and approval prior to advancing to the next phase. The project design timeline will vary based on multiple factors, such as scope of work, existing conditions, drawing completeness at time of submittal, and/or as dictated by (CDA-CPA). Please refer to:

- **Common Exhibit (CE)-1**: Development Process Overview Average Timeline

2.2: Design Submittals and CDA Review

The Concessionaire shall submit the following design completion level submittals to (CDA-CPA):

1. 30% Schematic Design (SD)
2. 60% Design Development (DD)
3. 90% Pre-Final Construction Documents (CD)
4. 100% Final Construction Documents (CD)

Other completion-level submissions may be necessary based upon review and completeness of the initial and follow-up submittals. Less complex projects may be approved to deviate from this requirement "Response to Project Initiation Letter" or additional submittals may be required if the design submittals are incomplete or poorly coordinated between professional disciplines.

Both Plan Sets and Specification submittals shall meet C-SOP criteria prior to submitting to CDA Design & Construction for review. If one or more of these criteria have not been met, it will be rejected by CDA Design & Construction. For help with setting up pdf files to meet this requirement, Please go to Working with Bookmarks (bluebeam.com), Page thumbnails and bookmarks in PDFs, Adobe Acrobat, or any other PDF editing software support for more information. All drawings shall be submitted in accordance with CDA CAD / BIM Standards. A complete set of PDFs is also required as part of each design submission. See Appendix C of Part 1 of CDA Digital Governance.

Below is a brief description of CDA's expectations for each design-level submittal.

2.3: 30% Schematic Design (SD) Submittal

The drawings further illustrate the concept of the design and include spatial relationships, scale, and form for the Concessionaire and CDA to review. Content shall include an airport terminal key plan, LOD and floor plan, overall dimensions, and illustrative materials such as images, renderings, and material selection boards. Sections and elevations shall be included if available and critical to describing the function of the project. If any portion of the project is proposed to occur outside of the buildings on Airport property, the drawings shall show all impacts to existing utilities, infrastructure, pavement, fences, earthwork, and other civil conditions, and propose necessary relocations. **The documents shall incorporate and comply with Exhibit C & C.30.** A SAM™ Checklist shall be included with this submittal to promote the early integration of sustainability strategies and ensure compliance with prerequisites.

2.4: 60% Design Development (DD) Submittal

The drawings further enhance and respond to the previous CDA review submittal comments. The submittal shall include preliminary mechanical, electrical, plumbing, and structural documents, architectural elevations, sections, reflective ceiling plan, and details, demolition plans, structural load calculations, technical evaluations, and phasing plans.

The drawings shall also contain full finalized dimensions and information on material specifications that communicate the level of quality. If the project will require modifications to or new utility services such as electricity, gas, water, or internet/phone, service applications and/or load calculations shall be submitted with identification of the party who will be responsible for paying utility bills. **The documents shall incorporate and comply with Exhibit C & C.60.** The submittal shall update the SAM™ Checklist with any changes or considerations requested in prior review comments.

2.5: 60% Design Development (DD) Site Review Meeting

As soon as the Concessionaire and the Architect of Record are prepared to discuss their response to the CDA 60% Submittal Review Comments, **the Concessionaire and the Architect of Record shall schedule an onsite visit for all field verification.** The AOR consultants including but not limited to architects, mechanical, electrical, plumbing, structural, fire protection engineers, and kitchen designers must attend the site visit. The design professionals' site visit must be accompanied with (CDA-CPA).

2.6: 90% Pre-Final Construction Documents (CD) Submittal

The drawings further enhance and respond to the previous CDA review submittal comments. The drawings shall be substantially complete construction documents for all architectural, engineering, and special consultant disciplines. Include final specifications for construction details and materials, materials selection, structural calculations, equipment layouts, and a barricade plan and elevation. The drawings shall have all the necessary preliminary information to bid and permit the project and are in compliance with all local, state, and federal requirements and codes. **The documents shall incorporate and comply with Exhibit C & C.90.** The submittal shall update the SAM™ Checklist with any changes or considerations requested in prior review comments.

2.7: 90% Pre-Final Construction Document (CD) Site Review Meeting

As soon as the Concessionaire and the Architect of Record are prepared to discuss their reply to the CDA 90% Submittal Review Comments, **the Concessionaire and the Architect of Record shall schedule an onsite or virtual conference meeting with (CDA-CPA)to review their response.**

2.8: 100% Final Construction Documents (CD) Submittal

The drawings shall represent complete construction documents and respond to the previous CDA review Submittal comments. The drawing shall have all necessary final information to bid and permit the project. **The drawings shall incorporate and comply with Exhibit C & C.100.** The submittal shall include the final updated SAM™ Checklist with any changes or considerations requested in prior review comments.

2:9: ALL CDA Responses to Concessionaire Submittals

Within fifteen (15) Business Days after each design submittal CDA will provide an Excel format document listing comments and directions that require the Concessionaire and Architect of Record response prior to the next design submittal. The Concessionaire and Architect of Record shall indicate their response to each CDA comment on the "Submittal Review Form" and on the next design document submittal. CDA will review the Concessionaire and AOR's response and design documents prior to the next submittal. At CDA's option, (CDA-CPA) may schedule an onsite or virtual conference meeting with the Concessionaire and AOR to review the response comments.

When the 100% construction documents review set is determined acceptable, CDA will send a "Response to Final submittal letter" to the Concessionaire stating that the project may be submitted for permit. The Concessionaire's AOR or contractor shall attach the CDA "Response to Final submittal letter" to the permit application and submit both to the Chicago Department of Buildings for a building permit.

Major milestone design submittals are listed below:

1) **30% Schematic Design**
2) **60% Design Development**
3) **90% Pre-Final Construction Document**
4) **100% Final Construction Documents**

2.10: Design Requirements

General Requirements:

All design professionals shall include the following general and technical design items in accordance with the appropriate design phase submittals. Preliminary engineering and specialty consultant work shall be shown no later than in the 60% submittal level. All discipline work shall be complete in the 100% submittal level. CDA will utilize the design requirement checklist as a reference to determine whether design requirements are satisfactorily addressed in the AOR's documents.

1) Verify design is in accordance with **All current applicable Codes**.
2) Comply with CDA Design and Construction Standards and Specifications and SAM™ Prerequisites.
3) Drawings shall identify previous use of space, particularly when the use of the space is changing, like a storage closet to occupied space.
4) Title blocks shall always include an airport terminal key plan showing the location of the Concession within the airport.
5) Include the egress path and the exit travel distance in the Life Safety Plan.
6) Label all adjacent spaces to the concession.
7) All correspondence with specific project code-related questions to DOB shall distributed to the self-certified Architect and (CDA-CPA).
8) The drawings shall incorporate and comply with **Exhibit C Checklist**

2.11: Mechanical Component Requirements:

1) Testing, Adjusting, and Balancing (TAB) HVAC System(s)
    a. **BEFORE** to confirm existing data available
    b. **AFTER** to document the existing/altered HVAC systems data vs. required Concession Design Requirements
2) Provide complete HVAC Ventilation Schedule indicating CFM-air changes required per Code and per each design. Chicago Building Code: 18-28-403.14 requires Outside Air OA on schedules.
3) Provide New Area heating-cooling-venting loads. Adjust or add HVAC Equipment as required.
4) Provide New or Altered Mechanical Systems equipment, ductwork, piping, and control details.
5) Convert existing pneumatic VAV boxes controls to *DDC-Type VAV boxes*.
6) For open-ceiling style retail and Kiosks, provide heat calculations from all proposed equipment and identify heat load in the ventilation schedule.
7) Identify all fire rated dampers and penetrations through fire rated walls, floor, ceiling, and roof.

2.12: Electrical Component Requirements:

1) Verify existing total electrical load calculations to determine if the electrical service to the newly remodeled OR the existing space is adequate for the required loads. Calculations must be completed at 60% level of design.
2) Identify the distance from the electrical service source to new space. Calculations must be completed at 60% level of design.

3) Submit all COMED service application request forms to CDA Utilities Team for coordination when requesting a separately metered electrical source. Attach a copy of the standard Load Letter to this e-mail. **A copy of the completed application must be emailed to ordtenantconstruction@cityofchicago.org or mdwtenantconstruction@cityofchicago.org**
4) Check and coordinate loads shown on electrical power plans against mechanical, plumbing, fire protection, and/or architectural equipment lists.
5) Lighting fixture schedules shall show voltage and input watts of each fixture.
6) Complete panel schedules shall be shown. Update existing panel schedules with updated circuit information.
7) Review circuiting designations of all electrical equipment including mechanical, IT, lighting fixtures and receptacles, etc. Circuit loading must comply with Chicago Electrical Code allowed values.
8) Place this note on all design review submittals: "The design shall be in accordance with the requirements of the Chicago Electrical Code, Chicago Department of Aviation Design Specifications, Chicago Airport Systems Design and Construction Standards, and CDA Concessionaire SOP for Design and Construction."
9) Utilize Energy-saving devices per the direction given in the SAM™ (**PLEASE NOTE:** devices carrying the "Energy Star" rating usually qualify).
10) Provide details on the electrical demolition drawings so that contractors bids will be accurate.
11) Show electrical equipment room locations. Provide code-required clearances and accessibility for all electrical equipment utilized for the design.
12) Check coordination between architectural reflected ceiling plan and electrical lighting plan.
13) Check coordination between the mechanical ceiling plan and electrical lighting plan.
14) Check coordination between architectural millwork plan, electrical power and receptacle plan.
15) Check coordination between architectural signage and electrical lighting plan if signage is illuminated or requires electrical power for operation.
16) Provide a separate emergency lighting and exit plan in accordance with City of Chicago Bureau of Fire Prevention requirements. Show all exit signs, fire alarm pull-stations, strobes, horns, speakers (if required), etc.
17) Electrical lighting switches and receptacles shall be installed in accordance with ADA and "Mayor's Office for People with Disabilities" requirements.
18) Identify all building column line designations, north arrow directional information, and airport terminal key plan, in coordination with the architectural plans submitted.
19) Provide a "One line diagram" (from Source to End Panel) and associated elevations of equipment.
20) Provide Short Circuit Interrupting Ratings of all Over Current Protective Devices specified.
21) Lighting fixtures and public address speakers shall be Chicago Plenum Rated if installation of a plenum ceiling is required.
22) The design shall account for voltage drop in main feeders and branch circuits and comply with Chicago Electrical Code requirements.
23) Show location of electrical meter in plan with room name and number.
24) Feeder and branch circuits shall be sized such that they shall not exceed 80% of the feeder or branch circuit rating respectively.
25) Provide a 25% minimum space capacity in each component in the design of each system.
26) Provide and electrical permit for all electric signage.
27) Balance panel phases to within 10% of one another.

2.13: Plumbing Component Requirements:

1) Provide plumbing installation details for Meter, Back Flow Preventers after meter, Check & Double Check Valves, Vacuum Breakers, Electric Hot Water Tank-expansion tank-piping-return piping-blow downs-mixing valve assemblies, flue(s), EM Drain Pan under Hot Water Tank, ID labeling, wall/floor penetration(s), pipe hangers & supports, Vibration Isolators, etc.
2) Submit all Peoples Gas service application request forms to CDA Utilities Team for coordination when requesting a separately metered gas service for concession work**.** A copy of the completed application must be emailed to ordtenantconstruction@cityofchicago.org or mdwtenantconstruction@cityofchicago.org
3) Provide complete plumbing requirements and schedules
4) Provide water metering for all Concession spaces
5) Provide Grease trap(s) at food and beverage establishments
6) All valves shall be within arm's reach. Do not locate valves in the ceiling or in inaccessible locations.

2.14: Fire Protection Component Requirements:

1) Show all existing, relocated, and new Sprinkler Heads
2) Verify sprinkler coverage complies with codes
3) Provide new systems piping details
4) Provide fire suppression system (Ansul) at kitchen hood
5) Identify all fire-rated penetrations through fire-rated walls, floor, ceiling, and roof

2.15: Life Safety Plan Requirements:

1) Provide Life Safety Plan including locations of any applicable night lights, exit lights, fire extinguishers, Ansul fire protection switch & tanks, Gas meter & shut off valve, Water meter & shut off valve, Electrical meter & switch gear or panel, and fire rating of partition, as required.
2) Provide egress width and travel distance within the concession and to the nearest exit.
3) Life Safety Plan will be used by the Chicago Fire Department. The Life safety plan shall be placed after Title plan and the second sheet of the drawing set.

2.16: Food Service & Kitchen Equipment Area Component Requirements (If Applicable):

1) A separate Board of Health review is required for projects containing Food Service & Kitchen Equipment. The process can be found in the
   - City of Chicago: Chicago Department of Public Health
2) Provide and identify special exhaust fans, hoods, make-up air equipment, to maintain negative air as required per codes. Provide special materials such as Stainless Steel, Black Iron, Aluminum, Ansel, fire dampers, gas, and electric automatic shunt trips, etc. per Codes & CDA Standards.
3) Comply with the Chicago Department of Public Health (CDPH).

2.17: IT and Telecommunications Component Requirements:

1) Coordinate all IT & Telecommunications needs with (CDA-CPA)for additional instructions as required.
2) Field verify the existing Infrastructure space and capacity when proposing to use the existing duct banks, manholes, handholds, tunnels, conduits, cable trays, IT/telecom rooms, and other infrastructure. If the existing space is not available, new infrastructure shall be included in the scope of the Concessionaire project.

2.18: Security and Safety Component Requirements:

Notify (CDA-CPA) for all Security and Safety Requirements and service requests. CDA Security, Safety, and CDA Design & Construction will review and coordinate all requests. e.g., Moving an existing security camera.

2.19: Utility Component Requirements:

Notify (CDA-CPA) for all Utility service requests. CDA Utility Team and CDA Design & Construction will review and coordinate all requests.

2.20: Environmental Component Requirements:

Notify (CDA-CPA) for all Environmental work. CDA Environment and CDA Design & Construction will review and coordinate all requests.

Asbestos / lead-based paint/mold building alteration or demolition:

1) Asbestos & lead-based paint (LBP)
    A. All projects involving building alterations, renovations, or demolitions shall have a licensed asbestos building inspector and a licensed lead risk assessor conduct a limited asbestos survey and an LBP survey prior to the start of work UNLESS accurate recordkeeping of one of the following documents are available:
        a) Technical Specifications (including as-builts) have been filed and showcase that existing building components **DO NOT** contain asbestos or LBP products.
        b) A prior asbestos survey and LBP survey has been filed for the building being altered and the report states that samples taken for the building **DO NOT** contain asbestos or LBP.
        PLEASE NOTE that an LBP survey is **NOT** necessary if the building being altered was built after 1980.
    B. If asbestos survey findings report that asbestos-containing material (ACM) **IS FOUND** and has the potential to be disturbed during construction, then the Concessionaire shall comply with local, state, and federal regulations and shall conduct an asbestos abatement project prior to the start of the building alteration.
    C. If LBP survey findings report that LBP **IS FOUND** and has the potential to be disturbed during construction, then the Concessionaire shall comply with local, state, and federal regulations and shall conduct an LBP abatement project prior to the start of the building alteration.

2) Mold
    A. All projects involving building alterations, renovations, or demolitions may, at the Concessionaire's discretion, conduct a mold study to verify the presence or absence of mold growth. The presence of mold is more likely in environments that have moisture problems.
        a) If mold is observed, the Concessionaire shall seek the involvement of a mold remediation contractor regarding proper mold removal prior to building alteration.

3) Equipment with Air Pollution Emissions on any project that involves the installation, removal, or modification of equipment that emits or has the potential to emit air pollution emissions shall be shown in the design. Permits may be required by the IEPA and the Chicago Department of Public Health (CDPH) for construction and/or operation of this equipment.

2.21: Demolition Component Requirements:

1) A Chicago Department of Building Permit is required prior to the start of any construction work unless CDA determines that the scope of the project does not require a building permit. If the Concessionaire acquires CDA approval to phase the construction work and begin demolition prior to obtaining the full building permit, the contractor shall contact Chicago Department of Buildings for a separate Demolition Permit.
2) Designs requiring any work in spaces outside the Concessionaire's LOD (lease/license boundaries) shall be clearly identified on all drawings, communicated to CDA Point of Contact and, if applicable, coordinated with the Concessionaire of the impacted space during the project's design phase.
3) Concession demolition requirements may include, but not limited to:
    a. Abandoned Domestic water pipes and fire protection pipes shall be removed entirely back to an active line and capped.
    b. In accordance with the Illinois plumbing code, demolition of abandoned existing domestic water and sanitary drain piping shall be properly removed and capped up to the active branch connections.
    c. Abandoned or disconnected electrical conduit, mechanical ductwork, mechanical piping, equipment piping, etc. shall be removed entirely back to an active line and capped.
    d. Abandoned or unused equipment shall be removed.
    e. All renovation work for each architectural and engineering discipline requires some demolition work or modification to existing building systems.
    f. Each architectural and engineering discipline design submittal shall provide demolition documents and specifications identifying existing and modified work.
    g. Identify any items that shall be relocated by others such as advertising, phones, vending devices, internet kiosks, charging stations, AED's, fire extinguishers, CDA signage, public address speakers, mechanical, electrical, plumbing, equipment, etc.
    h. A survey for asbestos-containing material, lead-based paint, mold, and hazardous materials may be required. Please contact (CDA-CPA) to determine whether a survey is required.
    i. Provide photos for the existing elements that will be removed or modified. Attach the pre-demolition photos on the demolition plans shown in the 30% and 60% design submittal.
4) All Concessionaire Projects must comply with CDA's Construction and Demolition Debris Disposal and PFAS policy. Contact (CDA-POC) Environment Division for this policy.

2.22: Construction Consideration Requirements:

Construction components including dumpster locations, phasing, haul routes of material to site and through terminal facility, required shutdowns of systems, and lay down and material storage areas should be coordinated to the best of the Concessionaire and Architect-POC's ability during the design phase. Architect of record must ensure due diligence is undertaken to determine the exact locations of all system tie-ins and to provide a design that requires minimal system shutdowns in order to avoid the project being assessed multiple shutdown fees. For site visits or shutdown coordination with CDA Facilities. Proposed work hours for the project shall be included in the notes of the design submittal, including work components planned for daytime versus work components planned for nighttime.

The final construction schedule, system shut-downs, and tie-in shall be identified by the General Contractor during the CDA Pre-construction meeting and to be coordinated through the CDA Smartsheet Standard Operating Procedure.
Please refer to Common Exhibit (CE)-7: CDA Smartsheet SOP.

2.23: Barricade Requirements:

Barricades are required for all projects that are within the view of passengers in the terminal facility. Barricades must completely obstruct the view of the construction site and adhere to CDA Temporary Barricade Standard for the applicable airport. All barricade graphics must also be included in the design submittal for review and approval by CDA.

Please refer to CDA Construction Barricade style Guide for full compliance requirements.

2.24: Sustainable Airport Manual (SAM™) Requirements:

1) **Terminal Concessionaire:**
   A. Included with each design submittal, the Concessionaire must submit a Sustainable Airport Manual (SAM™) checklist. The relevant SAM™ chapter is Terminal Occupants which can be found along with all of its supporting documents at the link below.
   PLEASE NOTE: that the Terminal Occupants chapter of the SAM™ is divided into two sections: Terminal Occupants – Design & Construction (TO-DC) and Terminal Occupants – Operations & Maintenance (TO-OM). For design, renovations, and construction of Concessionaire projects within the terminal, only the TO-DC section is applicable (SAM™ TO-DC Credits 1.0 to 6.0).
   B. The Designer shall complete and submit a checklist for the SAM™ Terminal Occupants – Design & Construction Chapter (SAM™ TO-DC Credits 1.0 to 6.0) and include all relevant supporting documentation. Be advised that the Terminal Occupants – Operations & Maintenance (CT-OM) checklist is not required for construction projects. The SAM™ checklist submittal is applicable to most Concession projects. The applicability is based mainly on the size and scope of the project. The determination of whether a SAM™ checklist is required will be made by CDA and will be communicated to the Architect-POC In the "Response to the Project Initiation Letter".
2) **Non–Terminal Concessionaires:**
   A. Concessionaires who are not located in the terminals shall refer to the SAM™ Design & Construction (DC) and Operations & Maintenance (OM) chapters of the SAM™. Examples of non-terminal Concessionaire's may include FBOs, cargo/freight operations, or other commercial or retail entities.

   Please refer to link below:

   - Sustainable Airport Manual (SAM™ Manual)

2.25 Concessionaire and CDA Signage Requirements:

When the project includes new storefront or blade signage, the final design submittal must include side view renderings or photos, the sign location, the exact dimensions, and an elevation for review by CDA to ensure the signage meets the terminal-specific requirements.
PLEASE NOTE: that a sign permit is NOT required for an interior airport project. If the sign is electric, obtain a permit via electric permit. Wayfinding or directional signage will not require a sign permit.

When airport signage is located within the project area, it must be shown in the construction documents. The design professionals shall inform the contractor that all Airport signage must be protected so it is not damaged during construction.

The Concessionaire must inform the (CDA-CPA) if the project requires existing airport terminal signage to be removed, modified, or supplemented. Altering any airport signage shall be reviewed and approved by the CDA. The Concessionaire shall be responsible for all costs to relocate or modify airport signage.

2.26 FAA 7460-1 Requirements:

A Federal Aviation Administration (FAA) Form 7460-1 (Notice of Proposed Construction or Alteration) may be required for certain projects that are expecting to use cranes or any other equipment that could impact the airport property due to height, civil, underground work, or building alterations. It is the responsibility of the Concessionaire to prepare and submit Form 7460-1 online via https://oeaaa.faa.gov/ for on-airport projects. Select the FAA Notice Criteria Tool on the website to determine if a 7460-1 is required. This should be confirmed with CDA. To learn more about the 7460-1 process, to complete the form, and for the FAA's contact information, Please see:

- https://www.faa.gov/forms/index.cfm/go/document.information/documentid/186273

PLEASE NOTE: This process takes approximately 60- 90 days to complete.

- Refer to: **Common Exhibit (CE)-4:** FAA Approved 7460-1 F

2.27: Impacts to CDA Security Requirements:

The Concessionaire must notify (CDA-CPA) if the project scope of work includes the removal, installation, deactivation, reactivation, or relocation of an access control device or boundary including perimeter fence, perimeter gate or checkpoint, or new openings (temporary or permanent) from the public area to the sterile area / airside, access control door, camera, alarm, or supporting hardware.

- Refer to: **Exhibit (D.3):** Impact to CDA Security and TSA Approval

End of STEP 2.0

STEP 3.0: Permit Process

3.1: Establishing Building permits

Typically, all projects require a building permit. However, projects with limited scope of work may not require a permit. The Concession-POC with CDA design & construction shall determine if permits are required. If it is determined that the scope of work does not require permit(s), the Concession-POC shall explain this determination to the Concessionaire. Otherwise, building permits shall be issued by the Department of Buildings. Complex projects may require multiple reviews with the Department of Buildings reviews at various stages during the design process. CDA encourages the Concessionaire to allow ample schedule time to acquire all required building permits.

PLEASE NOTE: if a signed construction permit is required, it can only be obtained by a licensed signed contractor. All projects are to conform and comply with all applicable CDA standards and codes.

3.2: Applying for a Permit with the Chicago Department of Buildings

Once the project is bid for construction and the Concessionaire awards the project to a contractor, the contractor shall apply for the required permits from the Department of Buildings and any other applicable state and federal authorities. The Concessionaire and contractor must coordinate the method, process, and schedule for the permit application submittals as well as coordinate conduction of final inspections.
PLEASE NOTE: The Description of Work on the permit must include the associated terminal (i.e. Terminal #), the closest gate (i.e. E4), the project name, and, the CDA project number. A list of required work permits is located on the Department of Buildings website.
PLEASE NOTE: that when a sign construction permit is required, it can only be obtained by a licensed sign contractor.
All Department of Buildings permit applications and submittals are fully electronic and available via the City's online system.

- Refer to: **"E-Plan" at the following website:** https://www.flychicago.com/business/opportunities/build/Pages/Online-Portals.aspx

3.3: Professional of Record (Architect of Record / Engineer of Record) Self-Certification Permit

The professional of record may self-certify a building permit for the project. The AOR/ EOR must be registered with the Chicago Department of Buildings to perform a self-certification permit. Typical city site inspections during construction shall be coordinated by the contractor. The Self-Certification Permit Program simplifies the building permit process for eligible residential, business, and mercantile and small assembly projects where the Professional of Record (as defined in the Self-Certification Permit Program) takes full responsibility for Code compliance. The Department of Buildings plan reviews are eliminated by allowing the Professional of Record to certify that the permit drawings comply with the Chicago Building Code. The Professional of Record must prepare and seal the permit drawings, complete Department of Building's Self-Certification Training Class, and have an active Self-Certification registration. **Refer to Step 6.3** Chicago Department of Public Health and Liquor License for more information please see: Chicago Dept. of Buildings Self Certification Program

3.5: MOPD Review

MOPD provides pre-permit plan review guidance for architects and developers for a nominal fee. It is optional for privately funded concessions. Still, a helpful resource to ensure ADA compliance.

End of STEP 3.0

STEP 4.0: Pre-Construction

4.1: Pre-Construction (Pre-Con) Documentation

1) As specified in the final CDA review comments, the Concessionaire-POC shall first compile all Pre-Construction documentation, and then request a Pre-Construction Meeting through the **(CDA-CPA) (CDA Concession Project Administrator)**. All Pre-construction documentation shall be electronically submitted to (**CDA-CPA**.) Please refer to **Exhibit Reference D & E: Contractor's Checklist.**
2) The Pre-Construction Meeting **will NOT** take place until MBE/WBE Compliance Plans, **Exhibits E.4-E.6,** have been reviewed and accepted by the CDA.
3) CDA and CDA's consultant team will conduct an evaluation to confirm complete compliance with the Minimum Pre-Construction document requirements **(refer to Step 9).** Complete documents will grant CDA acceptance. (**CDA-POC)** may reject, request any missing documents, or request an update to any outdated documents. Incomplete Pre-Construction documents must be resubmitted, and the approval process will be delayed. Concessionaire, consider the following:
    (a) It is the Concessionaire's-POC's responsibility to compile and submit the required documentation in a timely manner in order to maintain the overall project schedule.
    (b) Allow approximately four (4) weeks to acquire badging, vehicle permits, building permits, and other necessary pre-construction documentation.
    (c) Refer to **Exhibit D**: Pre-Construction Meeting Checklist for all required documentation.
    (d) Process for all required airport badges and permits must be completed by every employee/worker and vehicle involved in the project before work begins.
    (e) Construction will **NOT** begin until all required documentation has been submitted, reviewed, and approved by the (**CDA-CPA)**.

4.2: Pre-Construction Meeting

1) Upon completing **Step 4.1**, (CDA-CPA) will arrange to schedule a Pre-Construction Meeting and will notify the Concessionaire of the online meeting time. At the Pre-Construction Meeting, the Concessionaire and their representatives shall be prepared to answer any questions regarding the required documentation and the proposed construction.
2) The Concessionaire and/ or the General Contractor shall prepare a Presentation of the proposed construction summary for the Pre-Con meeting. (CDA-CPA) will provide a presentation power point template.
3) The General Contractor shall provide proof that the barricade graphic has been produced and is ready for installation.
4) At the conclusion of the pre-construction meeting, CDA will determine if the documentation and Concessionaire's response to any questions are complete, and, if so, (CDA-POC) will issue a letter authorizing construction to start.
   PLEASE NOTE: an e-Form must also be submitted and approved before construction can start. Please refer to **Step 5** for more information on the e-Form.

4.3: Required Pre-Construction Meeting Attendance

1) Concessionaire and/or Owner's representative(s).
2) General Contractor, Project Manager, Superintendent, and Safety Manager.
3) Attendance of the concessionaire's design consultant is optional.
4) The (CDA-CPA)will notify all Airport stakeholders necessary to attend the meeting.

End of STEP 4.0

STEP 5.0: Notice to Airport User Form (eForm)

5.1: Notice to Airport User Form (E-Form)

For all Concession projects, the Concessionaire shall submit a Notice to Airport Users form. The Concessionaire shall register or login to the online *Notice to Airport Users Form* at *https://eforms.cityofchicago.org/* to create a project start-up form indicating scope, start, and completion dates. Additional user forms required during the course of construction will be discussed at the Pre-Construction Meeting. All User Forms must be submitted at least three (3) business days prior to the anticipated start of work to allow adequate time for review.

Any work on the fire protection system within the Concession space which requires a fire protection shutdown should have a separate user form submitted and must adhere to CDA fire shutdown procedures.

Any work on the domestic water service within the Concession space which requires partial domestic water service shutdown shall have a separate user form submitted and must adhere to CDA domestic water service shutdown procedures.

For site visits or shutdown coordination with CDA Facilities, please refer to the CDA Smartsheet Standard Operating Procedure.

- **Common Exhibit (CE)-7***: CDA Smartsheet SOP*

End of STEP 5.0

STEP 6.0: Construction

6.1: Site Maintenance / Construction Administration

The work area shall be kept clean and all debris removed daily. All permits, user forms, emergency contact directory, and construction alerts approved by the CDA shall be prominently displayed in a locked glass display cabinet 24" high by 36" wide mounted to the public side of the barricade. One full size stamped set of drawings and the original permit must be kept on site at all times.

6.2: Building Inspections

Department of Buildings Inspection Bureau will conduct periodic inspections throughout the construction. Contractors must request inspections of ventilation, electrical, plumbing, and new construction on all projects with issued building permits, for both rough and final inspections. Failure to request these inspections may result in suspension or revocation of the permit, and issuance of citations by the Chicago Department of Buildings for violation of licensing requirements against the General Contractor and subcontractors.

Chicago Department of Buildings inspections shall be scheduled via the online inspection scheduling system at www.cityofchicago.org/buildings. All requests for rough and final Chicago Department of Buildings inspections should be requested at least fourteen (14) business days in advance.

If needed, contact the Department of Buildings Inspection Bureaus by phone as listed below:

- Ventilation Department – (312) 743-3573
- Electrical Department – (312) 743-3622
- Plumbing Department – (312) 743-3565
- New Construction Department – (312) 743-3559

In addition, contractors must offer the (CDA-CPA), (CMR), terminal manager, and building engineer an opportunity to perform an inspection at demolition, rough, periodic progress, and final phases. The contractor shall contact the (CDA-CPA) to coordinate these inspections.

6.3: Chicago Department of Public Health Inspections and Liquor License

Food establishments and retail establishments serving food require a health inspection to be conducted by the Chicago Department of Public Health (CDPH). Concessionaires applying for a liquor license require a separate inspection coordinated by the Business Affairs and Consumer Protection Department, in addition to the Department of Buildings inspections. For both inspections, allow one (1) to three (3) weeks to schedule and obtain a final inspection and certificate.

Please Note, the construction barricade cannot be removed until applicable licenses and inspections are complete.

PDF of the Health Inspection Approval and supporting documentation must be supplied and sent to CDA Concessions prior to store opening.

For Chicago Department of Public Health (CDPH) visit their website at:

- City of Chicago :: Chicago Department of Public Health or call (312) 747-9884.

For Business Affairs and Consumer Protection Department information visit their website at:

- City of Chicago :: Business Licenses or call (312) 744-6249.

6.4: Safety and Security Plan

All contractors and subcontractors and the work they perform are subject to the CDA Construction Safety Manual. Each project requires an onsite full-time Safety Manager who is solely responsible to monitor job site safety and security (See **Exhibit D.6 for more details**).

Please refer to link: **CE-8**

- https://www.flychicago.com/business/opportunities/build/Pages/StandardsManuals.aspx

CDA Safety will perform periodic site safety walkthroughs during construction to ensure all work is being performed per the CDA Construction Safety Manual. CDA Safety and the (CDA-CPA) have the authority to stop work if unsafe conditions or practices are observed.

6.5: Demolition

Refer to **Step 2.22**. Prior to demolition, pre-construction photos must be taken to document all existing conditions. Failure to provide photo documentation of the existing conditions before construction will result in the contractor and Concessionaire assuming responsibility for all damages and perceived damage to existing base building materials. Damaged materials must be repaired or replaced at the contractor's and Concessionaire's expense. Once demolition is complete, the CDA terminal manager, the CDA building engineer, (CMR), and (CDA-CPA) shall perform a site inspection prior to the start of construction.

Core drilling, and cutting of floors, walls, or roofs may be required. Under no circumstances shall the Concessionaire or its contractor(s), at any time be permitted to drill or cut conduit, pipe sleeves, chases, or duct equipment openings in the floor, columns, walls, or roofs of the structure without prior review and acceptance of the proposed locations and sizes by the CDA's structural consultant. The Concessionaire is required to x-ray or scan the area prior to beginning work utilizing a 3D ground penetrating radar and will provide a copy of x-ray/scan results to CDA. Scan/x-ray to be submitted via eForm three (3) business days prior to performing coring or drilling work. All penetrations shall be reviewed by a licensed engineer who shall provide engineering drawings and details to support the penetrations.

6.6: Construction Meetings and Reporting

During construction, the General Contractor shall provide the following project documentation and electronic documentation to the (CDA-CPA):

1) **Bi-Weekly Meeting**: Minutes from each Bi-weekly contractor led meeting (in person or via telecom) include the project owner and/or representative and (CDA-CPA), at an agreed location (project site or (CDA-CPA)conference room).
2) **Additional CDA Requested Meeting**: Minutes for any additional meetings upon any specific issues.
3) **Weekly Construction Status Report**: Minutes describing the progression of the work. The weekly status report must contain at a minimum the following:
   a) Project title
   b) Project number
   c) Forecast/ actual start/completion date(s)
   d) Describe construction progress of all trades that occurred since the last weekly report
   e) Update the three (3) week "Look Ahead" construction task schedule

f) Identify current and forecasted issues
g) Take at least three (3) project photos daily to document progress of construction.
h) Other items as requested by CDA.

4) Update the overall project schedule monthly
5) All Issued for Construction Drawings (IFC), addenda to the permit drawings, and resolved RFIs as they become available.

6.7: Non-Compliance and Unauthorized Construction

Non-compliance or construction that deviates from the approved permit documents without CDA's prior written approval may be just cause for CDA to order work stoppage until corrective measures are taken and compliance is obtained. Any cost or claims due to this work stoppage shall be borne by the Concessionaire and the General Contractor.

End of STEP 6.0

STEP 7.0: Substantial Completion

7.1: Substantial Completion Notification

The General Contractor shall notify the (CDA-CPA) a minimum of seven (7) business days prior to the anticipated substantial completion date to request a site inspection project completion walk-through. The construction space must be clean and all tools and surplus materials must be removed from the site or the walk-through will be canceled. Mandatory attendance at the walk-through includes: Concessionaire and/or Owner's Representative(s), and the General Contractor's Project Manager and Superintendent. The (CDA-CPA) will notify the (CMR), CDA terminal manager, the CDA building engineer, and any other attendees identified during the Pre-Construction meeting or as deemed necessary. The items listed below are required to support the substantial completion walk-through process:

1) The Concessionaire's architect shall compile their punch list items. The Concessionaire or concessionaire's architect shall provide a copy of their punch list to (CDA-CPA) for review and distribution prior to the CDA walk-through.
2) The concessionaire will receive final CDPH and Department of Buildings inspector's approval before the substantial completion walk-through.
3) The General Contractor shall notify the **Chicago Fire Department (CFD)** a minimum of ten (10) business days prior to the anticipated substantial completion date to request a site fire inspection. Chicago Fire Department, CFD's field inspection requires a minimum seven (7) business days prior to concessions opening.
4) The substantial completion walk-through must occur 5-10 business days prior to concessions opening.

7.2: Final Walk Through and Punch List

1) At the substantial completion walk-through, the General Contractor shall conduct a brief meeting to distribute and discuss the punch list items that they have identified.
2) The General Contractor and Concessionaire must show proof of all final:
   A. Department of Buildings and (CDPH) inspections
   B. Certificate of Occupancy
      a) If a Certificate of Occupancy is required as determined by the Department of Buildings, it must be submitted to the CDA prior to any occupancy of the renovated or newly constructed space.
      b) It is the Tenant's responsibility to arrange for inspections by the Department of Buildings for the Certificate of Occupancy.
   C. Business and Liquor licenses
   D. Certificate of Insurance
   E. The Concessionaire shall identify properly labeled utility meter locations
      a) Identify meter number
      b) Identify room name of meter location(s)
   F. The Americans with Disabilities Act (ADA) Compliance Check :
      a) The General Contractor and Concessionaire shall submit the ADA compliance letter by the Concessionaire's architect (It must be submitted to (CDA-CPA) prior to any occupancy of the renovated or newly constructed space.
      b) The ADA Floor Plan such showing the fixture layout plan and the accessible seating plan must be displayed in an 11x17 frame in the back of the house.
3) After all attendees have completed the walk-through, the parties shall reassemble to discuss their punch list items with the Concessionaire and General Contractor.

(CDA-CPA) shall review the Concessionaire's Architect's punch list and relay any additional items identified during the substantial completion walk-through on a separate punch list. Any punch list items that are noted as critical and thus require immediate correction will be identified during the substantial completion walk-through.

4) Within five (5) business days after the substantial completion walk through, the Concessionaire, Concessionaire's architect, and/or the contractors shall consolidate all agreed upon punch list items and issue via e-mail, a composite formal punch list. The Concessionaire's architect shall submit their substantial completion letter to the (CDA-CPA). This list will be distributed to all parties invited from the substantial completion walk-through.
5) (CDA-CPA) shall then issue a letter acknowledging the project's substantial completion to the Concessionaire. **The concession location cannot open until they have received CDA Concession's "Substantial Completion Notification" letter.**
6) The Concessionaire will track the completion of the punch list and periodically send CDA the list of completed and outstanding punch list items (with the reason for incomplete items and lead times for materials not immediately available).
   PLEASE NOTE: that the construction barricade may not be removed without written approval from (CDA-CPA).
7) The General Contractor shall complete the punch list items within thirty (30) business days of the initial walk-through or as dictated in the Concessionaire's signed Lease and License Agreement.
   Caution:
   - After thirty (30) business days, the punch list items remain incomplete CDA may elect to: Impose a fine of $200 per item, per day, until the work is finished.
   - After sixty (60) business days, the punch list items remain incomplete CDA may elect to: Hire contractors to complete the work at the Concessionaire's expense.

7.4: Business License and Certificate of Insurance

Prior to opening, the Concessionaire must obtain a Business License from the City of Chicago Business Affairs & Consumer Protection Department (BACP) City Hall, Room 805, 121 N. LaSalle St, 60602.

Concessionaire is also responsible for providing a current Certificate of Insurance per the Concessionaire's signed Lease and License Agreement.

A PDF of the Business License must be sent to CDA Concessions prior to store opening.

For Business License and Certificate of Insurance information visit their website at:

- City of Chicago :: Business Licenses or call (312) 744-6060.

7.5: ComEd Verification of Meter(s)

Prior to opening, the Concessionaire must reference the meter #, and provide its tax ID and billing mailing address.

For more information call (877) 426-6331.

End of STEP 7.0

STEP 8.0: Project Closeout

8.1: Close Out Documents

The Concessionaire's architect and engineer of record must transmit to the (CDA-CPA) as dictated in the **Concessionaire's signed Lease and License Agreement** all architectural and engineering "As-Built Documents" within thirty (30) business days after the completion of the punch list items. The items listed below are required to support maintenance of accurate facility records and future construction.

1) One (1) half size hard copy As-Built Documents, including the General Contractor's redline mark-ups and clouding construction changes.
2) Two (2) USB memory stick of CAD files either in AutoCAD and/or BIM format
    a) CAD folder with all CAD files to be submitted per CDA BIM standards.
    b) PDF folder with all image files in PDF format.
3) One (1) PDF of the finalized SAM™ Construction Checklist, If applicable.
4) One (1) PDF of all Operating and Maintenance Manuals (O&M Manual) for equipment being maintained by the CDA, If applicable,
5) One (1) PDF of the General Contractor's, and if applicable, subcontractor's, manufacturers, and equipment warranties
6) One (1) PDF of all the specifications
7) One (1) PDF of the Building Permit (both sides) with all required rough/final inspection signoffs
8) One (1) PDF of the preventative maintenance schedules, If applicable:
    a) Identify the required systems, equipment, and their frequency for preventative maintenance.
    b) Identify the scope of preventive maintenance to be performed.
    c) Identify which entity is responsible for the preventive maintenance.

The Concessionaire must submit two (2) copies of the above documents on USB memory stick and (1) half size hard copy of Item 1) above.

Documents shall be emailed and one full-size hard copy sent to O'Hare/Midway Airport at address below:

O'Hare International Airport Contacts
CDA Aviation Administration Building
Attn: Coordinating Architect, Design and Construction
10510 West Zemke Rd.
Chicago, IL 60666
cc: ordretailconstruction@cityofchicago.org

Midway International Airport Contacts
CDA Aviation Administration Building
Attn: Coordinating Architect, Design and Construction
10510 West Zemke Rd.
Chicago, IL 60666
cc: mdwretailconstruction@cityofchicago.org

In addition, the following close-out documents shall be transmitted to the (CDA-CPA) as dictated in the Concessionaire's signed Lease and License Agreement within sixty (60) business days after occupancy.

1) PDFs containing the Concessionaire's Sworn Statement of Improvement Costs, and all final lien waivers, including change orders.
2) PDFs containing the General Contractor's Sworn Statement of Improvement Costs, and all final lien waivers

8.2: Final SAM™ Checklist and Final SAM™ Required Forms

The General Contractor must also submit a final construction SAM™ checklist and final SAM™ required forms to samdocs@cityofchicago.org. These forms include:

1) Final C & D Debris Recycling Compliance Form
2) Final Diesel Emission Compliance Form
3) Local/Regional Material Final Construction Total
4) Recycled Content Material Final Construction Total
5) Sustainable Temporary Construction Materials Final Construction Total

SAM™ checklists will be reviewed concurrently with the final SAM™ required forms). Recognition in the form of a Green Airplane Certification will be awarded at completion of final checklist review.

8.3: Contractor Warranty

The General Contractor must warrant to the City of Chicago and CDA that the work, materials, and equipment furnished and installed under the contract with Concessionaire are of good quality and new, and that the work conforms to the requirements of the contract documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty shall exclude remedy for damage or defect caused by abuse, modifications, improper or insufficient maintenance and operation, or normal wear and tear, and normal usage, not executed by the general contractor.

8.4: Subcontractor's Manufacturer's and Equipment Warranties

The General Contractor must ensure that all required subcontractors, manufacturers, and equipment warranties are passed on to the CDA. The warranties must include the name of the project as designated in the contract documents, and project reference number and must be signed by an officer of the company having authority to provide the warranty. Include wording such as "this document serves as a (list duration of the warranty) written guarantee for the work performed, and the material and equipment installed on the above-referenced project. This warranty incorporates all provisions of the contract documents that refer to or relate to the guarantee. This warranty shall commence on the date of the occupancy or at acceptance of substantial completion."

During the warranty period, the Contractor-POC must repair and replace at its own expense, all materials or equipment that may develop defects whether these defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material that is repaired or replaced shall have the warranty period extended for one additional year from the date of the last repair.

8.5: Final Notice to Airport User Forms

The Concessionaire shall close out the Notice to Airport Users Form by electronically attaching a PDF of the permit's front and back showing inspector sign-offs, by entering the substantial completion date, by entering the completion walkthrough date, and by entering the anticipated submittal of redlined drawings which must be within 30 days of the substantial completion. An automatic email reminder will be sent to the Concessionaire / Contractor-POC if this information is not entered into the Notice to Airport Users Form on or before the scheduled substantial completion date.

End of STEP 8.0

STEP 9.0: Compliance Overview

Throughout the Design and Construction process, the Concessionaire shall be responsible for complying with various City of Chicago participation requirements. The Concessionaire shall also be responsible for tracking their participation and providing verifying documents to CDA for review.

9.1: City of Chicago Minority and Women-Owned-Business Participation Rules

In accordance with the Municipal Code of Chicago 2-92-650, or as dictated in the Lease and License Agreement, the City's Minority Owned Business Enterprise Commitment and Women-Owned Business Enterprise Commitment in Construction Contracts has set goals of **MBE** participation and **WBE** participation on all contracts. **MBE and WBE participation shall be separately documented for Construction Services and Professional Services.**

9.2: Required MBE and WBE Documentation

Both the Concessionaire and their General Contractor must comply with the CDA minority participation plans. After the Concessionaire selects a Professional Service Contractor and their General Contractor, the designated Concessionaire-POC shall be provided with RMS login information. The Concessionaire and General Contractors shall enter the Compliance Plans, Certified Payroll, and Sworn Statements into the web-based Retail Management System ("RMS") which is the City of Chicago, Department of Aviation's, secure concession portal. All required documents must be submitted electronically using RMS.

- The RMS links and User Guide are listed below:
  - RMS Portal: Retail Management System (airportware.com)

9.3: MBE and WBE Compliance Plans

The Concessionaire and their General Contractor shall submit via RMS, the following Compliance Plans and identify their selection of MBE, WBE, and Non-Minority Sub-Contractors.

1) Concession's Compliance Plan – Affidavit of Concessionaire, see **Exhibit E.4**
2) Concession's Compliance Plan – Affidavit of Professional Services, see **Exhibit E.5**
3) Concession's Compliance Plan – Affidavit of Prime Contractor, see **Exhibit E.6**

- **PLEASE NOTE:** If at any point during the construction phase of the project, there is a change in MBE or WBE participation, the (CDA-CPA) must be immediately notified.

- **Resource:** To aid in outreach efforts to meet or exceed the City of Chicago's Construction and Professional Services Program goals, a list of City of Chicago certified MBE and WBE firms may be found at:
  - https://www.cityofchicago.org/city/en/depts/dps/supp_info/process_improvements.html
  - http://www.idot.illinois.gov/doing-business/certifications/disadvantaged-business-enterprise-certification/il-ucp-directory/index

9.4: MBE and WBE Good Faith Efforts:

If the Concessionaires and Prime Contractor Compliance Plans fall short of the MBE or WBE Construction Program goals, a Good Faith Efforts form must be included with the submitted Compliance Plans. Refer to **Exhibit E.7**. Good Faith Efforts are achieved by actively soliciting MBE and WBE firms to perform work on the contract in accordance with Special Conditions Regarding Minority Owned Business Enterprise Commitment and Women-Owned Business Enterprise Commitment in Construction Contracts. The Good Faith Efforts form must contain contact information for not less than five (5) MBEs and/or WBEs. A Compliance Plan may be rejected as non-responsive if the Concessionaire and/or General Contractor fail to submit one or more of the documents with the response.

- **PLEASE NOTE:** If a Concessionaire's and/or General Contractor's Compliance Plan fails to meet the Construction Program goals for MBE and WBE participation, the project will be delayed and not move toward a Pre-Construction Meeting until either the goal is satisfied, or Good Faith Efforts have been demonstrated and approved.

9.4: City Resident Construction Worker Employment Requirement & Certified Payroll Requirements

In accordance with the Municipal Code of Chicago 2-92-330 and Article 5 of the Concession Lease and License Agreement, at least 50% of the total construction worker hours worked by persons on the site of the Work shall be performed by actual residents of the City and at least 7.5% by project area residents. The Airport will identify the project area for the purposes of calculating project area residents.
The Concessionaire shall provide each general contractor bidding on the project with a Compliance Plan and the "City Resident Construction Worker Employment Requirement" for use in the bid preparation process.

When a project is approved by CDA, and construction has commenced, the General Contractor shall submit on a weekly basis, the following Certified Payroll Report for all contractors and subcontractors:

1) City Resident Construction Worker Employment & Certified Payroll Requirements, see **Exhibit E.8**
2) Excel Certified Payroll Worksheet (example), see **Exhibit E.9.**

9.5: Compliance Close-Out Documents

Within sixty (60) business days of substantial completion, the Concessionaire and the General Contractor shall submit the following documents, along with final lien waivers.

1) Concession's Sworn Statement – Affidavit of Concessionaire, see **Exhibit E.10**.
2) Concession's Sworn Statement – Affidavit of Prime Contractor for Construction Services, see **Exhibit E.11**

End of STEP 9.0

STEP 10.0: Supplemental Exhibits

These Guidelines shall be read in conjunction with the following documents below:

1. O'Hare Airport (ORD) Concessionaire Design Guidelines
2. Midway Airport (MDW) Concessionaire Design Guidelines
3. CDA Concessions Projects- Exhibits (C-SOP Exhibits)
4. CDA Tenant/Concessions Projects- Common Exhibits (SOP-CE)
5. Construction Barricade Style Guide
6. Construction Safety Manual

PLEASE REFER to the documents shared on the Fly Chicago website:

- https://build.flychicago.com/

End of STEP 10.0

Revision History

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All Sections: Initial Issue

Version 2020-08-01
All Sections: Major Revisions

Version 2023-10-18
All Sections: Major Revisions

Version 2024-01-04
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§ 2.2: Added pdf submittal requirement

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added general Notes checklist.
Update 30%, 60%, 90%, 100% checklists.
Updates links & embedded exhibits within.
MOPD Review.
Impacts to CDA Security
Storage beyond the designated LOD. (C-SOP Exhibits)

Version 2024-08-15
All Sections: Minor Revisions
Update 30%, 60%, 90%, 100% checklists
Updates links & embedded exhibits within

EXHIBIT 11

ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS

EXHIBIT 12

AIRPORT CONCESSIONS PROGRAM HANDBOOK

CHICAGO
MAYOR BRANDON JOHNSON

AIRPORT CONCESSIONS PROGRAM HANDBOOK

SEPTEMBER 2024

CDA
Chicago Department of Aviation

O'HARE
INTERNATIONAL AIRPORT

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Introduction to the CDA Concessions Program

The City of Chicago's Department of Aviation Airport Concessions Program serves as the primary resource to meet the needs of the traveling public regarding the provision of high-quality, fair-priced goods and services at Chicago's Airports.

O'Hare and Midway International Airports are owned by the City of Chicago (City) and the Chicago Department of Aviation (CDA) and we welcome you to the family of Tenants operating at the City's Airports. Your business represents an excellent opportunity to serve the traveling public as well as operate a profitable enterprise.

The CDA is responsible for all aspects of Airport management at both O'Hare and Midway International Airports. At O'Hare specifically, in conjunction with the CDA, Unison Retail Management (Unison) oversees all Concession program operations as the Concessions Management Representative (CMR). To ensure quality and uniformity among all Tenants, the CDA and Unison have designed this document, the Airport Concessions Program Handbook (CPH), to identify precise guidelines for our Concessions program that match the expectations and needs of our passengers. The CPH illustrates the monitoring program that outlines the expected safe and secure operating standards as well as facility and maintenance expectations for all Concessions operators and their employees.

To begin your partnership with the CDA, we encourage early review of this CPH. Understanding and compliance with the handbook will assist in successful operational planning to meet the requirements of the Lease and License Agreement (Agreement) and will better position the success of your business as a partner in the City of Chicago's Department of Aviation Concessions Program.

The information in this handbook is not all-inclusive and is subject to change over time. In the event of any conflicts between the terms and conditions outlined in this handbook and those of the Agreement, the Agreement shall prevail. Tenants, Contractors, Subcontractors, vendors, and their employees are required to comply with all rules and regulations which are applicable to the operation of their respective business.

Chicago Department of Aviation (CDA)
Concessions Administration

O'Hare International Airport
Aviation Administration Building
10510 W. Zemke Road, Level 2
Chicago, IL 60666
(Use for all common carriers such as FedEx)

CDA Mailing Address (US mail only)
Chicago Department of Aviation
O'Hare International Airport
P.O. Box 66142
Chicago, IL 60666

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Unison Retail Management

Office Hours are Monday – Friday (8:30 a.m. - 5:00 p.m.)
773-894-3900 (main number)

Unison Retail Management
Physical & Shipping Location:
Unison Retail Management
O'Hare International Airport
Terminal 3, Mezzanine Level
Above Spirit Ticket Counter
Chicago, IL 60666
(Use for all common carriers such as Fed Ex)

Unison Retail Management
Mailing Address (US mail only):
Unison Retail Management
O'Hare International Airport
Terminal 3 Mezzanine
P.O. Box 66142
Chicago, IL 60666

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General Airport Information

Airport Transit System

The Airport Transit System (ATS) train network provides external passenger connection service between all terminals and the Multi-Modal Facility.

ATS service is 24 hours daily at all positions (periodic planned interruptions and changes to service may apply).

ATS use is limited to foot traffic only; carts, equipment and Concessions materials are not permitted for travel aboard train cabins under any circumstances.

Tenant personnel and associated agents shall yield to the direction and instructions of ATS officials and agents, with service priority belonging to members of the travelling public.

ATS station information, service advisories and additional information may be found at the following link: Airport Transit System (flychicago.com).

Banking

Seaway Bank operates a full-service bank in Terminal 2. Services include individual and commercial checking and savings accounts, direct deposits, check cashing and currency conversion.

For additional information on services, hours and locations, please visit Seaway Bank locations.

Employee Parking

Employees are encouraged to use public transportation on their way to/from O'Hare, most notably the CTA Blue Line. However, various options exist for employee parking arrangements, including terminal-adjacent parking lots and remote parking lots.

Selection and issuance of employee parking arrangements are the individual responsibility of Tenants and operators.

Information regarding parking availability for personnel can be found at Employee Parking (flychicago.com).

For additional support, including rate information, locations and parking pass arrangements, please contact Standard Parking at 773-894-8070 or via email at ParkingPassOffice@ord-parking.com or by visiting the Parking Pass Office on Level 1, Elevator Center 2 in the Main Garage.

Lost and Found

Lost and Found services are decentralized and managed according to jurisdiction of each space/area. Users are advised to contact the relevant party for assistance with Lost and Found matters or begin with a general inquiry placed to the Common Areas contact.

Common Areas/ Chicago Police Department	773-686-2385	**Interfaith Chapel**	773-686-2636
Security Checkpoints/TSA	773-377-1210	**HMS Host**	773-377-7804
Airport Transit System (OATS)	773-601-1817	**American Airlines**	773-686-4234
Parking Lot (Standard Parking)	773-686-7530	**United Airlines**	773-601-3295

Mail Delivery

Chicago O'Hare does not currently receive USPS delivery or collection services.

Major parcel services (UPS, FedEx, DHL) and individual courier services may perform deliveries and collections for physical locations on the premises. Service arrangements are subject to existing security policies and procedures. Unattended deliveries and collections are prohibited.

Coordination of delivery services are the responsibility of the Tenant and/or service operator.

Multi-Modal Facility and Customer Parking

The Chicago O'Hare Multi-Modal Facility (MMF) is located at 10255 W. Zemke Blvd. Chicago, IL 60666.

The MMF provides a central position for the following services and agencies:

- ATS connection to all terminals
- Shuttles to remote parking lots
- Select rental car agencies
- Connection to select regional bus services and networks
- PACE suburban bus network
- Metra service (Northwest Central Line – O'Hare Transfer)

For parking information, go to General Parking Information | Chicago O'Hare International Airport (ORD) (flychicago.com).

Tenant Agreement Requirements and Operations Management

The Tenant is responsible for complying with all terms and provisions outlined in the Agreement and in the Airport Concessions Program Handbook. The Tenant will have the right to enter the Leased Space with officers, employees, agents, Subcontractors, vendors, Suppliers and invitees, assuming the Tenant is compliant to all statutes, ordinances, rules, and regulations from time to time enacted or established by the City, the Federal Aviation Administration (FAA) the Transportation Security Administration (TSA) or any other governmental agency or authority having jurisdiction.

Tenants must not conduct Concessions operations in a manner that:

- Interferes with the reasonable use by others of Common Areas or the Agreement of licensed space of other Tenants or Licensees at the Airport.
- Hinders TSA, CDA Safety and Security, police, fire-fighting or other emergency personnel in the execution of their duties.

On a regular basis, CDA Concessions, through Unison, will review compliance expectations through yearly audits of the following:

- City business licensing and insurance coverage
- Product merchandising, Value Pricing and use clause compliance
- Financial reporting and commitments
- Airport Concession Disadvantaged Business Enterprise (ACDBE) compliance
- Operations and staffing
- Marketing and Passenger Experience programs

Non-compliance during any audits could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Tenant must conduct its Concessions operation in a first-class, businesslike, efficient, courteous and accommodating manner consistent with the Physical Inspection Standards that appear on the following page. The Commissioner of the CDA, CDA Concessions, or Unison has the right to make reasonable objections to the appearance and condition of the Leased Space, if the Tenant does not comply with the Physical Inspection Standards. The Tenant must discontinue or remedy any non-compliant practice, appearance or condition within 5 days following receipt of a written notice by the Commissioner, CDA Concessions (or immediately upon receipt of notice, if the infraction is non-compliant to standards, is hazardous or illegal).

The Tenant's failure to cure the non-compliance as required by the Commissioner, CDA Concessions or Unison would cause the City to file cause of damages, including, among other things, loss of goodwill. Penalties may be applied as per allowance of the Agreement.

The monitoring process will include on-going site inspections of each Concession site by the Unison Operations Management Team. Tenants are required to manage the facility space, equipment, and all aspects of their operation in "top condition" as dictated by the Agreement.

Operational Physical Inspection Standards will consist of full review of the facility/space, as outlined in the Agreement, and its operations within the Airport terminals, including any remote storage. All inspections will be documented and reported in the Concessions Retail Management System (RMS) RMS. This system is used to report and manage communication for the CDA and the Tenant. Highlighted areas of the Physical Inspection Standards include:

- Facility operational safety requirements
- Hygiene and food safety standards
- Operational ADA compliance
- Hours of operation
- General external maintenance of storefront service area
- General internal maintenance of the premises including space utilization and all equipment/mechanicals
- Personnel/employee practices and service expectations
- Product and menu pricing requirements

Unison will use the RMS Operations Review Form to record all findings and observations. Review findings and action items will be sent electronically to the Tenant manager for monitoring and/or resolution.

- Expected timelines for resolution of noted items will be determined based upon the severity of said items and the associated risk potential. Timelines will be identified and stated within inspection findings.

- General resolution guidelines (may be adjusted at the discretion of Unison/CDA):

- Life safety, food safety, facility safety: items with an imminent, critical risk of injury, damage or harm must be resolved immediately and may require a pause to operations or closure at the discretion of Unison/CDA.

- Major repair Work may be subject to timeline review requirements for facility coordination planning.

- General housekeeping and cleaning: completed at the earliest reasonable opportunity without impact or disruption to operations and customer experience.

- Basic repairs: completed at the earliest reasonable opportunity without impact or disruption to operations and customer experience.

In the event that issue resolution cannot be achieved within the expected timeline stated by Unison/CDA, the Tenant shall provide an updated timeline or projection for approval by Unison/CDA.

Non-compliance may result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

Business Licenses

Every location operating at the Airport must have its own Business License, which must be visibly posted at all times. A Business License must be obtained before opening the location. To apply for a Business License at the Chicago Department of Business Affairs and Consumer Protection (BACP), you may do so online Chicago Business Direct, or at the downtown Chicago office, which is located at City Hall on the 8th floor. It could take up to one month to obtain the License, so your corporate offices need to apply in a timely fashion according to your construction schedule. Unison must also be given a copy of the License before opening.

Food & Beverage operators will need to apply for their License during construction and will require a City of Chicago Health Department inspection. After approval has been given, the License needs to be physically picked up at the Chicago Department of Business Affairs and Consumer Protection office (City Hall, 8th floor).

Please be aware that the Departments of Revenue, Health and Aviation make periodic checks to confirm your Business License is current and properly displayed. Fines will be issued for violations. Business Licenses are granted on a two-year basis; upon renewal, please provide Unison with a copy of your updated License.

Accounting and Sales Reporting

On a weekly basis, daily sales are reported electronically in RMS. The daily sales for the previous week are entered into the system no later than Tuesday of the following week.

On a monthly basis, Tenants will need to certify the total monthly sales that were reported, via RMS. The monthly sales need to be reviewed and submitted no later than the 15th of the following month. Once the monthly sales report has been submitted in RMS, the summarized report will be distributed to the Comptroller's Office, the CDA Department of Finance and to Unison. Sales entry questions can be directed to Dana Miller at 773-894-3382 or Dana.Miller@Unisonretailmng.com.

Payments, Invoices, and Customer Statements

The City of Chicago Comptroller's Office and the CDA have its own eBilling software CDA eBilling System that links with RMS to generate issued invoices, monthly customer statements as well as allowing Tenants to pay invoices online. The Tenant will provide the appropriate AR Contacts to have access to the CDA eBilling system via Dana Miller at 773-894-3382 or Dana.Miller@Unisonretailmng.com.

Monthly Concessions Meetings

CDA Concessions and Unison conduct monthly Tenant meetings. Topics for discussion typically include high-level initiatives, operational topics, safety/security briefings, business trends, program performance, airline traffic updates, facility notifications, marketing initiatives and continuing education.

Tenants are asked to designate a minimum of one representative to attend each meeting.

Hours of Operation

All Tenants must operate retail locations according to the hours of operation as stated in the Agreement, unless otherwise modified and approved by Unison/CDA.

All Tenants must post hours of operation using CDA-approved templates. Hour postings must be in a position that is visible from the concourse area at all times.

Tenants are expected to offer the full menu of goods and services for the entirety of operating hours unless otherwise approved for a limited menu window by Unison/CDA.

Unison/CDA may elect to review and make recommendations to modify hours of operation based on external factors including, but not limited to airline operations/gate utilization, weather interruptions and facility projects.

Health Department and Compliance Management

Products and merchandise for the purpose of food/beverage service shall meet or exceed all pertinent local, state and federal quality and safety standards.

As such, Tenants selling food and beverage are subject to periodic inspection and/or complaint-generated inspections.

To view current information including regulations and guidelines, please consult Chicago Department of Public Health.

ADA Compliance with Disabilities

All Tenants and operators are subject to standards and regulations from the Americans with Disabilities Act (ADA).

Tenants are subject to periodic reviews of ADA compliance within locations, including those public-facing and associate service areas (back of house).

Additional resources, including the latest standards and revisions can be found at ADA.gov.

Green Concessions Policy

In order to assist Tenants in their efforts to minimize waste, enhance recycling, generate demand for eco-friendly Products, and provide healthier foods for passengers and employees, the CDA has developed a set of guidelines and standards. These exist within the Sustainable Airport Manual (SAM), Terminal Occupants – Operations & Maintenance chapter, and these prerequisites form the Green Concessions Policy. Compliance with the policy is reviewed with Tenants on a bi-annual basis. Should a Tenant not comply with the policy, they are required to submit a response to the CDA indicating why they are not in compliance and what efforts are being undertaken to achieve compliance, including target dates for completion. Therefore, the CDA mandates that all future Tenants comply with each of the following requirements:

1. Elimination of polystyrene foam (Styrofoam)
2. Elimination of petroleum-based plastic consumer bags
3. Elimination of petroleum-based plastic disposable consumer containers and utensils
4. Source-separate all solid waste into recyclables, compostables and residual refuse
5. Procure and use only green cleaning and hygiene products
6. Procure sustainable consumer products that equal a minimum of 10% or greater of total consumer products (by cost) purchased
7. Donate surplus food to local organizations
8. All components of The Sustainable Airport Manual (SAM)

Use of CDA Logos, Iconography, Branding and Images

The CDA prohibits Tenants from using CDA-affiliated logos, iconography, branding and internally-produced images unless otherwise approved in writing by Unison/CDA.

If Tenant is granted the non-exclusive, non-transferrable right to use any of these materials for the purpose of marketing, promotions, website content, etc., they must adhere to the following guidelines:

- Tenant shall not modify, distort or alter the materials in any way that could misrepresent the brand or reputation of CDA. Tenant agrees not to use the materials for any illegal, defamatory, or unethical purposes.
- Tenant agrees to use the materials in a manner that upholds the quality and integrity of the CDA brand. All use of the materials shall adhere to industry standards and best practices.
- The permission to use the materials shall commence upon the effective date of Unison/CDA approval and shall continue until otherwise terminated by Unison/CDA or through a mutual agreement of both parties. CDA may also terminate the permission to use the materials upon written notice if the Tenant breaches any provision of this section, as stated in this document. Upon termination, Tenant shall immediately cease all use of the materials and return or destroy any physical copies in its possession.

- The CDA retains all rights, title, and interest in the materials. Nothing shall be construed as granting Tenant any ownership rights to the materials.
- Tenant agrees to indemnify and hold harmless the CDA from and against any claims, damages, liabilities, costs, and expenses arising out of or related to Tenant's use of these materials.
- Tenant shall not use the materials in any press release, public announcement or externally-facing promotion without the prior written consent of Unison/CDA.

ID Badging Process

To register a new company with the O'Hare ID Badging Office, you must complete the Employer Information and Authorization Form (flychicago.com) and designate ID Badging Signatories for your company. All ID Badging forms can also be obtained from O'Hare Badging Forms (flychicago.com). Companies must designate a primary Signatory and are required to have two Signatories (at minimum). All Signatories are the primary managers of the day-to-day activities/relationship between the CDA, ID Badging and their respective companies. Signatories are responsible for their company's awareness and compliance to the ID Badging and Access Control requirements.

As the company representative, Signatories are also responsible to their company for obtaining and providing accurate, up-to-date information on ID Badging and Access Control procedures and regulations. The Signatory's badge must be active to act and/or sign documents on behalf of their company. If all Signatory badges expire and therefore become deactivated, the represented company and all badges assigned to that company are at risk of being deactivated. Signatories must review the O'Hare ID Badge Regulations and Practices Handbook carefully. FAA and CDA regulations are specific and must be followed meticulously. Take the time to learn the regulations at the beginning of the badging process in order to avoid processing issues and delays.

- Obtain an Employer Information and Authorization Form (EIAF) from the ID Badging Office or online at Employer Information and Authorization Form (flychicago.com).
- Legibly print (or type) all information in blue or black ink.
- Ensure that all signatures are dark enough to be scanned by computer.
- Complete all required fields.
- Indicate "New" or "Update" at top of form.
- Fill in the names, phone numbers and email addresses of executive level management, and secondary contacts where applicable. The form requires signature and title of the owner, president, or a senior officer from company leadership. This signature verifies and validates the accuracy of the entire document.

- The six signature areas on the lower part of the form should contain the name(s) and signature(s) of only those persons authorized to sign employee Access Control Photo Identification Badge Applications (ID Badges) on behalf of the company (typically General Managers or Supervisors). It is in your best interest to limit the number of authorized Signatories, but Tenants should have a minimum of two signees (see the Identification Badge Regulations and Practices Handbook for Signatory Requirements and Responsibilities.) Signatories are required on a regular basis to generate online badge applications and will be required to attend ID Badging Signatory trainings to retain Signatory privileges.

- This form requires CDA approval. Once approved, bring it to the Compliance Office.

- Allow one business day for processing, based upon the volume of work the Compliance Office receives.

ID Badging Access Control

All Concessions employees are issued either a green or a purple badge and are required to identify themselves with this Airport badge upon all requests from Airport personnel. The specific distinctions are denoted by the type of access (terminals, airfield, etc.) provided as described below. The basic differences are:

Green Badges - Green badges are Security Identification Display Area (SIDA) badges. A Green ID Badge holder has authorized, unescorted access to and in the Secured Areas, Sterile Areas and the Airfield Operating Areas (AOA). Only Green ID Badge holders with an Escort privilege designator “E” on their badge have Escort privileges.

Purple Badges - Purple badges are issued to those that report directly to Concession store locations within the terminals. Purple badges allow badge holders to enter the airside Sterile Area from the terminal Security Checkpoints.

Renewals

Purple badges must be renewed every six months, green badges annually. Unless another date is specified on the original application, renewal date is typically an employee’s birthday.

- ID Badges expire and are electronically deactivated just after midnight of the day after the date indicated on each badge. Deactivated badges are invalid, and therefore subject to confiscation.

- Complete an ID Badge application and select “Renewal” as “Application Type” on the form. Bring this application to the Unison office for approval and signature (following normal procedures noted above) and proceed to the ID Badging office for a new badge.

- Renewals must be done prior to expiration. The badge application may be renewed within 30 days before and 30 days after the ID Badge expiration date (HOWEVER, DO NOT LET THE LATTER SITUATION OCCUR).

- If you are a Signatory, it is in your best interest to monitor your company. Having an internal company report of badge holders is recommended, and remind your employees as their renewal dates approach.

First-Time Applicants

Immediately upon hiring a new employee and before the employee can begin work, the employee and his/her employer must complete the online Employee Access Control Photo ID Badge and Fingerprint Application. All required fields must be completed. A copy of this application is available at Access Control and Photo ID Badge Application (flychicago.com).

Individuals who begin employment with a new company shall be considered "New Issue" and first-time applicants. Individuals with an ID Badge having expired 30-days beyond the badge expiration date shall also be considered a "New Issue". All "New Issue" applicants are subject to fingerprinting for a Criminal History Records Check (CHRC), and a Security Threat Assessment (STA) check which takes an additional 7 to 10 days. If a disqualifying CHRC and/or STA is confirmed, the Badging Office will refrain from issuing a badge.

Making Changes to Company Information

When those listed as Signatories leave your employment, or when you hire a new employee that needs Signatory status, please follow these procedures:

- Obtain an Employer Information and Authorization Form (EIAF) from the ID Badging Office or online at Employer Information and Authorization Form (flychicago.com).
- Legibly print (or type) all information in black or blue ink.
- Indicate either "New" or "Update" on top of form.
- Complete the form in its entirety, designating the information you wish to add or delete.
- Obtain the required signature and title of the company's most senior officer.
- Once completed, hand-deliver the form to the Compliance Office as it requires CDA approval.
- Allow one business day for processing based upon the volume of work the Compliance Office receives.

Upgrading from Purple to Green ID Badges

Should an employee be required to upgrade his/her ID Badge from purple to green (indicating additionally required security access such as a Storage Space in a Secured Area, disposal of garbage, Escorting, etc.), an ID Badge application must be completed. This procedure is required to meet FAA and TSA regulations. All upgrades must be approved by the CDA and ID Badging and should only be done for those requiring special access. An upgrade from a purple to a green badge is NOT a promotion, nor should it be used to identify managers from their staff. The TSA has put out a directive that only 25% of a company's Airport employees should be green-badged; exceptions to this rule must be approved by CDA Security. Companies are expected to limit their requests for access privileges to those employees whose duties require such privileges. Access through the Vendor Checkpoints is issued to green badge-holders only.

Escorts

Persons issued but not in physical possession of their approved Airport Security ID Badge shall not under any circumstances be Escorted into any portion of a Secured Area or AOA. Therefore, employees who have a badge but leave it at home are not allowed to be Escorted through Security Checkpoints or any Secure Areas.

Additionally, only persons on official business within the airport may be Escorted. Escorting for personal reasons and for those who may be flying, without representing Airport business matters, is strictly prohibited.

Escort privileges are only granted for operational needs of the company in Secured Areas and/or Airport Operation Areas. Green ID Badges that have the "E" designator on the lower left side of the badge are authorized to Escort. Persons Escorting assume full responsibility for the actions of the Escorted party. The Escorting employee must accompany and monitor the activities of the Escorted person while within the Secure Area. The CDA does not permit the Escorted person to be "handed off" to a representative of another company.

Multiple Employers

Multiple-employer ID Badges reflect multiple company accounts for a single employee. An employee working simultaneously with multiple employers must submit an ID Badge application for each employer. Each application submitted should issue badges and access with respect to the duties and responsibilities for the hired position. Employees are subject to fingerprints, SIDA training and driver testing requirements (if applicable) for each badge issued.

NOTE: To terminate from one employer causes the termination of all privileges and access for the employee. Employees who terminate employment from one employer with the intent of remaining with the second employer (or multiple employers), must self-terminate from that particular company within 24 hours of their last day of employment to avoid having their badge deactivated.

ID Badging Terminations

Employers are responsible for retrieving badges and submitting the proper paperwork for employee terminations to the ID Badging Office within 24 hours. This is essential so that the Department of Aviation can remove terminated employees from the ID Badging System.

In the event of a termination, the employer must immediately:

- Complete an Access Control ID Badge Termination Form Access Control ID Badge Termination (flychicago.com), as this acts as the receipt for all terminated badges.
- Attach the retrieved badge to the ID Badge Termination Receipt Form (flychicago.com). Do not staple.
- Collect the badge of the terminated employee. If the individual does not return their ID Badge at termination of employment, simply select 'no' on both termination forms. However, it is the responsibility of the employer to take immediate steps to recover the individual's ID Badge to ensure proper return of the badge. Therefore, each company should have a written policy for non-returned badges that expresses this process to prospective and current employees.

- Inform their employee that it is also their responsibility to return their badge upon termination. The employee has the option of returning their badge to ID Badging, the Compliance Office, or by dropping the badge into US mail. Employers should also remind the employee that the badge is the property of the City of Chicago.

- Hand-deliver the badge and termination forms directly to the Compliance Office within 24 hours.

Badges of those on extended vacation, leave of absence, suspended, or terminated employees are NOT to be kept in offices. All ID Badges collected must be given to the Compliance Office immediately.

NOTE: If an employee advises the Compliance Office that their employer recovered the ID Badge, and no Termination Forms are on file from that company, the company may be held liable for a replacement fee.

Hostile Terminations

If you terminate an employee that you consider to be hostile or that may have criminal intent, you must:

- Immediately notify the Airport Communications Center. The CDA will immediately revoke all privileges of the terminated employee.

- Complete the proper paperwork using the normal procedures detailed above and attach a memo stating that the employee was the subject of a hostile termination and that the official termination papers are attached with an official Police Report.

Lost or Stolen ID Badge

If an employee's badge is lost or stolen, the employer must report the incident to the OCC. The OCC will give a "DF number" to be included on the Access Control and Photo ID Badge Application. The employer and employee should immediately:

- Complete the appropriate sections of an online ID Badging application in full, marking the type of request as "Lost" or "Stolen". Be sure to include "DF number".

- Bring the ID Badging application and copies of the required forms of identification for approval and signature to Unison.

- Hand-deliver the signed document and the required forms of identification to the Compliance Office to obtain a new badge.

There is a $50 fee for the first lost/stolen badge. For stolen badges, upon applying for a replacement badge, the $50 is waived only if the applicant provides an official police report. Payment must be made by money order or credit card (Discover, Visa, Master Card and American Express); cash or checks are not accepted.

ID Badging does not guarantee the replacement of a lost badge replacement. It is managed on a case-by-case basis.

CDA Confiscated ID Badge

The Department of Aviation Police will confiscate, on-sight, improperly used, malfunctioning, damaged and/or expired ID Badges. The Department reserves the right to require company justification/explanation prior to replacement, and/or refuse replacement for violating Access Control Regulations. Employees whose badges are confiscated:

Should:

- Ask for a copy of the green receipt attached to the confiscation report.
- Contact their employer for Escort services, if necessary.
- Report to ID Badging with properly signed, completed ID Badge and Fingerprint application.

Should not:

- Report to ID Badging without a signed ID Badge and Fingerprint application.
- Call ID Badging or Security to discuss security violations on the telephone.
- Submit a lost/stolen report via the online ID Badging application. This will be treated as a serious and intentional security violation, and access privileges may be revoked immediately and/or permanently.

NOTE: Before accepting an application for replacement of a confiscated ID Badge, the ID Badging staff shall review electronic ID Badge records to determine that no fines or special instructions preclude a re-issue to the applicant.

Tenant ID Badging File Review

For your information and protection, you may periodically ask the Compliance Office to run Company Status Reports of those currently badged under your company. You are given the opportunity to revise these files based on your current employee roster in addition to help monitor the expiration of current badge holders. Should you require an audit of badge holders at any time, please complete and fax a Customized Company Report Request Form (flychicago.com) to the Compliance Office.

NOTE: The ID Badging Office will keep all forms that are not complete, accurate, intact and legible. White-out and makeovers are not acceptable. New forms will need to be submitted with all necessary corrections.

Vendor/Supplier ID Badging Requirements

Outside vendors and Suppliers who regularly provide services or Products to your company are required to be accountable and responsible for all TSA ID Badging rules and requirements. These entities fall under the Subcontractor definition in your Agreement. Therefore, for security and safety reasons, you are responsible for those who provide a service to you, and the Tenant must request badging privileges in writing, on Tenant company letterhead to the CDA and Unison, outlining the request and Access Controls necessary for each vendor's specific terminal operations.

Recordkeeping

The FAA, TSA and the CDA may conduct periodic audits of the employment records of employers at the Airports. All employment records must be available to the FAA within hours of the request. Therefore, the on-duty supervisor must have access to these records. If records are stored off-site of Airport property, the off-Airport office must be able to produce records immediately upon request.

Records for each employee should include:

- Copy of the ID Badge application
- Copy of the full employment history
- Copy of any termination paperwork for former employees

Fines for non-compliance can be as high as $10,000 per violation. Tenants must keep termination records for 180 days after an employee is terminated (this is an FAA requirement).

Piggybacking

Many doors and elevators located in the Sterile Area are equipped with badge readers to manage Access Control, and all security requirements as listed in the CDA's Identification Badge Regulations and Practices Handbook apply.

Piggybacking is defined as either:

- Following an authorized person through an Access Control portal, on foot or in a vehicle, without presenting airport issued/approved ID media to Access Control personnel or equipment that determines authorized entry.

- Entering an Access Control portal, on foot or in a vehicle, as an authorized person is exiting the portal, without presenting airport issued/approved ID media to Access Control personnel or equipment that determines authorized entry.

Should an occupant on an elevator refuse to verify access, other occupants are directed to depart the car and immediately notify OCC of the violation. Operating instructions for relevant elevators shall be included in each Tenant's approved logistics plans.

Construction ID Badging Process

Unison will approve and authorize badges for each general Contractor and their Subcontractors for Concession-related construction projects. Contractors' badges will be valid only for the duration of the assigned project. All construction personnel must either be badged or accompanied by someone with Security Escort privileges. The only individuals with Escort privileges are those with green badges with an "E" designator, and those with blue badges. No one is allowed on the airfield at any time unless wearing the proper green badge or when accompanied by an individual with Escort privileges.

Requests for Escort privileges are processed and approved by Unison and the ID Badging Office based on both TSA, and City guidelines, regulations and ordinances. Escort privileges are granted only to those who must bring un-badged personnel or vendors to a Secured Area in order to conduct company business. Individuals performing Escort duties must remain in close proximity to those who are being Escorted. An individual performing Escort duties may not Escort more than 5 individuals in order to ensure he or she can continuously control, monitor, and respond to those individuals while maintaining direct oral communication. Any persons issued, but not in physical possession of their badges, shall not, under any circumstances be Escorted into any portion of a Secured Area.

1. The Tenant will be required to notify Unison of the general Contractor and Subcontractors who will be requiring badging, and the duration of time anticipated to complete the project. The Contractor is not permitted to perform Work for any company other than the company that has sent an authorization letter to Unison.

2. All Contractors requiring badging or currently badged must complete the Employer Information and Authorization Form (flychicago.com) for Unison's approval and signature. This form must be signed by a president, owner, or senior executive officer of the company and will authorize an individual(s) to sign all employee badge forms as the company Signatory.

3. The Contractor will assign a Signatory to be responsible for all regulations that link their company and the ID Badging and Access Control System. This person(s) will be designated to represent the company in all matters pertaining to ID Badging and Access Control, including signing ID Badge applications.

4. Construction personnel requiring a badge must complete the online Access Control and Photo ID Badge Application Access Control and Photo ID Badge Application (flychicago.com), which is approved by the construction personnel's authorized Signatory and returned to the Unison office. Supporting documentation that provide information on the applicant's living status must accompany this application, including Certification of Naturalization, Permanent Residence card, Social Security card, U.S. Passport, Birth Certificate and/or Department of Human Service paperwork.

5. After the application is complete, the Signatory must then set up an appointment through Badge Scheduler (flychicago.com).

6. Based on the evaluation of the application and the results of a fingerprint-based Criminal History Records Check and Security Threat Assessment by TSA, the ID Badging Office will decide whether or not to issue a badge.

7. After the Contractor receives notice that an employee may obtain a badge, the employee may then report to the ID Badging Office with the issued receipt along with supporting documentation to receive his or her badge.

8. Construction projects requiring airfield access must be approved by CDA Safety and Security prior to construction. If an individual will be driving on the airfield, a driving test administered by ID Badging will be required, in addition to an airfield training course. To apply for authorization of a vehicle allowing access to the airfield, complete the Company Vehicle Access Form - AIRFIELD (flychicago.com). This form must be delivered to Unison for signature and processed by the Vehicle Permits Department. The liability insurance requirement for airfield access is $5,000,000. When driving onto the airfield, vehicles must display their company logo and the permit issued from the Vehicle Permits Department.

9. Upon termination of an employee, the Contractor will be responsible for completing the required termination paperwork and collecting and returning the ID Badges to the Compliance Office. The Contractor must make every effort to collect the badge, complete the required termination forms and submit the paperwork and badge to the Compliance Office of ID Badging within 24 hours of termination of the employee. Please note that the City may impose substantial fines on a Contractor if badges are not promptly returned. These fines increase daily, as each day that a badge is not returned is considered a separate violation.

Personnel and Staff Requirements

All personnel and employees associated with Tenant operations within O'Hare are subject to local, state and federal employment requirements.

Tenants must maintain a full-time, fully trained staff during the term of this Agreement, having sufficient size, expertise and experience to operate the Concession per the Agreement. Tenants must maintain an adequate retail staff to maximize revenues and use the utmost skill and diligence in the conduct of its Concessions operation.

Tenant staffing plans are subject to review and input by the CDA in order to maintain adequate Passenger Experience and quality assurance standards.

Tenant employees must be clean in appearance, courteous and helpful to the public. The City is entitled at any time to direct the Tenant to require any of its employees, who are not properly attired, to immediately adhere to these requirements or leave the Leased Space.

- Tenant employees must clearly display Airport ID Badges at all times while operating on the SIDA.
- Tenants and personnel must participate and cooperate fully in all quality-assurance programs instituted by CDA Concessions or Unison.
- Tenants shall make available management personnel to attend all Passenger Experience trainings and participate, where applicable, in program events, meetings and all other merchandising and marketing plans.

Dress Code and Uniform Requirements

All Tenant associates operating in a food/beverage production or retail setting are subject to Chicago Department of Public Health food code standards for safe food handling.

All Tenant personnel with public-facing roles or posts are expected to present themselves in dress and/or uniform whose appearance is neat, clean and generally tasteful.

Midriffs, sheer materials, and other revealing clothing are prohibited.

The CDA may request immediate resolution for associates who are deemed to be inappropriately attired or equipped (including removal from operations until properly corrected).

Pricing Survey and Merchandise Pricing Requirements

All merchandise must have the current price posted on a sign contiguous to the point of display.

Agreement Requirements for Merchandise Pricing Surveys – All Tenants are required to price items according to the guidelines of their Agreement requirements. Pricing surveys are submitted annually to Unison, which are then audited for accuracy. Prices cannot be raised without approval by the CDA.

Safety, Security and Facility Emergency Information

O'Hare Communications Center

The O'Hare Communication Center (OCC) serves the main control center and dispatch role for Chicago O'Hare (24 Hours).

OCC operates two separate contacts for emergency and non-emergency reports. Users are discouraged from using the typical "9-1-1" contact as it will route calls to an operator located off-premises.

OCC Emergency: 773-894-9111

OCC Non-Emergency: 773-894-5000

OCC Emergency

This contact should be reserved for emergent issues with life safety or public safety concerns.

Operators are encouraged to favor caution by immediately reporting concerns and avoiding assumption that another party has [or will] report the matter.

Examples of Emergency Scenarios:

- Medical emergency or injury
- Fire / smoke
- Active threat / threatening behavior or remarks
- Unattended or suspicious items
- Exposed utilities
- Hazardous odors or vapors
- Breach of security perimeter or existing postures

OCC Non-Emergency

This contact is dedicated for reporting concerns with non-emergent threats or severity.

Examples of Non-Emergency Scenarios:

- Report a missing access control badge (SIDA)
- Request for K9 sweep on incoming vehicles/materials
- Malfunctioning access control doorway or portal
- Request for police report
- Report a missing sharp object
- Personnel mediation or removal from premises
- Facility damage (with safety implications)
- Medical incident or injury (non-emergent)
- Report trespassing activities

Facilities Operations Monitor

The 24-hour Facility Operations Monitor acts as control center and dispatch role for matters which pertain to core facility and equipment operations.

The Facilities Operations Monitor is colloquially known as “H&R” (Heating and Refrigeration).

Facilities Operations Monitor: 773-686-2248

Examples of Facility Operations Scenarios:

- Loss or interruption of utility supply (electrical, plumbing, HVAC)
- Custodial concern in Common Areas (concourse, public restrooms)
- Damage to Shell/Core of facility (water intrusion, window damage, doorway compromise)
- Malfunctioning conveyance (elevator, escalator, walkway)
- Temperature-related problems
- Malfunctioning waste systems (refuse, recycling, oil reservoirs)

Emergency Response Plans

The U.S. Department of Labor, Occupational Safety & Health Administration and the Department of Homeland Security require the CDA to prepare and maintain an Emergency Response Plan (ERP). The ERP includes detailed descriptions of emergency operations, evacuation procedures and shelter-in-place plans.

Tenants shall not divulge, share, or otherwise make available to any third-party any information contained in their ERP without the prior written consent of the Commissioner of the CDA.

Tenants are required to establish an Emergency Response Plan that’s aligned with the CDA Safety and Security Operations Emergency Response Plan. An emergency plan outline is available to Tenants to assist in creating individual response plans tailored to each operation’s nuances.

Tenants are responsible for training this topic to all associates, personnel and agents who occupy or perform roles within the Airport.

Tenants are advised to retain copies of sign documentation illustrating Tenant personnel have each individually completed training on emergency response material.

Emergency Response Coordinators

Tenants are required to designate and identify Emergency Coordinators for managing emergency response materials and operations.

Primary Emergency Coordinator (PEC):

- Implement and update the ERP, as required.
- Conduct ERP training and development for Tenant personnel and agents.
- Manage distribution of emergency communications to all Tenant personnel and agents.
- Account for all employees, visitors and guests at all assembly points.
- Manage communications and instructions with safety officials and emergency responders.
- Perform emergency debriefs and on-going development of safety plans.

Secondary Emergency Coordinator (SEC):

- Assist the PEC in the execution of the ERP during an emergency.
- Manage distribution of emergency communications to all Tenant personnel and agents.
- Assist the PEC in accounting for all persons at the assembly points.
- Assume all responsibilities of the PEC in his/her absence.

Emergency Response Plans should include basic framework and instructions which can be applied to a variety of emergency types and scenarios:

- Fire
- Severe Weather
- Active Shooter/Violent Incident
- Medical Emergency
- Hazardous Materials/Radiological Emergency
- Mechanical/Facilities Emergency

Tenants must consult Unison/CDA for individual support and guidance in developing plans to fit operations and locations which Tenant has or will occupy.

Unison/CDA will perform a final review of all emergency materials and plans. Upon approval, Tenants will be required to retain physical and digital copies accessible to all personnel at each location.

Prohibited Items Auditing and Safety

All Tenants are required to adhere to all current TSA, FAA and CDA guidelines with regards to the Prohibited Items and Sharp Object Control in Operations. Materials and management procedures for sharp objects/tools/hazardous chemicals used in operations, can be obtained from Unison/CDA.

To report an unaccounted item or risk associated with prohibited items, contact the O'Hare Communications Center:

OCC Emergency: 773-894-9111

OCC Non-Emergency: 773-894-5000

Auditing Prohibited Items

Any Tenant area located within the Sterile Area, utilizing or housing prohibited items, must complete a physical audit of all items at minimum twice per work shift. These locations include retail locations, remote storage positions, commissaries/production outlets and administrative offices.

Audits shall be recorded and organized for submission to Unison/CDA on a monthly basis:

- Digital copies of audits are due to the Unison Operations Team no later than the 5th day of the following month.
- Submissions must have all values completed and verified, with entries fully legible.
- Operators shall retain copies of audit logs on record for a minimum of 6 months.

Performance of each audit requires signed documentation from a manager stating the following information has been audited for discrepancies against the previously established values:

- Quantity of all prohibited items
- Fitness/condition of prohibited items
- Location of prohibited items

Unaccounted prohibited items must be immediately reported to the O'Hare Communications Center (OCC) for response and documentation. Formal changes to quantities of prohibited items must be documented in the appropriate section of the reporting log.

Prohibited Items Criteria and Management

Operators are advised to consult the TSA for current information and guidance regarding prohibited items in the Sterile Areas of the Airport.

Additional or supplemental revisions and guidelines shall be communicated and instituted at the needs and discretion of the CDA administration.

Examples of Common Prohibited Items in Operations

The following are examples of common risk items which are permitted solely for Tenant operations by badged personnel. General public members are prohibited from possessing these items in Sterile Areas:

- Cutting tools (culinary knives, scissors, box knives, razor blades, corkscrews)
- Household tools (screwdrivers, hammers, wrenches, drills)
- Cleaning materials (flammable chemicals, compressed aerosol canisters, bleach, abrasive chemicals)
- Culinary equipment (forks, mallets, probes, lighters/torches)

Storage and Management of Prohibited Items

A continual chain of security custody and supervision must be maintained for all prohibited items in operations:

- Prohibited items must remain in the sole possession of the Tenant/operator; possession of items may not be transferred to members of the public or other personnel, for any duration or justification.
- Sharp objects must remain securely tethered to a solid fixture or surface, out of reach from members of the public or other outside personnel.
- Tools and other equipment stored in a central container or fixture must be secured by a locking mechanism. Each individual item remains subject to shift auditing requirements.
- Flammable liquids and compressed aerosols must be stored in an approved fire-rated cabinet. Operators are required to maintain a manufacturer-issued Material Safety Data Sheet (MSDS) for all chemicals housed within operations.
- Items no longer needed within operations must be directly removed while maintaining a continual chain of Tenant custody until fully removed from the Sterile Area. Items may not be left unattended, abandoned or disposed of in any waste receptacle or stream. *Removal of any items and changes in values must be reported in audit logs.*
- Operators are encouraged to create and maintain photographic records of each individual prohibited item, allowing for accurate accounting and tracking of said items.

CDA Safety Severe Weather Operations Overview

Tenant operations during severe weather scenarios shall be guided by a blend of Airport public safety policy and Tenant-specific emergency plans.

Severe weather scenarios are often dynamic in nature, requiring monitoring, efficient communications and comprehensive understanding of the established management procedures.

Severe weather notifications and corresponding instructions will be issued by the OCC Everbridge System and in-terminal public address announcements.

Tenant leadership, Concessions management and all associated personnel are required to subscribe to OCC Everbridge notifications by contacting CDASafety@cityofchicago.org.

CDA Severe Weather Plan 1

- This advisory identifies that severe weather activity has been detected in the general vicinity of the Airport and additional risks may be possible.
- Public safety personnel will initiate preparations for possible evacuation; monitor outlets closely for further alerts and instructions (electronic or in-terminal).
- Advise personnel to heighten awareness of their surroundings and be prepared to promptly execute Weather Plan 2 movements [if activated].
- Perform a count of on-site personnel and shed unnecessary equipment in use.

CDA Severe Weather Plan 2

- This notification requires that operators must immediately cease operations and discontinue all service to customers.
- Operators must immediately extinguish and terminate use of all equipment, secure locations, and proceed directly to the nearest designated shelter area.
- Individuals in terminal areas must proceed to shelter areas (lower levels, restrooms, and areas protected from glass).
- All personnel must remain in shelter positions until receiving formal notice that clearance has been secured and normal operations may resume.

Tenant Severe Weather Operations Overview

Tenants are responsible for managing and training personnel for location-specific actions and procedures relevant to the Tenant's individual operational systems and needs. Detailed information shall be outlined in the Tenant's individual Emergency Response Plan, including:

- Tenant's Emergency Coordinators (primary and secondary)
- Chain of communication for Tenant leadership/personnel
- Shutdown procedures for critical/sensitive equipment and systems
- Nearest areas of shelter and other Tenant rally points

Tenant Emergency Response Obligations

The Department of Aviation, Safety and Security provides security directives to Tenants through ID Badging Signatory and employee training procedures and Safety and Security Plan regulations. Tenants are responsible for maintaining standards and training employees on the security rules of the Airport, as they are set forth and amended.

- Tenant must comply with, and require compliance by its Subcontractors, Suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances outlined by the City, the TSA the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons.

- Tenant must adopt procedures to control and limit access to the Airport and the Leased Space by Tenant and its Subcontractors, Suppliers of materials and furnishers of Services, employees and business invites in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances.

- Tenants must have in place and in operation a security program for the Leased Space that complies with all applicable laws and regulations.

- Gates and doors located on the Leased Space, if any, that permit entry into restricted areas at the Airport must always be kept locked by the Tenant when not in use, or under Tenant's constant security surveillance.

- Tenants may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport Security program. The Tenant acknowledges that all such knowledge and information is of a highly confidential nature. Tenant covenants that no person will be permitted to gain access to such knowledge and information unless the person has been approved in writing.

- Tenant understands that fines and/or penalties may be assessed by the TSA or FAA for Tenant’s non-compliance with the provisions of 49 CFR Parts 1540 and 1542 entitled Airport Security or by other agencies for non-compliance with regulations applicable to Tenant’s operations as outlined in the Agreement.

Tenant Equipment and Facility Maintenance Standards

Tenant equipment and operations must at all times meet existing health code requirements, Occupational Safety and Health Administration (OSHA) guidelines and other applicable, local, state and federal standards. Tenants must comply with the following CDA guidelines for equipment and Leased Space facility standards. Immediate corrective action is required for any deficiencies which may occur or be identified through inspection or other reporting.

General Maintenance and Repairs

- Tenant-owned equipment, fixtures, surfaces and facilities shall be maintained in a state of cleanliness and comprehensive fitness, subject to regular inspection and evaluation by Unison/CDA.
- Necessary maintenance, repairs or cleaning activities must be executed in a manner as to avoid an interruption of business and/or impact to Passenger Experience.
    - Work with internal impacts may require scheduling during overnight hours and/or additional protections and accommodations at the discretion of Unison/CDA.
- Maintenance activities or repairs with external impacts shall be subject to additional coordination requirements at the discretion of Unison/CDA.
    - Additional information can be found in the subsequent section titled Impact Coordination via CDA E-Forms/Smartsheets.

Access/Escorts to Controlled Areas

Work projects which require access to remote areas shall be coordinated in advance with relevant Unison/CDA agencies.

Tenants must initiate the coordination process by contacting Unison/CDA with a basic summary of proposed Work scope and information on associated Work areas.

The following areas are subject to additional coordination and/or Escort access requirements (prior approval must be secured through Unison/CDA):

- Roof level areas
- Heating, ventilation and air conditioning (HVAC) penthouse areas
- Aircraft operating areas
- Utility/telecom vaults and closets
- Ring tunnel areas
- Stakeholder areas (offices, crew rooms, baggage roadways, baggage handling areas)

Preparations and requirements for respective areas shall be determined and communicated to authorized parties following Unison/CDA review and approval of the proposed Work scope.

Technicians and Service Providers

The Tenant shall ensure that any technicians, trades or service providers shall hold the necessary certifications and qualifications to perform their relevant Work scope or task.

- Scope of services and area access request
- Company Business License (state and/or municipal)
- Company Certificate of Insurance
- Verification of technician licensing or certification
- State-issued identification

Unison/CDA may request verification or current proof of the above listed items.

The Tenant owns the responsibility to supervise the actions and movements of any services or trades acting on the Tenant's behalf, including securing proper approvals and coordination prior to initiating any Work or activities.

Pest Control Service

Each Tenant shall be responsible for maintaining regular pest control service for all Leased Spaces:

- Retail locations
- Remote storage areas
- Commissary/production kitchen areas
- Office/administrative areas

Tenant Leased Spaces shall each receive inspection and treatment from a certified Pest Control Operator (PCO), at minimum once monthly.

- Detection of pest activity within Tenant Leased Spaces or adjacent areas may be cause for a temporary increase in service frequency at the recommendation of Unison/CDA (or CDA hired PCO).

If Tenant PCO notes findings of pest activity in (or adjacent to) Tenant Leased Spaces, findings must be forwarded to Unison/CDA for coordination with corresponding treatments and preventative measures.

- Tenant PCO may be required to participate in coordinated pest control communications and efforts in conjunction with CDA hired PCO, CDA Facilities and PCOs representing other agencies.
- Tenant PCO shall be subject to review and direction of treatment and materials by the CDA and CDA hired PCO.

Tenant PCO shall be capable of providing the following elements of basic service:

- Pest control monitoring and abatement
- Must furnish and maintain a physical copy of service reports kept readily available for review at each Tenant Leased Space
- Inspection (and necessary installation) of exclusion methods to prevent pest entry/passage
- PCO must make best faith efforts to minimize impacts of pest control service
    - Treatment materials and equipment shall be applied in a safe manner
    - Control boxes and equipment shall not be visible to members of the public
    - Shall perform duties in a manner that does not impact Tenant performance of service to customers (unless otherwise authorized by Unison/CDA)

Exhaust and Supplementary HVAC Service

- Exhaust hoods, ducts, fans and filters must be cleaned and appropriately maintained to the recommended standards by a certified professional.
    - Exhaust cleaning frequencies must be submitted for approval by Unison/CDA and may be impacted by various factors including food byproduct levels, exhaust system design, nuanced facility considerations and other external factors.
- Interruption of exhaust service must be promptly notified to the CDA Facilities Monitor 773-686-2248.
    - Loss of exhaust service shall require an immediate suspension of all activities and tasks which require exhaust support.
    - Non-supported activities may continue at the ongoing discretion of Unison and the CDA.
- Findings or reports of damaged rooftop exhaust/HVAC equipment may also warrant a suspension of operations due to safety risks, regardless of performance loss.
- Tenant operations may require supplementary HVAC components “make-up air”. Changes to Tenant operations or overall facility conditions may result in commensurate adjustments to being necessary to Tenant-owned HVAC support equipment.
- Rooftop exhaust and HVAC installments must receive (at minimum) one comprehensive service and inspection visit per calendar year, from a certified professional.
    - Service reports shall be submitted to Unison/CDA upon service completion.
    - Immediate corrective action shall be taken for any deficiencies or hazards identified during inspection.
    - Other equipment located upon the rooftop level shall also be subject to annual inspection requirements (remote refrigeration components, data/telecom instruments, media installations).
- Remediating and repairing damage to rooftop areas resulting from a failure to properly maintain rooftop equipment and/or improper service frequency shall belong to the Tenant.

Plumbing and Waste Network Maintenance Requirements

- Tenants must meet local and federal plumbing design standards and guidelines.
- Tenant locations requiring grease interceptors must receive regular service and maintenance, whose service frequency must be approved by Unison/CDA. Frequency needs may be impacted by various factors including food byproduct levels, interceptor design/capacity, nuanced facility considerations and other external factors.
    - Service records/manifests must be retained by the Tenant and submitted to Unison/CDA for on-going review and verification.
    - Immediate corrective action shall be taken for any deficiencies identified during service.
    - Recommendations for changes to service frequency shall be evaluated on an individual basis.
    - Bypass or “pipe-through” repairs for compromised interceptors shall not be permitted without obtaining prior approval from Unison/CDA.

- Tenants with waste network connections regularly require rodding service maintenance to support operations/locations.
    - Determination of service need and corresponding frequency shall be dictated and approved by Unison/CDA, using the above-mentioned factors and considerations.

Maintenance for Tenant Specialty Equipment and Systems

Service, cleaning and general maintenance for Tenant specialty equipment and fixtures shall be instituted and approved at the discretion of Unison/CDA in a manner to ensure overall safety and limit externalities upon public and other agencies.

Impact Coordination via CDA E-Forms/Smartsheets

Activities or service with potential external impacts to public or other Airport agencies must be coordinated using the City of Chicago E-Form Portal and associated components.

The Tenant or associated service provider must submit a description of Work scope and general impacts, including:

- Date / time of operation (including duration)
- Location(s) of operation
- Supervisor contact
- Confirmation of relevant permits and conditions met

Advanced coordination needs shall be managed with a Smartsheet submission concurrent to any E-Form submission: CDA Smartsheet SOP.

Operations with Work scopes which may include the following shall be subject to additional requirements and documentation (as denoted in the E-Forms Portal and the CDA Design and Construction Standard Operating Procedures – Concessions Projects (C-SOP)):

- Hot Work activities
- Access to sensitive areas (roof level, aircraft operating area, utility/data areas)
- Compromise to a perimeter/barrier between Access Control areas
- Interruptions to building systems
- Impacts to passenger flow

Please consult the following City of Chicago resources for user registration, training documents and supporting materials:

- E-Forms Portal
- CDA Design and Construction Standard Operating Procedures (CSOP) (flychicago.com)

Unison/CDA reserve the final authority in determining the scheduling and execution of projects with anticipated external impacts. Work with adverse impacts may require scheduling during overnight hours and/or additional protections and accommodations.

Additional Space/Remote Storage Locations

Tenants with remote storage locations are subject to the following requirements and criteria:

Logistics and Operations

- All appliances and equipment must receive advance approval from Unison/CDA prior to installation in Tenant storage areas (including, but not limited to cold holding, ice making equipment, supplementary HVAC).
    - Proposed equipment for storage areas may require additional utility accommodations at the Tenant's expense (including, but not limited to HVAC balance, electrical capacity, plumbing configuration).
- Food preparation is not permitted in designated storage areas. Please refer to Chicago Department of Public Health resources for standards and requirements.
- All deliveries taken straight to storage areas must be received and verified in-person by an agent of the Tenant. Deliveries may only be staged temporarily beside or adjacent to the storage area (including corridors and vestibule areas). All staged items must be continuously attended to and promptly processed.
- Delivery materials including waste and return media (crates, pallets, cylinders) must remain stored within the Tenant's Leased Space and may not be left in Common Areas.
- To allow for adequate cleaning, service and operational safety, all consumer inventory and materials housed in storage areas must be stored according to the following standards:
    - An elevation no less than 8" above the floor
    - A minimum of 3" from any wall
    - A minimum of 18" clearance from the overheard ceiling sprinkler heads

Safety and Cleanliness Standards

- All Tenant doors facing Common Areas or corridors must be visibly signed and contain the following information:
    - Agreement Outline Number/Identifier (CDA issued)
    - Tenant Business Name or DBA Name
    - Location(s) of retail outlet which said Storage Area(s) support
    - 24-Hour emergency contact phone number
- Tenant Storage Area doors facing Common Areas must meet the following criteria:
    - Fully secure, featuring at minimum one functioning lock and operating hardware of adequate fitness
    - Firmly attached door sweeps/seals spanning the base of each door

- Tenant Storage Spaces are to be maintained according to the following general requirements:
    - Floors, walls and ceilings are kept free of debris, and accumulation of dust and residue.
    - All approved fixtures housed within Tenant Storage Areas must be kept in a clean state, and of a fitness which is generally free of damage or safety risks.
    - All penetrations to the shell of the Tenant Storage Area must feature an adequate seal to prevent passage of liquids, pests, odors and other externalities.
    - Tenants subject to Chicago Department of Public Health are advised to consult current guidelines and requirements for all Storage Areas associated with Tenant's agreed upon operations.
- Compressed gas cylinders and tanks (CO2, nitrogen) housed in Storage Areas must be managed according to the following safety criteria:
    - All tanks must be stored upright and stabilized in this position using a storage cage or secured tank chain.
- Chain storage for tanks requires a linkage of adequate weight/gauge which can be kept consistently taught and firmly secured or anchored to a wall on both ends. Fastening chains/tanks to a fixture is not permitted.
- Tenant Storage Areas are subject to pest control service and inspections standards. As such, all Storage Areas are required to receive service from a qualified and properly licensed pest control operator (PCO) on a monthly basis. Service logs with inspection findings must be kept on premises for verification.
- Tenant Storage Areas must be equipped with a fully functional fire extinguisher according to the following criteria:
    - Extinguisher must maintain a sufficient charge level.
    - Extinguisher must maintain a current inspection/service label, readily visible for verification.
    - Extinguisher must be properly mounted or stored:
        - Wall-mounted extinguishers must reside at an elevation and position clear from obstructions or potential impact.
        - Extinguishers housed in a cabinet (or similar fixture) must have their location clearly identified using approved signage.
        - All Tenant storage areas must post in clear sight an individual evacuation plan provided by the CDA.

CDA Facilities and Tenant Maintenance Obligations

City and CDA Facility Obligations

The City and its on-Airport CDA Facility Departments will keep the following in good condition: the Common Areas, roofs, structures, foundation, central mechanicals including plumbing, electrical systems heating, ventilation, cooling, water and sewage to the terminals. The City will provide heating, ventilating and cooling to the Common Areas. The Commissioner reserves the right to temporarily interrupt the heating, air cooling, ventilation, plumbing or electrical services furnished to the Common Areas, the terminals, or the Airport to make emergency repairs or for other reasonable purposes, and the Commissioner will restore the services as soon as reasonably possible. Further clarification can be found in your Agreement.

Tenant Obligations

The following outlines maintenance requirements to assist in partnering with the City to manage the facility to its best operational standard. Upon request, Tenant must provide the City and Unison with monthly repair and maintenance reports detailing all repair and maintenance undertaken with respect to its Leased Space. If Tenant repair and maintenance reports indicate that Tenant is not complying with its repair and maintenance obligations, Unison/CDA will refer directly as to what's stipulated in the Tenant Agreement. In addition to any other remedies available to the City, if Tenant fails to undertake required repair or maintenance within 5 days after receiving notice from the Commissioner (or such shorter time as may be required due to health or safety reasons), the City may undertake the required repair or maintenance through a City Contractor or its own forces, and charge Tenant the reasonable cost thereof as Additional Rent.

- Tenant must provide all cleaning and janitorial services to the Leased Space. Tenant must clean, maintain and repair (including replacements where necessary) the Leased Space in first-class condition during the entire term.
- Tenants must provide and maintain the tables and chairs in the Food Court Common Area adjacent to the Leased Space (if location is part of this communal space).
- Tenants are responsible for pest control within the Leased Space by contracting with a professional pest control service on a regular basis or as needed, or as the City or Unison may direct. Tenant must furnish the Commissioner and Unison a copy of its pest control contract and service records upon request.

- Tenant must, at its own expense, keep the exhaust system, including all risers, piping and fans used in connection with the exhaust systems, whether located in or outside of the Leased Space, and all other pipes or ducts used by Tenant, including black iron duct, in good repair. The expectation then is that Tenant meets the highest standards of cleanliness, health, and safety, in a manner consistent with the operation of a first-class restaurant and in accordance with all applicable laws, codes and regulations of any governmental authority having jurisdiction, or otherwise recommended by the Commissioner or Unison based on capacity and use.

- Tenants must maintain a grease trap cleaning and plumbing maintenance schedule, as recommended by the City or Unison, to minimize discharge of grease into the City's plumbing lines.

- Tenants must maintain all fire detection and fire suppression systems and mechanisms in accordance with all applicable laws, codes, and the requirements of all applicable policies of insurance and insurance inspectors of the City. Tenant must not cause or permit any damage to insulation and fire protection materials surrounding the black iron duct. In addition to Tenant's obligation to maintain utility lines in the Leased Space as set forth in Section 4.8 of the Agreement, Tenant must install and maintain in good working order and in accordance with the rules and regulations of all insurers and applicable laws, codes, and regulations of any governmental authority, all fire extinguishing systems in the Leased Space.

Any damage to Airport property or property of other Tenants arising out of Tenant's failure to perform its maintenance obligations is expressly deemed a "Loss" subject to Tenant's indemnification obligations under Section 8.2 of the Agreement.

Signage Requirements and Change-Out Procedures

All signage and replacement signage must comply with the CDA design specifications as outlined in the CDA Design and Construction Standard Operating Procedures (CSOP) (flychicago.com). Proposed signage changes must be submitted to CDA/Unison and CDA Planning and Development for written approval. CDA Concessions reserves the right to require Tenant to also obtain the approval of CDA Marketing.

- All internal and external signs, signage stand holders, menu boards and blade signs must be clean, free of dust and in good condition.

- Pictures, displays and frames (whether art or advertising) must be clean and free of tears, scratches and dust.

- No promotional banners or signage may be used without review and written approval from CDA Concessions.

- All illuminated signs must be in proper working condition.

- All Concession Areas under construction must provide professionally approved signage upon barricade exteriors.

- Handwritten and/or unprofessional signs are prohibited.

- Exit signs must be operational, illuminated and clearly marked.

- Hours of operation signage must be posted in a continually visible position, using a Unison/CDA approved medium or template.
- Store policies regarding credit cards, returns/refunds, etc. must be clearly displayed.
- Prices must be clearly displayed.
- No persons, without written authorization from CDA Concessions may post commercial signs, banners, or distribute advertisements, literature, circulars, or any other form of printed or written commercial material at the Airport.
- Retail advertisements must be displayed within the Agreement premises, unless otherwise authorized by Unison/CDA.
- No promotional activities or events may be conducted without prior review and written approval from CDA Concessions.

Signage proposal submission, review and installation process:

- Tenant shall submit a summary request of changes and/or installation to Unison/CDA.
- Request submission shall include all drawings, specification sheets or samples.
- Upon receipt, Unison/CDA shall review submission materials and respond with written approval and/or comments.
- Tenant signage shall remain subject to on-going review and direction based upon the changing needs and priorities of Unison/CDA.
- Signage deployments may be suspended or removed at the discretion of Unison/CDA.

Logistics

Delivery Planning

Delivery and distribution of goods and materials shall be planned and approved by Unison/CDA on an individual basis for each Tenant.

Tenants shall initiate delivery planning and approval by submitting a comprehensive list of delivery activities including the following information for each delivery provider:

- Delivery provider name
- Summary description of incoming/outgoing goods and associated needs
- Packaging/construction of incoming goods
- Estimated time of arrival for delivery provider and staging duration
- Destination(s) for incoming goods (remote storage and/or Tenant retail location)
- Anticipated frequency of delivery operations
- Projected delivery vehicle type(s) and associated restrictions

Tenant individual delivery plans will be continually managed factoring a combination of considerations and needs including:

- Security postures/safety requirements
- Physical positioning and screening capacities
- Elevator availability and desired route dynamics
- Tenant operational needs
- Other considerations, including construction, facility accommodations or operational projects

The Tenant shall have primary responsibility for managing and monitoring compliance to the Tenant's approved delivery plan from all associated agents, including delivery providers and personnel. Adjustments or updates made to the approved delivery plan shall be the Tenant's responsibility to communicate to the associated providers and agents of the Tenant.

Damage or infractions resulting from the actions of a Tenant's delivery provider will be reviewed on an individual basis and may implicate Tenant responsibility and/or corrective action.

Failure to comply with stated safety and security procedures/policy may result in the suspension or termination of access permissions for delivery providers and/or Tenant agents.

General Delivery Procedures – Safety and Security

All Tenant deliveries shall be executed in accordance with local, state and federal safety guidelines, including:

- Chicago Department of Public Health Food Code Rules
- OSHA laws and regulations
- Posted traffic instructions and restrictions

Upon arrival at the designated/approved delivery position, incoming delivery vehicle(s) must be met by an agent of the Tenant for prompt handling of the delivery vehicle and contents.

- Unattended deliveries or staging product for later intake and/or processing is prohibited.

All incoming delivery materials and goods must be inspected and verified by a Tenant agent or delivery manager prior to assuming custody and possession.

- Receivers are asked to verify the following criteria prior to assuming possession:
  - Verify delivery / service provider name and identity
  - Quantity of goods
  - General condition of goods
  - Examine goods for evidence of tampering
  - Verify temperature of sensitive / perishable food items
- Any discrepancies identified with the above-listed criteria should be held for further clarification or rejected for immediate backhaul by the delivery provider.

Upon verification of delivery contents, incoming goods must be marshalled and delivered directly to a Tenant location for storage and/or sale. Items may not be staged or left unattended in Common Areas, corridors or dock areas for any duration of time.

Goods and materials entering the Sterile Area shall be subject to screening and inspection from TSA, CDA Security and CPD.

- Items which cannot be scanned using magnetometer/X-ray shall be subject to a manual screening inspection, and as such may require removal from shipping packaging and/or access to interior contents and compartments.
- Additional information on Vendor Checkpoints can be found in the dedicated Vendor Checkpoint section.

Many deliveries involve “return media” components for provider backhaul. This includes pallets, cartons, racks, compressed gas cylinders, kegs/tanks.

- Return media items must remain in Tenant possession and custody until the corresponding provider has arrived to resume possession and backhaul from the premises.
- Return media items must remain stored within Tenant Leased Space at all times.
- Return media items may not be abandoned or left unattended [for any duration] in public areas.

Core Terminal Delivery Operations

- Incoming deliveries to the core terminal area (Terminals 1, 2 and 3) must stop and stage for screening approval at the perimeter Small Package Inspection point, located in the far right lane of westbound I-190.
    - All vehicles, contents and passengers shall be subject to random inspection and screening at this position, including K-9 sweep.
- Upon clearance from the Small Package Inspection position, vehicles will proceed to their designated/approved delivery position via only the Lower Level Roadway utilizing only the far right lanes.
- Core terminal delivery positions shall be determined and approved by Unison/CDA:
    - Post 7 Landside Pad – Terminals 1, 2
    - Post 9 Roadway/Landside Pad – Terminals 2, 3
    - Post 10 Landside Pad – Terminal 3
    - Special accommodations as authorized by Unison/CDA

Terminal 5 Delivery Operations

- Incoming deliveries to Terminal 5 will proceed to the central T5 loading dock loading via the Lower Level Roadway, utilizing only the far right lanes.
- Vehicles shall await dock availability by staging in queue short of the dock area until a vacant dock position becomes available.
- Upon dock entry delivery personnel must sign in with the CPD post located on the dock interior, including both driver and the receiving Tenant information.
- Incoming items shall then be received by an agent of the Tenant and promptly removed from the dock area.
- The T5 dock may not be used for unattended storage or staging of incoming goods or outgoing return media items [for any duration].

MMF Delivery Operations

- Concession deliveries and logistics information for operations at MMF must be independently approved and coordinated in advance via Unison/CDA.

Internal Handling of Goods and Materials

General Equipment Use Guidelines

All personnel and agents of the Tenant must operate their equipment in a safe and courteous fashion, at all times. Failure to operate with reasonable care and caution may result in immediate corrective action and/or suspension of access permissions at the discretion of Unison/CDA or other relevant agencies.

Carts, pallet jacks and other wheeled equipment shall be operated within the following guidelines:

- Equipment shall be operated at a reasonable speed and payload weight. The operator must be capable of effectively steering, controlling and stopping the equipment.
    - Equipment operators shall always yield right of way to passengers and other foot traffic in terminal areas.
- Equipment operators are prohibited from using cell phones, music devices or other instruments/activities which present a risk of distraction from proper operation.
- Equipment contents shall be arranged in a stable manner, at a height which permits the operator an uninterrupted 360-degree line of sight around the equipment operating envelope.
    - The use of shrink-wrap, straps or containers may be necessary to secure the equipment payload based on the delivery contents, equipment type and distance of travel.
- Equipment shall be used only for approved purposes and applications:
    - Equipment may not be used for shared handling of waste and retail/food Products.
    - Tanks and compressed gas cylinders must be transported in a secure fashion to prevent damage and or accidental discharge of cylinder/tank contents, regardless of tank state (empty or full charge).

- Delivery and waste hauling equipment operators shall not deviate from the Tenant's approved travel routes and list of authorized elevators without obtaining prior approval from Unison/CDA.
    - Equipment/operators may not utilize passenger elevators without prior approval.
- Equipment may not be staged or left unattended in public areas [for any duration].
    - Equipment underway with loading/unloading activities must remain attended throughout, and staged in a position that does not impede passenger flow, egress or present a compromise to overall Passenger Experience.
- Idle equipment must remain fully housed and secured within Tenant Leased Space and may not be staged in Common Areas including concourse areas, corridors and docks.
- Disposal of equipment which has been removed from Tenant operations shall be the sole responsibility of the Tenant.
    - Proper disposal may require additional arrangements aside from the existing waste receptacles (provided at the Tenant's expense).

Tenant Delivery Equipment Maintenance

All equipment and fixtures used to transport materials within the facility shall be subject to inspection and direction from Unison/CDA to ensure comprehensive safety and aesthetic standards.

Unison/CDA may issue recommendations on equipment type and design based upon Tenant's approved delivery information and plan.

Material handling equipment shall be kept in a state of clean working order, meeting the general criteria:

- All equipment entering/operating within the premises must be visibly labeled with neatly printed identification of Tenant (or agent) name and housing location.
- Wheels operate silently without producing marks, scratches or wear to flooring surfaces.
    - Wheel construction material shall be subject to review and approval from Unison/CDA.
- Equipment must not exceed the stated weight limits for use or deviate from intended purpose(s).
- All equipment traversing public areas must be kept clean and free of damage or other hazards.
- Tenant equipment deemed to present a risk or exception shall be subject to immediate corrective action and/or removal from operations.

Waste, Recycling and Byproduct Handling

Each Tenant shall be issued an operating plan to manage the handling of waste, refuse and other byproducts generated through their operations.

To initiate the plan development each Tenant shall complete a Byproduct Estimation Survey for review by Unison/CDA.

Submissions will be used to generate a Tenant-specific comprehensive byproduct plan, establishing the following approvals and recommendations for each of the Tenant's respective locations:

- Primary and secondary waste (garbage) deposit points
- Primary and secondary recycling deposit points
- Primary and secondary spent oil recycling points
- Compost deposit point(s)
- Food donation deposit point(s)
- Approved haul route for travel between Tenant area(s) and deposit point(s)
- Approved freight elevator(s) for travel between Tenant area(s) and deposit point(s)
- Recommended equipment for handling of byproduct transport

Upon establishing a Tenant's deposit points, Unison/CDA may assist with training Tenant personnel on the respective deposit facilities and corresponding equipment.

The Tenant shall be responsible for managing personnel to ensure the safe and proper use of associated waste and recycling equipment.

Designated Vendor Checkpoints

Access for goods and personnel to the Sterile Area is permitted through dedicated Vendor Checkpoints, located in the following positions:

- Terminal 1 – No Vendor Checkpoint (all Terminal 1 Tenants should use Terminal 2 Vendor Checkpoint)
- Terminal 2 Vendor Checkpoint – Upper Level Near Door 2A (24 Hours)
- Terminal 3 Vendor Checkpoint – Upper Level Near Door 3A (24 Hours)
- Terminal 5 Vendor Checkpoint – Only accessible via access controlled corridors/areas (4AM-830PM)

Temporary Checkpoint closures may require redirection of operations to adjacent Vendor Checkpoint(s) or passenger Checkpoint lanes (*only upon prior instruction and authorization from Unison/CDA*).

Badge holders must receive advance clearance and approval for Vendor Checkpoints via the corresponding badging access codes, provided during the badging process, issued at the discretion of Unison/CDA.

X-Ray/Magnetometer Use

The following items entering the Sterile Area shall be subject to magnetometer screening and/or physical inspection from TSA, CDA Security and CPD:

- Incoming materials, goods and Products
- Associated delivery equipment, containers and packaging
- Personal effects, accessories and outerwear
- Items which cannot be scanned using magnetometer/X-ray shall be subject to a manual screening inspection, and as such may require removal from shipping packaging and/or access to interior contents and compartments.

Operators shall at all times defer to the instructions of TSA personnel (and other security officials), regarding the permissible use and treatment of Checkpoint areas and associated equipment.

- Tenant shall be responsible for ensuring effective management and supervision of all personnel, activities and operations at Vendor Checkpoint areas.
- Failure to operate within established instructions, procedures and guidelines may result in the suspension or termination of access permissions.

Hiring Outside Services

Stores may hire service providers such as housekeeping, extermination, or telecommunications without prior CDA approval. However, it is required that anyone who may impact Airport operations such as electricians, phone repair, plumbers, etc. be pre-approved by CDA/Unison.

IMPORTANT: All technicians working on the infrastructure of the building need to be licensed and certified in the Work they are performing. Electricians, plumbers, HVAC mechanics, restaurant hood cleaning and maintenance technicians, all carry either a license or a certification, and proof of documentation must be supplied, along with any permitting requirements, and sent to all applicable Departments prior to starting any Work.

IMPORTANT: Your Tenant space is one small location within a much larger operation that cannot be disrupted unexpectedly. Anyone found working in the terminals without following this procedure may lose their privilege to work within the Airport and the Escorting employee may also lose their privilege and their right to work at O'Hare.

Marketing and Passenger Experience

Marketing

The CDA Marketing Department operates a marketing fund to support Airport-wide Concessions marketing, advertising and promotion. The program may include advertising, media placements, digital campaigns special events, promotional events, brochures, videos and catalogs, “Mystery Shops”, market research and surveys, Passenger Experience trainings etc., as appropriate. The program is funded by a Marketing Fee assessed on all Tenants.

Each year, the Concessions Marketing Department will build a marketing plan with strategies and tactics developed to reach Airport-wide Concessions marketing objectives and goals. The Concessions Marketing Department will convey the plan objectives and seek Tenant participation in the initiatives planned for the year.

These opportunities are made available, with no additional fees, to operators who contribute to the marketing fund. Tenants are asked to display counter card signage (provided by the Concessions Marketing Department) supporting Airport-wide initiatives during specific time periods. Participants will be encouraged to complete post-event forms to gauge the success of these initiatives.

The Concessions Marketing Department gathers and supplies content from Tenants, including store descriptions, keywords, operating hours, phone numbers, and other relevant details, and communicates these to CDA Marketing and Customer Service teams as needed. The information collected is used across platforms for marketing, communications and other informational purposes. Upon onboarding, the Tenant’s profile will be posted on Eat Shop & More | Chicago O’Hare International Airport (ORD) (flychicago.com). It is the Tenant’s responsibility to provide updated information if/when content changes.

The Concessions Marketing Department also collects and provides a social media content calendar to CDA Marketing ensuring all Concessions are featured across @Fly2ohare social media channels (Facebook, Instagram, X and LinkedIn). The Concessions Marketing Department will work with the Tenant and serve as a liaison to gather content. Content will be collected on a quarterly basis.

Content must be sent via email to the Concessions Marketing Department. A comprehensive Marketing onboarding packet will be furnished to Tenants, encompassing detailed guidelines on how to effectively share and provide content.

Please tag O’Hare in your O’Hare specific brand posts with @fly2ohare. Many times, the CDA webmaster will re-post your message which builds reach and visibility across social media platforms.

Concessions Messaging and Advertising

The Concessions Marketing Department has secured signage locations throughout the Airport to market the Concessions program, (i.e., column wraps or wall signs, electronic directories, TV monitors throughout the Airport property, the ATS train ads and at ATS terminals). Also, handheld brochures are printed and made available for distribution from the Travelers Aid Information booths at both Airports. These programs are intended to market the Concessions program as an entity. All Tenants will also be included in wayfinding/navigational materials where/when appropriate.

On the CDA's Eat Shop & More | Chicago O'Hare International Airport (ORD) (flychicago.com), Tenants are required to provide Tenant location and hours of operation. However, Tenants are also allowed to provide the following to increase their online presence:

- Employment contact information for posting on the job portal page of Concessions Jobs at ORD & MDW (flychicago.com). It is the Tenant's responsibility to provide updated files when content changes.
- Store information for Eat Shop & More | Chicago O'Hare International Airport (ORD) (flychicago.com) that includes company website, mobile app, electronic directories, etc.
- Menus, as required for all Food and Beverage (F&B) locations, by submitting a single JPG file. The menu does not need to include prices. It is the Tenant's responsibility to provide updated files when content changes. Remember all pricing/Product changes must be approved by the Commissioner's office prior to implementation.

Employee Discount Listing

Each Tenant is encouraged or in some cases Agreement-required to offer an employee discount to all badged employees at the Airport. Each year, this list is updated prior to May, and a new list is distributed.

Employee E-Newsletter

A quarterly e-newsletter is distributed electronically to all those who opt-in. The publication shares past marketing event stories, upcoming marketing programming and stories of interest. This document is a great opportunity for Airport employees to stay informed about Concessions activities throughout the Airport. Opt-in at ORD Connections (flychicago.com).

Special Chicago Large Event/Convention Discounts

For a few specific, large events in the Chicago area, the CDA requests Tenants provide a discount to event participants. Once confirmed, the CDA will then publish a discount list for each of these participating events. This information is then shared through Chicago Things to Do, Events, Restaurants, Hotels & Vacation Planning (choosechicago.com).

Military Discount Listings

Each Tenant is encouraged or in some cases Agreement-required to offer an annual military discount/special to military personnel (active, retired and Veterans) with proof of Military ID. Each year, this list is updated prior to May when a new list will be distributed. In addition to the annual discount/special, May is Military Appreciation Month. Tenants are encouraged to strengthen their annual offer or provide a special month-long offer specifically for the month of May. On other patriotic dates throughout the year, signs may be placed throughout the terminals that encourage the military to seek out participating locations.

Race On the Runway – Plane Pull

Each year, typically in the fall, the CDA hosts a race/walk held on a runway, and/or a plane pull benefiting a not-for-profit agency. Tenants are invited to either offer free Product for all race participants and volunteers, to become a cash sponsor, or to rent an exhibit space from which to sell Product.

Cross-Promotions with Fellow Tenants

The CDA encourages Tenants to partner in cross-promotions with other Tenants at the Airport. The Concessions Marketing Department can help introduce managers interested in cross-promotion efforts. Cross-promotional activities are especially supported with social media postings.

Your Own Concession Events

Retail stores and Food & Beverage locations who wish to host their own event should inform the Concessions Marketing Department. Typically, your event can be supported with online messaging and content. If the event is large, sometimes space in front of a Concessions location can be requested, and the Concessions Marketing Department can assist with skirted tables and counter card signage. Approval processes must be sought for the use of all Common Areas.

Food Sampling

Sampling at your store is highly encouraged. If there is not enough physical room at your storefront, please reach out to Unison to discuss sampling opportunities. Health code requirements must be maintained at all times.

Air Chicago Magazine

This quarterly publication may at times invite Tenants to free editorial opportunities. The Concessions map is always included at the back of the magazine, and advertising space is available for purchase.

If interested in Air Chicago Magazine advertising opportunities, please contact:

1030 Media
Siobhan Higgins
503-358-9301
siobhan@1030media.com

Passenger Experience

Unison may periodically coordinate Passenger Experience trainings in which the CDA requires Concessions partners to participate. These Concessions-wide programs support training activities already conducted within many of our Airport's businesses and help to ensure high-level quality of service and consistency of Passenger Experience across all Concessions locations.

CDA Concessions may also periodically hire an outside Contractor to perform "Mystery Shopping" and evaluate in-store experience and employee performance of each Concession location. Such reviews shall be used to monitor Passenger Experience and cash handling procedures among other criteria which are important to the overall retail experience at our Airports.

Passenger Feedback

The City operates a Customer Service Hotline (800-832-6352) as well as a dedicated email address (aviation@flychicago.com) for passenger feedback. When a call or email is received, it is documented and given to CDA Concessions or Unison. You will be advised of the nature and details of the call and will be required to respond. If a customer provides contact information, you are required to follow up in writing (email) to the customer, with copies to both the CDA and Unison. If no address was left, you are required to follow up in writing (email) to Unison detailing how the problem was solved. As stated in most Agreements, this follow-up must be conducted within 72 hours of your receipt of the feedback.

EXHIBIT 13

LIQUIDATED DAMAGES

Tenant acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its sole discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Tenant and the City agree that the fines set forth herein are reasonable, and Tenant further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Tenant further acknowledges that the liquidated damages are not exclusive remedies and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Tenant's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Tenant to correct the violation within the time specified in the notice.

2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, liquidated damages shall be immediately assessed with no grace period.

3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Infraction	1st Violation	2nd Violation*	3rd Violation*
Value Pricing, Article 4.3: Failure to comply with policy referenced	Written Warning	$250/incident	$500/incident
Operational Requirements, Article 4.4: Failure to comply with Physical Inspection Standards, failure to offer widely accepted payment methods or receipts; failure to respond to customer or government inquiries	Written Warning	$250/incident	$500/incident
Hours of Operation, Article 4.5: Failure to operate during minimum required hours of operation	Written Warning	$250/incident	$500/incident
Personnel Standards, Article 4.6: Failure to comply with any of the Standards referenced	Written Warning	$250/incident	$500/incident
Operation and Maintenance Standards, Article 4.7: Failure to comply with any of the Standards referenced	Written Warning	$250/incident	$500/incident
Refuse Handling, Article 4.9: Failure to comply with trash handling procedures.	Written Warning	$100/incident	$250/incident
Signs and Advertising, Article 4.10A: Failure to comply with any sign requirements referenced	Written Warning	$100/incident	$250/incident

Work Requirements, Article 5.4(A): Failure to complete improvements to be open for business by scheduled date of beneficial occupancy (DBO)	$500 per day from scheduled DBO	N/A	N/A
Development Plan, Article 5.5(c): Failure to submit a Development Plan to the satisfaction of the City within 180 days of the Effective Date.	$500 per day		
Work Requirements, Article 5.5(I)(iv): Failure to complete punch list items within 30 days following the date on which Tenant opens to the public for business	$200 per day per item	N/A	N/A

_____ (Initial Here)

EXHIBIT 14

DESIGN GUIDELINES

EXHIBIT 15

INCUBATOR PROGRAM PLAN