

Dallas Fort Worth International Airport
Concessions Lease

ARTICLE 1:

Lease Number:

Concessionaire:

Tradename:

Permitted Use:

Commencement Date: The term will begin on ("_____") or upon opening to the public; whichever is earlier.

Term: The term shall expire _____ years from the Commencement Date.

Minimum Annual Guarantee: \$subject to increases as outlined in Section 4.02 A

Percent Rent: Percent (%) of Gross Receipts for the sale of food and non-alcoholic beverages, hereafter known as Category 2.

Percent (%) of Gross Receipts for the sale of alcoholic beverages, hereafter known as Category ALCO.

Percent (%) of Branding Fees, Marketing Fees, Merchandising Fees, Promotional Allowances, Retail Display Allowance (RDA), and any type of Ancillary Advertising, hereafter known as Category ALLO.

Percent (%) of all other Gross receipts not listed above, hereafter known as Category MISC

Concessionaire Charges: As per the Schedule of Charges.

Cash Deposit or Surety Bond: 25% of the initial MAG: initially,
DFW Reserves the right to review at the beginning of each fiscal year and may increase the bond based on prior year's payment history.

M/WBE Commitment: % or Good Faith Effort

ACDBE Commitment: % or Good Faith Effort

Product Exclusive Rights: Concessionaire acknowledges that the Board currently has a semi-exclusive (95%) beverage pouring rights agreement with Coca-Cola Refreshments USA, Inc. Pouring rights shall apply to the dedication of display and cooler space and the selection of non-alcoholic beverage products displayed, sold and served by Concessionaire. The Board reserves the right to allow other competitive beverage products to be allocated in the remaining 5% of space, provided that: (a) no competitive product shall be displayed, sold and/or served on or from any equipment, except as set forth below, provided by Concessionaire or bearing Concessionaire's trademarks or logos; and (b) there shall be no competitively-branded coolers anywhere on the premises. Allocation of display space for non-exempt beverage products shall be according to the Beverage Exclusivity Policy.

All water products must be purchased through Coca-Cola Refreshments USA, Inc. Beverage pouring rights shall exclude any coffee or tea product that is not bottled.

Concessionaire agrees to include products included in said Agreement in Concessionaire's menu, if applicable, and purchase said products via the Airport's exclusive agreement to the extent those products are not in conflict with agreements existing prior to January 2004.

An initial price ceiling on 20 oz. bottled beverages has been set not to exceed \$2.50. The price ceiling for various beverage products shall be reviewed annually for price adjustments.

Should The Coca-Cola Company Agreement expire during the term of this contract and another soft drink company wins the contract, the concessionaire shall comply with the new company's product mix.

Special Provisions:

Location(s):

Terminal	ID Number	Column Number	Gate	Square Footage	Name of Business
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*Square Footage may be adjusted after final build-out per Section 2.01 (A) of the Lease.
Location Address: (Terminal, Gate, Column)

NOTE: This Lease contains other provisions and additional information about the items listed in **Article 1**. In the event of any inconsistency between other provisions in this Lease and **Article 1, Article 1** shall control. Concessionaire acknowledges that it has read this entire Lease carefully.

Concessionaire's Initials

This concession lease (hereinafter called "Lease") is made and entered into by and between the Dallas/Fort Worth International Airport Board (hereinafter called the "Board"), a Joint Airport Board of the Cities of Dallas and Fort Worth, Texas (hereinafter called the "Cities"), and the above Concessionaire (hereinafter called "Concessionaire").

Board:

Dallas Fort Worth International Airport
ATTN: Airport Concessions Department
P.O. Box 619428
DFW Airport, Texas 75261
972-973-4820 (Phone)

Mailed Payments or Notices:

Dallas Fort Worth International Airport
P.O. Box 974551
Dallas, Texas 75397-4551

All Courier Mail:

Dallas Fort Worth International Airport
ATTN: Airport Concessions Department
2400 Aviation Drive
DFW Airport, Texas 75261

Notices:

Concessionaire:

Partner:

In consideration of the rents and covenants hereinafter set forth, the Board does hereby lease to Concessionaire, and Concessionaire does hereby lease from the Board, the herein described premises ("the Premises") upon the following terms and conditions:

ARTICLE 2: PREMISES

Section 2.01 Premises Description

- A. The Premises consists of the location shown on **Exhibit "A"**, attached hereto and incorporated herein, including any improvements to be made thereon or modifications to be made thereto. No other part of the Airport Terminals or the ground on which they are situated shall be part of the Premises. The total estimated square footage allocable to Concessionaire for purposes of assessing fees and charges is stated in **Article 1**, and if there is more than one location under this Lease, the individual location allocable square footages are stated in **Exhibit "A"**. If the Premises is not fully constructed at the time of Lease execution, then the actual square footage determined after completion of construction shall be adjusted and acknowledged by the parties on **Exhibit "A"**.
- B. Concessionaire shall have the right of ingress to and egress from the Premises over the Airport roadways, including the use of common use roadways, the same as the public at large, subject to such rules, regulations and security requirements now in existence and as may be established from time to time by the Board and by other governmental authorities.
- C. Neither this Lease nor any memorandum of lease shall be filed in the real property records of Tarrant County.

Section 2.02 Premises Acceptance As Is

Concessionaire accepts the Premises in its present condition, as is, where is, and with all faults. The Board shall not be obligated to construct additional improvements or to modify existing improvements, nor to provide services of any type, character, or nature (including any utilities or telephone service) on or to the Premises during the Term of this Lease other than those stated in this Lease to be provided by the Board.

Section 2.03 No Warranty of Economic Viability

The Board makes no warranty, promises or representations as to the economic viability of any concession location or business concept. The Board makes no warranty that airline usage of gates or other facilities adjacent to the Premises will not change.

ARTICLE 3: TERM

Section 3.01 Commencement Date and Term

- A. The Commencement Date, and Concessionaire's obligation to open for business and to commence payment of Rent (including the Minimum Annual Guarantee), shall be the date stated in **Article 1**.
- B. The Term shall be for the amount of time stated in **Article 1**, unless sooner terminated as hereinafter provided.

ARTICLE 4: RENT, FEES, REPORTING, RECORDS, AND AUDITS

Section 4.01 Gross Receipts

"GROSS RECEIPTS", sometimes called Gross Revenues or Gross Sales, shall include all monies paid or payable to Concessionaire for sales made and for services rendered at or from the Premises, to include catering and internet sales, regardless of when or where the order therefor is received (including outside the Premises), and any other receipts, credits, rebates, allowances, or revenues of any type arising out of or in connection with Concessionaire's operations (or those operations of Concessionaire's agents) at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, retail display allowances (RDA), and any type of ancillary advertising or product placement fees/allowances, provided, however, that Gross Receipts shall not include:

1. Any taxes imposed by law which are separately stated to and paid by a customer and directly payable to the taxing authority by Concessionaire;
2. Amounts and credits received in settlement of claims for loss of, or damage to merchandise;

3. Amounts and credits received from suppliers for products and merchandise returned by Concessionaire;
4. Receipts that are later refunded to a customer for merchandise returned;
5. Insurance proceeds;
6. Bulk sales as defined by the U.C.C;
7. Tax rebates;
8. Inter-store transfers; and
9. Amounts for coupons and other forms of discounts (including, but not limited to, complimentary customer and employee meals), such that only the amounts actually received are ultimately included in Gross Receipts.

When properly recorded and accounted for, Concessionaire may also deduct from Gross Receipts the Mixed Beverage Gross Receipts Taxes paid to the State of Texas and levied as a percentage of the amounts charged by Concessionaire for mixed beverages, provided Concessionaire lists said Mixed Beverage Gross Receipts Taxes on reports of Gross Receipts submitted to the Board.

Section 4.02 Rent

Effective on the Commencement Date or first day of operation and continuing thereafter, Concessionaire shall pay Percentage Rent to the Board as set forth in **Article 1** based on Concessionaire's Gross Receipts, subject to a Minimum Annual Guarantee (MAG) as set forth in **Article 1**, and as further provided below.

- A. Minimum Annual Guarantee (MAG). One-twelfth of the MAG shall be due in advance on the first day of each month without setoff, deduction, prior notice or demand. Each payment not received by the 1st day of the month shall be late, and Late Payment Charges shall accrue as set forth in the Schedule of Charges.

The MAG shall be adjusted at the beginning of every calendar year during the Term of the Lease after the first twelve-month period of operation, by a flat rate of three percent (3%) per year. Notwithstanding this annual flat rate adjustment, the MAG shall never be decreased and shall not increase more than three percent (3%) in any single year.

- B. If the Commencement Date occurs other than on the first day of a calendar month or if the Expiration Date occurs other than on the last day of a calendar month, then the MAG shall be prorated for said month.
- C. Percentage Rent. In addition to the MAG, Concessionaire shall pay percentage rent in the amounts noted in **Article 1**, but only to the extent that percentage rent exceeds the monthly installment of MAG paid in advance for said month or portion thereof. Percentage Rent for any category of Gross Receipts not specifically listed in **Article 1** shall be computed by the Concessionaire at the lowest Percentage Rent defined in **Article 1**. Percentage rent for each month is due and payable by the 20th day of each month following the month of accrual, without issuance of an invoice. Payment will be considered late if not received by the 20th day of the same month and late payments will be accrued as set forth in the Airport's Schedule of Charges.

Section 4.03 Schedule of Charges

Concessionaire shall pay to the Board all charges described as "Concessionaire Charges" in the Airport's Schedule of Charges (unless specifically exempted from any such Concessionaire Charge in **Article 1**). The methods by which the Concessionaire Charges are to be calculated are stated in the Schedule of Charges. Concessionaire Charges shall be due within 20 days from the invoice date or electronic notice date without setoff or deduction. Each payment not received per the terms of the invoice or electronic notice date shall be late, and Late Payment Charges shall accrue as set forth in the Schedule of Charges. The Schedule of Charges, as it may be amended from time to time in the Board's sole discretion, constitutes a part of this Lease.

Concessionaire shall pay Late Payment Charges, Declined Credit Card Charges and Returned Check Charges on all late payments, declined credit cards and returned checks. Late Payment Charges are calculated according to the formula set forth in the Airport's Schedule of Charges. Late Payment Charges, Declined Credit Card Charges, and Returned Check Charges shall be payable upon demand. In the event of a dispute as to the

amount to be paid, the Board shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, the Late Payment Charge shall apply only to the deficiency. Concessionaire acknowledges that the formula for Late Payment Charges is fair and reasonable. In no event, however, shall the Late Payment Charges, to the extent they are considered to be interest under applicable law, exceed the maximum lawful rate of interest.

The Board and Concessionaire are knowledgeable and experienced in commercial transactions and agree that the provisions of this Lease for determining charges, amounts and additional rent payable by Concessionaire (including, without limitation, payments of charges under the Schedule of Charges, as amended from time to time) are commercially reasonable and valid even though such methods may not state a precise mathematical formula for determining such charges. The Board and Concessionaire further acknowledge that the Board is obligated by federal law to charge rates for all services and use of Airport property that are at least fully compensatory of the costs incurred by the Board.

Concessionaire acknowledges that the Board is a governmental authority as well as a landlord, and that many charges in the Airport's Schedule of Charges are assessed to the public at large pursuant to the Board's governmental police powers, even if the charges are not specifically enumerated in the body of this Lease.

Section 4.04 Space Acquisition Costs

If there is a Space Acquisition Cost stated in **Article 1** to reimburse the Board for an airline's or a prior tenant's release of the Premises, Concessionaire will pay said sum upon execution of this Lease.

Section 4.05 Space Infrastructure Costs

If there is a Space Infrastructure Cost stated in **Article 1** to reimburse the Board for certain systems constructed or installed at the Board's expense, Concessionaire will pay said sum, once calculated, when billed by the DFW Board.

Section 4.06 Manner of Payment

The Board may require all payments of Percentage Rent, the MAG, and all Concessionaire Charges recurring monthly to be made by electronic submission, or such other method as designated in writing by the Board. Concessionaire shall provide the Finance Department with such information and authorizations as are necessary to facilitate such electronic payments.

Section 4.07 Gross Receipts Reports, Record Keeping, End of Year Adjustment

Concessionaire shall file with the Board a weekly Gross Receipts report stating Gross Receipts by and from each location comprising the Premises. The weekly Gross Receipts reports shall be submitted through the Concessionaire Submittal Application (CSA) and shall be filed no later than the day the Department of Concessions specifies for the activity of the immediate prior week. Gross Receipts submitted into this application will be totaled at the conclusion of each calendar month to determine the amount of percentage rent due where applicable. Concessionaire must calculate the amounts due in accordance with this Lease Agreement and payment should be received no later than the 20th of each month following the month of accrual. As the reporting process is enhanced, due date may be adjusted accordingly.

Concessionaire shall prepare and maintain in accordance with Generally Accepted Accounting Principles complete and accurate books and records that include all income, expenses, Gross Receipts, and other economic transactions under this Lease, and the Board shall have the right, through its representatives, and at all reasonable times, to inspect the books and records of Concessionaire, , or other participants in the operations authorized in this Lease. Concessionaire's system of accounts shall allow each location of Concessionaire's operations under this Lease to be distinguished from all other locations or operations of Concessionaire. Concessionaire shall maintain source documents sufficient to support Concessionaires books, records, and reports. All Gross Receipts related to this Lease shall be deposited to a business bank account, the records for which shall be subject to review and audit in accordance with Section 4.08 below.

Concessionaire shall submit within 30 days of request an income statement and balance sheet for the DFW Airport location(s) included in this Lease for whatever period and in whatever form directed by the Board, as requested by the Airport Concessions Department. The Board reserves the right to require such additional information be reported as deemed necessary by the Board and in a format as developed by the Board from time-to-time. Concessionaire shall pay a fee as outlined in the Schedule of Charges per day per report if

Concessionaire fails or refuses to file any Gross Receipts report, income statement, or balance sheet due hereunder within twenty-four (24) hours of its required filing. Late Payment Charges shall accrue as set forth in the Schedule of Charges.

All Gross Receipts reports shall be filed using the technology and procedures designated by the Board. If the Board instructs Concessionaire to file the reports using future technology, the Board shall not be obligated to furnish Concessionaire with the technology, equipment, software or systems necessary to do so.

On or before each April 1st during the Term of this Lease, Concessionaire shall provide a written statement to the Board (Annual Certified Gross Receipts Report), in a format specified by the Board (see **Exhibit "D"**), from an independent Certified Public Accountant, stating the amounts of Concessionaire's Gross Receipts (by month, by Percentage Rent category) and the amounts paid to the Board as the total of MAG and Percentage Rents for said calendar year or part thereof, and stating that, in the Accountant's opinion, the Gross Receipts reported on the annual report for the preceding calendar year (Jan. - Dec.) are in accordance with the terms of this Lease. Concessionaire shall provide a written statement fully explaining any differences between the monthly Gross Receipts reported to the Board during the calendar year and the monthly Gross Receipts listed on the annual report. If Concessionaire shall have paid to the Board an amount greater than Concessionaire is required to pay as Percentage Rent for such calendar year under the terms hereof, the Concessionaire's refund will be issued in the form of a check or Electronic Funds Transfer (EFT) as determined by the Board; or if Concessionaire shall have paid an amount less than the Percentage Rent required to be paid hereunder, Concessionaire shall pay such difference to the Board upon presentation of an invoice or electronic notice for payment. The Board, in its sole discretion, may notify the Concessionaire in writing that the written statement may be signed and submitted by the Chief Executive Officer or Chief Financial Officer of Concessionaire rather than by an independent Certified Public Accountant.

Section 4.08 Audit

The Board shall have the right until three (3) years after the expiration or termination of this Lease, through its representatives, and at all reasonable times, to review all books, records, and agreements of Concessionaire (and where applicable, all individuals or other business entities who are party to this Lease) requested by the Board's representatives to substantiate the accuracy of reported Gross Receipts and Concessionaire's compliance with other provisions of this lease. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance agreements, records of refunds or voids, and joint venture or partnership agreements. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire's suppliers or others, assisting the Board in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by the Board's representatives to complete the audit. All such books, records, and agreements shall be kept for a minimum period of five (5) years after the close of each calendar year.

Audits will be conducted at Dallas/Fort Worth International Airport. However, if first agreed to by the Director of Audit Services or designee, the audit can be conducted off the Airport, in which event Concessionaire shall reimburse the Board for reasonable transportation, food and lodging costs associated with the audit. Concessionaire shall allow the Board's representatives to copy any records the representatives determine to be necessary to conduct and support their audit. Concessionaire shall provide the Board's representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the audit. Concessionaire shall not charge the Board for reasonable use of Concessionaire's copy machine while conducting the audit, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical, microform or other media. Concessionaire shall provide all records and retrievals requested, within seven calendar days. If such records are not received within 14 calendar days, the Board may assess liquidated damages in the amount of \$100 per day for each record or retrieval not received. Such damages may be assessed beginning on the 15th day following the date the request was made.

If, as a result of the audit, it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by three percent (3%) or more for the period audited, the entire expense of the audit shall be borne by Concessionaire. Any additional payments due shall forthwith be paid by Concessionaire to the Board with interest thereon at the same rate specified for late fees, from the date the subject rent or fees became due. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to

Gross Receipts by five percent (5%) or more for the period audited, the Board shall be entitled to terminate this Lease for cause upon thirty (30) days' written notice, regardless of whether the deficiency is paid.

ARTICLE 5: PERMISSIBLE USES, NON-EXCLUSIVE

Section 5.01 Permitted Use

The Premises shall be used only for the purposes listed in **Article 1**.

Section 5.02 Non-exclusive Rights

The rights granted herein for the operation of the permitted concession at the Airport shall be Non-exclusive. The Board may, at any time, award space (existing or newly created) to accommodate other concessionaires who may have rights similar to those non-exclusively granted herein. The Board may, in its sole discretion, grant exclusive rights to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

Section 5.03 Prohibited Acts

Concessionaire shall not:

- A. Commit any nuisance on the Premises, or any other portion of the Airport, or do or permit to be done anything which may result in the creation or commission of such nuisance, including without limitation the placing or permitting of any radio, television, loudspeaker or amplifier outside the Premises or where the same can be seen or heard outside the Premises;
- B. Cause or produce or permit to be caused or produced upon the Premises or upon any other portion of the Airport or to emanate therefrom any unusual, noxious, or objectionable smokes, gases, vapors, or odors;
- C. Permit to be used or use the Premises for any illegal purpose or for any purpose not expressly authorized hereunder;
- D. Do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Premises or elsewhere, or do or permit to be done anything which may interfere with free access and passage in the Terminal Buildings or in the streets and sidewalks adjacent thereto;
- E. Do or permit to be done any act or thing upon the Premises or upon any other portion of the Airport which will invalidate or conflict with, or increase the cost of, any fire insurance policies or other insurance policies covering the Premises or any part thereof, or which in the opinion of the Board may constitute a hazardous condition so as to increase the risks normally attendant upon the operations contemplated herein and elsewhere at the Airport;
- F. Without the Board's written consent, which consent is completely discretionary with the Board, install or permit to be installed coin-operated vending machines or pay telephones on the Premises. The Board reserves the right to install and maintain, through independent contractors, such coin-operated vending machines or pay telephones on the Premises;
- G. Without the Board's written consent, which consent is completely discretionary with the Board, install or permit to be installed third-party advertising on the outside of Concessions space, including windows facing out to the public or
- H. Without first receiving Board approval, close any location, change operating hours of any location, or introduce any goods for sale from the Premises not specifically provided for herein without prior written approval from the Airport Concessions Department.

ARTICLE 6: STANDARDS OF OPERATION

Section 6.01 Products and Pricing

- A. Concessionaire has caused to be attached hereto as **Exhibit "B"** a complete listing of all goods, menu items and/or services Concessionaire is allowed to sell from the Premises as well as the prices to be

charged to the public. The execution of this Lease constitutes acceptance by the Board of the merchandise, services and pricing as reflected on the referenced exhibit.

- B. Concessionaire shall not add, delete or sell merchandise categories, menu items and/or services not reflected on the aforesaid exhibit without first receiving written approval from the Airport Concessions Department, which shall not be unreasonably withheld or delayed. It is agreed that in the event of any conflict between Concessionaire and another lessee as to specific items sold, the Board or its designee shall have the sole authority to resolve the conflict as it deems appropriate. Concessionaire shall provide for the sale of any additional merchandise or the furnishing of any additional service as directed by the Airport Concessions Department. Prices must be visibly displayed to customers for all products.
- C. If Concessionaire offers merchandise promoting the City of Dallas or Fort Worth, or promoting tourist attractions in either city, then Concessionaire shall offer merchandise promoting both such cities and their respective tourist attractions, as instructed by the Airport Concessions Department in its reasonable discretion.
- D. Concessionaire further understands the Board's objective to limit the prices charged for products and services sold to the public at the Airport to no more than ten (10) percent above "street level pricing" (the off-Airport prices charged for comparable products and services). Accordingly, Concessionaire warrants and represents that Concessionaire, its employees, successors and assigns, if any, will adhere to the following:
 - 1. Prices charged at the Premises for each item of products and services shall be no more than ten percent (10%) higher than comparable products or services sold outside the Airport. The Concessions Department shall have the discretion to define what constitutes an individual item sold, including without limitation combinations or bundling of items.
 - 2. In determining which products and services off-Airport are to be used for street-level pricing comparisons, the parties agree that if Concessionaire owns or operates a similar business selling like products or services to the public within twenty (20) miles of the Airport, then prices at said business (other than non-traditional venues) shall be deemed comparable. If Concessionaire owns or operates more than one (1) similar business selling like products or services to the public within twenty (20) miles of the Airport, then the average of a minimum of three (3) locations' prices for each such product or service shall be deemed comparable. The Concessions Department shall have the discretion to determine whether Concessionaire's off-Airport businesses are similar and whether particular products or services are alike. If Concessionaire does not own or operate a similar business selling like products or services to the public within twenty (20) miles of the Airport, then the parties agree to use comparisons from other off-Airport businesses.
 - 3. Upon receiving TCO (Temporary Certificate of Occupancy) and on April 1st of each year thereafter, Concessionaire shall provide an updated merchandise list with current prices and shall provide the Concessions Department names and addresses of local area businesses that Concessionaire believes to be comparable, together with the specific products and services that Concessionaire believes to be comparable. However, the Concessions Department shall have the discretion to reject said suggestions from Concessionaire and to select other businesses and other products and services. Prices from non-traditional venues, such as amusement parks, other entertainment venues, stadiums, other airports, hotels, hospitals, and zoos shall not be acceptable for use in establishing street-level pricing-regardless of whether the Concessionaire owns or operates such businesses.
 - 4. The Concessions Department may at its discretion require Concessionaire to submit documentation verifying compliance with the street-level pricing requirements herein. The Board may require Concessionaire to submit their price comparison using an automated process method. If Concessionaire fails to submit said documentation of compliance within the time specified by Board, or if documentation submitted is erroneous, Concessionaire may be charged Non-Compliance Fees per the Schedule of Charges.
 - 5. The Concessions Department may at any time compel Concessionaire to lower prices within two (2) business days on specific items to bring them into compliance with street-level pricing, but nothing herein shall negate the general default and remedies provisions of this Lease.
 - 6. The Concessions Department may grant any exemption(s) from street-level pricing, but any such exception or determination must be in writing and signed by the Vice President of Concessions, and under no circumstances shall Concessionaire be entitled to any such exemption.

7. If Concessionaire is required by this Lease to participate in product exclusivity contracts made by Board, said exclusivity contracts may include minimum or maximum prices that shall be binding on Concessionaire notwithstanding any higher price allowed or lower price required by the street-level pricing provisions herein.
- E. At any time during the Term hereof the Board may make or cause to be made a survey of prices being charged for products or services offered by Concessionaire from the Premises hereunder. If the survey concludes that any prices being charged by Concessionaire on the Premises are not in accordance with the terms of this Lease, Concessionaire may be charged Non Compliance Fees per the Schedule of Charges.
- F. Failure to comply with the provisions of this section shall constitute a material default. If Concessionaire, after receiving notice to reduce prices and/or application of any penalty is later found to have again violated the street level pricing policy within the Fiscal Year, the Board shall have the right to collect a Non-Compliance Fee per the Schedule of Charges and/or terminate this Lease for cause by giving thirty (30) days written notice. Failure of the Board to exercise its right to terminate this Lease shall not constitute a waiver of the Board's right to terminate at a later date for the same, similar or continued violation of the street level pricing policy.

Section 6.02 Product Exclusive Rights

The Board may enter into contracts with one or more manufacturers or suppliers granting to said companies certain exclusive rights pertaining to the sale of food, beverages, other products and technologies at the Airport. Concessionaire agrees to include products and technologies of said exclusive supplier or manufacturer in Concessionaire's menu or merchandise list, as applicable and purchase said products via the Airport's exclusive agreement. Concessionaire further acknowledges that the Board or its designee reserves the rights to set price ceilings for exclusive rights and the Board or its designee reserves the rights to review price ceilings annually for price adjustments. If the Board grants such an exclusive right during the Term of this Lease, Concessionaire shall have sixty (60) days from receipt of written notice to comply with the exclusive right. Concessionaire agrees not to sell, display, advertise, or promote similar products of or from other manufacturers or suppliers unless Concessionaire has first received written approval from the Airport Concessions Department. The Airport Concessions Department approval may be withheld at its sole discretion.

Section 6.03 Merchandise and Materials Deliveries

It is necessary due to the number of vendors in the Terminal buildings that the Board protect the airside operation area and the landside curb utilization integrity for the flow of airline passengers. Therefore, Concessionaire agrees that the Board, in its sole discretion, may require that all merchandise and materials ordered by Concessionaire for resale or operation of its business on the Premises be delivered only within the times and at the locations authorized by the Airport Concessions Department. In transporting merchandise and materials associated with operating the concessions to and from the premises, Concessionaire shall use only carts or conveyances that are sealed, leak-proof, and equipped with wheels suitable for operating on carpet or other flooring without damage thereto, as approved by the Airport Concessions Department. Concessionaire shall adhere to the rules and guidelines specified by the Airport Concessions Department to use the automated people mover systems for the purpose of transporting merchandise or products. The Board may require changes in the method, location or time of the delivery of Concessionaire's merchandise or materials.

Section 6.04 Hours of Operation

- A. Each location shall open at least one hour prior to the scheduled departure of the first flight originating from a holdroom area within three (3) gates on either side of the lease specified gate location as referenced in Exhibit "A" and shall remain open for customers until the last departure in the evening is called for boarding from such holdroom areas. Further, any flight delays within the three (3) gate distance shall require Concessionaire to remain open to the public to provide its service until said flight is called for boarding, including all night, if requested by Board staff. The hours of operation may be changed by the Board from time to time in its sole discretion.
 1. In Terminal A, B, C, and D, all newsstands and locations serving coffee and breakfast will open for business no later than **5:00 a.m.** All other locations will open no later than 6:00 a.m. or as determined by Concessions staff.

2. In Terminal E, all newsstands and locations serving coffee and breakfast, on the secure side of the Airport, will open for business no later than 4:30 a.m. All other locations will open no later than 5:00 a.m.
3. Failing to open for business at the required time, or closing early, shall constitute a violation of this section and a Non-Compliance Fee may be assessed upon the first and subsequent violations. Any violation shall entitle the Board to require Concessionaire to submit a written staffing plan to avoid future violations. Repetitive violations (3 or more in any calendar month) shall constitute a default under this Lease. If the Board gives Concessionaire written notice of such a default and another open/close violation occurs subsequent to said notice, it shall entitle the Board to terminate this Lease for cause upon thirty (30) days written notice of termination. Failure by the Board to exercise any such remedy shall not constitute a waiver of the Board's rights to do so for any default.

B. The "gate" is defined by the gate assigned to this lease in Exhibit "A".

Section 6.05 Management

Concessionaire shall select and appoint (an) employee(s) who shall serve as Managing Director(s) of Concessionaire's operations at Airport. Such person must be a qualified and experienced manager vested with full power and authority to operate the concession business herein authorized, and to control the conduct and demeanor of Concessionaire's agents, servants and employees. Said Managing Director shall be assigned to an office at or near the Airport, where he or she shall ordinarily be available during regular business hours and where, at all times during his or other absences, a responsible subordinate shall be in charge and available. Concessionaire shall inform the Airport Concessions Department of the telephone numbers and e-mail addresses and changes thereto of the local office and Managing Director.

Section 6.06 Personnel

- A. Concessionaire shall, in the operation of the concession under this Lease, employ or permit the employment of only such personnel as will assure a high standard of service to the public. All the personnel, while on or about the Premises, shall be clean, neat in appearance, uniformly attired (with appropriate identification badge displaying no less than Concessionaire and employee name) and courteous at all times. No personnel employed by Concessionaire, while on or about the Premises, shall use improper language; act in a loud, boisterous, or otherwise improper manner; or be permitted to solicit business in a manner that is offensive or otherwise unprofessional.
- B. Concessionaire shall maintain a close check over attendants and employees to ensure the maintenance of a high standard of service to the public and compliance with this Lease. The satisfactory performance of the obligation hereunder shall be determined at the sole discretion of the Board. Concessionaire shall take all proper steps to discipline employees who participate in acts of misconduct on or about the Premises.

Section 6.07 Cash and Record Handling Requirements

- A. Concessionaire shall at all times observe cash-handling and record-handling procedures in accordance with sound accounting practices and as necessary to provide timely accurate reports to the Board under this Lease. The cash-handling and record-handling procedures shall be incorporated in the written policy and rules and regulations of Concessionaire covering their accounting and handling of all transactions relating to merchandise and services under this Lease.
- B. Adequate fidelity bonds or theft insurance shall be maintained by Concessionaire on its employees engaged in the operation of the concession hereunder.
- C. The Board shall have the right to monitor and test all of Concessionaire's controls.

Section 6.08 Level of Public Service

- A. Concessionaire shall maintain and operate the Premises in a first-class manner and shall keep them in a safe, clean, orderly and inviting condition at all times, all as satisfactory to the Board. Concessionaire shall provide prompt, courteous and efficient service adequate to meet the reasonable demand therefore and shall take all necessary steps to ensure polite conduct on the part of its employees and representatives.

- B. The Board requires that all merchandising be adequate to meet the passenger demand and shelves are well stocked. Board reserves the right to provide merchandising standards.
- C. In entering into this Lease, Concessionaire acknowledges the desire and obligation of the Board to provide the public and the air traveler high quality merchandise and a high level of public service. Therefore, Concessionaire covenants and agrees to offer for sale from the Premises only high-quality merchandise and services, goods and prices to be determined in accordance with this Lease.
- D. The Board shall have the right to monitor and test all of Concessionaire's services and pricing by a responsible shopping service or Board personnel.

Section 6.09 Paging, Audio, Video Systems

Concessionaire shall not be permitted to install any paging, audio or video systems within the Premises without advance written approval of the Airport Concessions Department.

Section 6.10 Credit and Debit Cards

Concessionaire agrees to carry all major credit cards for services or merchandise at the Premises including Visa, MasterCard, American Express, Discover, Union Pay, Diner's Club, JCB and any other credit cards needed to meet the needs of DFW Airport passengers.

Concessionaire shall comply and remain current with all Payment Card Industry Data Security Standard (PCI-DSS) requirements as detailed at https://pcisecuritystandards.org/securitystandards/pci_dss.shtml.

Section 6.11 Making Change for the Public

Concessionaire agrees to make change for the public. This will include servicing both persons making a purchase in the store and persons not making a purchase.

Section 6.12 Technology

During the Term of the Agreement, the Airport reserves the right to implement a solution or solutions that capture sales data electronically from the point-of-sale system (POS) or other pertinent system and to further modify the system from time to time. With the exception of credit/payment card number, all sales data will be required. Concessionaire must collaborate and participate fully in the development and implementation of any technology changes and procedures of such systems. If the Board instructs Concessionaire to use technology, equipment, software and systems, the Board shall not be obligated to furnish Concessionaire with the technology, equipment, software or systems necessary to do so. If Concessionaire fails to comply within the time designated by the Board, penalties will apply as set forth in the Airport's Schedule of Charges.

All business transactions, which occur in the Premises, must be completed by a register transaction and a receipt must be offered to each customer, including but not limited to the total of any and all coupon redemptions.

Concessionaire must cooperate fully in the development and implementation of such a system. Upon implementation, the Vice President of Airport Concessions may direct a new method of collection and payment by providing written notice to Concessionaire. Concessionaire must cooperate with the Airport in implementing such modified collection procedures. If Concessionaire fails to comply within the time designated by the Board, penalties will apply.

During the term of the Agreement, the Airport reserves the right to implement technology and procedures for submitting Product Lists and reporting price comparisons. Concessionaire must cooperate with the Airport in implementing such technology and procedures. If Concessionaire fails to comply within the time designated by the Board, penalties will apply.

Concessionaire's POS shall not be required to interface with the Board's POS or other technology, provided, subject to the review and approval of Concessionaire's legal and information technology departments. Concessionaire will use commercially reasonable efforts to accommodate Airport passengers ordering via the Concession Department's mobile software application, if any.

Any technology to be implemented by Concessionaire that involves an interface with the public other than merely viewing a display (such as Wi-Fi, beacons, mapping of the terminals or mobile ordering) is subject to Board approval in its sole discretion. Concessionaire must use the exclusive airport approved wireless provider for all public facing Wi-Fi. Concessionaire must adhere to the DFW WI-FI and technology standards as outlined by the DFW International Airport ITS Department. Any content that is viewed by the public either through display boards, Wi-Fi, mobile technology, etc. must be approved by Board.

Section 6.13 Trash and Refuse

- A. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Premises, using the Board's designated contractor. Concessionaire shall provide and use suitable sealed fireproof receptacles approved by Board Staff for all trash and other refuse on or generated in connection with Concessionaire's use of the Premises. Piling of boxes, cartons, barrels or other similar items in, or within view from, a public area shall not be permitted. Concessionaire shall comply with all Board rules and regulations relative to trash, waste disposal, or recycling that may be made from time-to-time, and Concessionaire shall pay the costs associated with trash removal and disposal, as provided in the Board's Schedule of Charges, as it may be amended from time to time.
- B. In transporting merchandise, products, trash and refuse associated with operating the concession to and from the Premises, where not otherwise restricted or prohibited by this Lease, Concessionaire shall use only carts, vehicles, or conveyances that are clean, sealed and leak proof and that are equipped with wheels suitable for operating on carpets or other flooring without damage thereto and which shall be approved by the Airport Concessions Department. Concessionaire shall not use the Airport train system for the purpose of transporting trash or refuse. The Board shall have the right to require changes in Concessionaire's transporting of trash and refuse, including time of day transport can occur, equipment used for each activity and routes of transport.
- C. Concessionaires who sell food and beverage products are required to use collapsible containers for all "grab and go" and leftover packaging, rigid plastic containers are prohibited for "grab and go" food and beverage products. Eco-friendly, paper-based containers are preferred.

Section 6.14 Tenant Design Manual

Concessionaire agrees to adhere to all guidelines that are outlined in the Tenant Design Manual.

Section 6.15 Proposal

Concessionaire agrees to adhere to all statements and representations contained in Concessionaire's competitive proposal, provided however in the event of any inconsistencies with other terms of this Lease, said other terms shall control.

Section 6.16 Concessionaire Handbook

Concessionaire agrees to adhere to all guidelines that are outlined in the Concessionaire Handbook.

ARTICLE 7: AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISES

Concessionaire agrees to adhere to all statements and representations contained in AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE SPECIAL CONTRACT PROVISIONS which is attached as Exhibit "F". In the event of any inconsistencies with the terms of this Lease, Exhibit F shall control.

ARTICLE 8: CONSTRUCTION AND CAPITAL INVESTMENT

Section 8.01 Capital Investment Treatment

- A. If a minimum capital investment in the Premises is set forth in **Article 1**. Concessionaire shall use due diligence to complete the approved project within the timeframe agreed upon by the Concessionaire and the Airport Concessions Department. Later remodeling shall be done as reasonably deemed necessary by the Board; however, work subsequent to that described in the first sentence hereof shall not be considered "Capital Investment" as defined in this Article, unless the project and capital dollars are first approved in writing by the Airport Concessions Department as qualifying for capital investment treatment. Capital

investment cost estimates on new construction or remodeling as well as renderings of the project shall be first submitted to the Airport Concessions Department prior to construction or installation thereof. Capital investment costs shall be amortized on a straight-line basis over the remaining Term of this Lease excluding any option years. Title to all additions shall vest in the Board immediately upon installation by Concessionaire. The final cost of all items subject to amortization as defined in this Article, shall be certified to the Board by Concessionaire's Chief Financial Officer within ninety (90) days after installation on the Premises. Failure to timely file a Certification shall relieve the Board of any obligation on unamortized investments otherwise provided for in this Lease.

- B. Capital investment(s), and any obligation of the Board to Concessionaire for any unamortized capital investment as may be provided in this Lease, shall be defined and subject to the following conditions:

Capital Investment dollars are those dollars spent in actual construction or remodeling as well as architectural and engineering fees relating thereto. Capital Investment dollars shall also include dollars paid to the Board or to a prior tenant of the space, in order to acquire a release of the space for Concessionaire's use.

Capital Investment shall be reported to the Airport Concessions Department in written form provided by the Concessions Department itemizing each element of expense. Further, the report must clearly reflect the total capital investment claimed per location. The report shall be submitted within ninety (90) days of the completion of each project (each location being a separate project), and Concessionaire shall during the Term hereof and for a period of twelve (12) months following termination retain all records in support of each report.

The Board shall have the right to audit each capital investment report at any time during the term of this Lease and for a period of twelve (12) months following termination.

In the event of an audit, any itemization of capital investment costs not supported by proper documentation, such as invoice, receipts, canceled checks, shall be disallowed.

Any obligation by the Board to pay unamortized capital investment after a termination without cause shall be based upon Concessionaire's timely submitted report as provided herein.

- C. Capital investment costs associated with each shop location shall be reasonable in scope and subject to Board audit. Any shop being remodeled or newly constructed shall be renovated or constructed only after Concessionaire submits to the Board the estimated cost of the capital investment.

Section 8.02 Theme, Design and Decor

The theme, design and decor of each location shall not deviate from that which is in keeping with the Tenant Design Manual and which decor is first approved in writing by the Board staff. Any changes desired by Concessionaire shall be submitted to the Airport Concessions Department for approval. Changes that are made without approval will constitute a breach of this Lease.

Section 8.03 Due Diligence

Concessionaire shall submit to Board the final plans, specifications, and timelines for the construction of Concessionaire's location in accordance with Board's current design criteria per the Tenant Design Manual or as approved by DFW Concessions. Upon receiving Notice to Proceed ("NTP") Concessionaire shall commence the design in accordance to the Tenant Design Manual. If Concessionaire does not complete design within ninety-one (91) days from NTP, Concessionaire shall pay to the Board, as liquidated damages and not as a penalty, upon receipt of invoice, the sum of Two Hundred and Fifty Dollars (\$250.00) per day for any location not in compliance. Concessionaire shall commence construction of said project within thirty (30) days from the date of final Code approval. If Concessionaire does not begin construction 30 days from final code approval, Concessionaire shall pay to Board as liquidated damages and not as a penalty, upon receipt of invoice, the sum of Two hundred Fifty Dollars (\$250.00) per day for any location not in compliance. Concessionaire shall diligently proceed with construction so as to complete said project and open for business on or before the date specified in the approved construction schedule which must be submitted at the Pre-Construction Meeting and will be referred to as Exhibit "C". Concessionaire acknowledges that the financial success of the Airport depends, in part, on both (i) the completion of the construction, remodel and renovation of

the Premises as herein required; and, (ii) Concessionaire's opening for business in a timely manner, and that Board's damages arising from Concessionaire's failure to do so are extremely difficult and impracticable to fix. Therefore, should Concessionaire fail to either complete said project as required or open the Premises for business as required, Concessionaire shall pay to Board as liquidated damages and not as a penalty, upon receipt of invoice, the sum of Two hundred Fifty Dollars (\$250.00) per day for any location not in compliance. Concessionaire agrees that said amount of Two hundred Fifty Dollars per day per location is fair compensation to Board for said liquidated damages. In the event the Facility is not open for business on the date that is sixty (60) days after the scheduled opening date, the Airport shall have the option to charge the designated Rent/Minimum Annual Guarantee (MAG) as stated in Article One (1), or terminate this Lease, or to remove the applicable facility from the Lease, any rent components based on square footage shall be removed accordingly. Concessionaire shall be liable for all damages associated with such termination or removal. Concessionaire shall adhere to the specified Design and Construction dates as per Exhibit "G".

Section 8.04 Construction by Concessionaire

Concessionaire shall not erect any structures, make any improvements or modifications, or do any other construction work on the Premises, or alter, modify, or make additions, improvements, or repairs (except emergency repairs) to, or replacements of any structure now existing or built, or install any fixtures (other than trade fixtures removable without permanent injury to the Premises or improvements thereon) without the prior written approval of the Board as provided herein and as more specifically provided in the DFW Design Criteria Manual and the Board's Tenant Design Manual, as they may be amended from time to time in the Board's sole discretion. In the event that any construction, improvement, alteration, modification, addition, repair (excluding emergency repairs), or replacement is made without such approval, or in a different manner than approved, the Board may terminate this Lease in accordance with the provisions for termination herein, or upon notice to do so, Concessionaire will remove the same, or, at the discretion of the Board, cause the same to be changed to the satisfaction of the Board. In case of any failure on the part of Concessionaire to comply with the notice, the Board may, in addition to any other remedies available to it, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to the Board upon demand.

Section 8.05 Preliminary Activities

Prior to commencement of any construction, demolition, additions or other modifications to the Premises during the term of this Lease, Concessionaire shall familiarize itself with the Board's Tenant Design Manual and the DFW Design Criteria Manual. Concessionaire shall comply with the provisions of the Tenant Design Manual and the prescribed provisions of the DFW Design Criteria Manual.

Section 8.06 Construction Contracts, Liens and Certificate of Occupancy

- A. Concessionaire shall include in all construction contracts entered into in connection with any or all of the construction work aforesaid, a provision requiring the contractor, or, in the alternative, Concessionaire, to indemnify, hold harmless, defend and insure the Airport Board, and the Cities of Dallas and Fort Worth including but not limited to the Board's directors, officers, agents, employees, and the Cities' councilmembers, officers, agents and employees against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of such construction work, whether the claims and demands made are just or unjust, unless same are caused by the gross negligence or willful act of the Board, its directors, officers, agents, employees or contractors, acting within the course and scope of employment. Concessionaire shall furnish, or require the contractor to furnish, insurance, as required herein.
- B. Concessionaire shall also include in any construction contract such provisions as may be required by the Board relating to the operations of the contractor on the Airport; such provisions, among any other, shall include the requirement for a payment and Performance Bond for any work in excess of \$100,000 to be performed by Concessionaire or the contractor.
- C. Concessionaire shall not allow any liens to attach to the Premises or Concessionaire's leasehold interest therein without prior written approval of the Board. Prior to the commencement of any addition or non-emergency repair of a sum greater than that stated above, Concessionaire or its contractor shall furnish the Board, on forms attached to the Tenant Construction Application, and without expense to the Board, a surety bond issued by a surety company licensed to transact business in the State of Texas and satisfactory to and approved by the Board, with Concessionaire's contractor or Concessionaire as principal, in a sum not

less than one hundred percent (100%) of the estimated or actual, as the case may be, total cost of the contract or contracts for the addition or non-emergency repair of the Premises or any part thereof. The bond shall guarantee prompt payment to all persons supplying labor, materials, provision, supplies and equipment used directly or indirectly by the contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in the construction contract and shall provide for the full performance of the work contracted for by Concessionaire, and shall protect the Board from any liability, losses or damages arising therefrom. Upon completion of construction, Concessionaire shall obtain lien waivers from all contractors and subcontractors providing labor or materials to the construction project.

- D. Prior to entering into any contract for construction work, Concessionaire shall submit to the Board or its designee, as named by the Airport Concessions Department, for approval the name of the general contractor and/or construction manager to whom Concessionaire proposes to award the contract for the construction work and/or construction management. The Board or its designee shall have the right to approve or disapprove any such contractor and/or construction manager and approval shall not be unreasonably withheld or delayed.
- E. Concessionaire further agrees that all construction work to be performed, including all workmanship and materials, shall be of first-class quality and shall be in accordance with the plans and specifications approved by the Board or its designee. As used herein, the term "first-class quality" shall mean of the same quality as buildings used or to be used for the same or similar purposes already constructed on the Airport. Concessionaire agrees that it shall deliver to the Board or its designee, "as built" record documents of the construction, addition and other modifications constructed by it on the Premises and shall, during the term of this Lease, keep said documents current, showing therein any changes or modifications which may be made by it in or to the Premises or additions thereto. Concessionaire shall further provide the information described in this paragraph as described in the Tenant Design Manual.
- F. When the construction work hereinabove provided has been completed, Concessionaire shall certify to Board that such construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations and orders. When the Board or its designee is satisfied that such construction is so in compliance, he shall deliver a Certificate of Occupancy to Concessionaire.
- G. Concessionaire shall not, during the Term hereof, without first submitting for review the appropriate plans as may be required in the Tenant Design Manual and obtaining written approval thereof, erect any additional structures, make any other additions, structural repairs, or do any other construction work on the Premises, or alter, modify, or make additions, improvements or structural repairs to or replacements of, any structure now existing or built at any time during the Term hereof, or install any fixtures except trade fixtures, furniture and other items of personal property removable without material damage to the structure. Concessionaire shall further update the "as built" record documents and computer software to reflect said additions and changes. If the structure is damaged by such removal, it shall be immediately repaired by Concessionaire.

Section 8.07 Inspection of Premises

Board representatives may enter upon the Premises at any and all reasonable times during the term of this Lease for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to rights of the Board hereunder.

Board representatives may also take photographs as deemed necessary during inspection of premises. Board representatives will make best efforts not to interfere with Concessionaire's business operation.

Section 8.08 Default During Design and Construction

In the event of default of Concessionaire during the design or construction period of any additions hereunder, the Board shall have the right, which right shall be set forth in all contracts between Concessionaire and its independent contractors and suppliers for work or materials relating to additions hereunder, to replace Concessionaire with itself and to continue the contracts of Concessionaire with said independent contractors and suppliers. A provision substantially similar to the following shall comply with this Section:

"The Board of Directors of the Dallas/Fort Worth International Airport, acting for the Cities of Dallas and Fort Worth (and herein referred to as the "Board"), shall have the right, but not the obligation, in the event that the Board elects to replace Concessionaire with itself under the terms of the Board's contract with Concessionaire, to continue this contract between Concessionaire and contractor, upon assuming in writing all the liabilities of

Concessionaire under this contract between Concessionaire and contractor; and Board thereby shall receive all the rights, title, interests and remedies that Concessionaire has under the terms of this contract between Concessionaire and contractor. The Board shall have the right to demand, collect (including suit for damages and cost of litigation and reasonable attorney fees) from Concessionaire all costs incurred by the Board in assuming the obligations of Concessionaire as provided in this Section."

Section 8.09 Signs

All signs are subject to the terms of this Section and comply with the Tenant Design Manual and DFW Design Criteria Manual. Concessionaire further acknowledges the Board's desire to maintain a high level of aesthetic quality in all concession facilities throughout the Terminal Buildings. Therefore, Concessionaire covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to the Board, through a Tenant Construction Application, the size, design, content, construction or fabrication and intended location of each and every sign it proposes to install on or within the Premises and that no signs of any type shall be installed on or within the Premises without the specific prior written approval of the Board as to the size, design, content, construction or fabrication and location, which approval shall not be unreasonably withheld or denied if the proposal is in compliance with the Board's criteria governing signage.

Section 8.10 Refurbishment

If this Lease is for a Term of more than five years, Concessionaire shall refurbish the Premises at the midpoint of the Term. Said refurbishment shall include without limitation all refinishing, repair, replacement, redecorating, repainting and re-flooring necessary to keep said areas in as new condition and shall comply with all other terms and conditions of this Article. Concessionaire shall submit its plans for refurbishment to the Airport Concessions Department for review and approval no later than 180 days prior to the midpoint of the term of this Lease. All refurbishment will be completed prior to the midpoint of the lease. Upon completion of the refurbishment, Concessionaire shall provide certified documentation to the Airport Concessions Department of all capital investment associated with the refurbishment within ninety (90) days of completion, which shall become eligible for reimbursement in the event of early termination according to **Article 12**. Failure for concessionaire to complete refurbishment by the required due date unless otherwise approved by the Vice President of Concessions will result in a Non-Compliance Fee as set forth in the Schedule of Charges.

ARTICLE 9: MAINTENANCE, UTILITIES AND REPAIRS

Section 9.01 Concessionaire's Maintenance Obligations

- A. Except for such maintenance of the Premises as is to be provided by the Board under the express terms of this Lease, Concessionaire shall be obligated, without cost to the Board, to maintain the Premises and every part thereof, including personal and trade fixtures, in good appearance and repair, and in a safe as-new condition. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all leasehold improvements on the Premises (including, without limitation thereto, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by the Board). All of the maintenance, repairs, finishing and replacements shall be of quality at least equal to the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of the Airport Concessions Department.
- B. If it is determined that the maintenance is not in compliance herewith, the Board shall so notify Concessionaire in writing. If the maintenance required to be performed as provided in the Board's notice to Concessionaire is not commenced by Concessionaire within five (5) days after receipt of such written notice, or is thereafter not diligently prosecuted to completion, the Board or its agents shall have the right to enter upon the Premises and perform the subject maintenance, and Concessionaire agrees to promptly reimburse the Board for the cost thereof, including such charges as are provided in the then current Schedule of Charges of the Board.
- C. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a directive from the Airport Concessions Department. At the sole discretion of the Board, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is removed.
- D. Concessionaire agrees to comply with all present and future laws, orders and regulations, including any rules, regulations and procedures promulgated by the Board regarding centralized maintenance and

distribution. If and when any system for centralized maintenance and distribution are put in place for the Terminals that is capable of appropriately allocating to Tenant its proportional share of the cost, Concessionaire must pay its proportional share as determined by the Board of the portion of those costs actually charged by any third party contractor to the Board or billed directly to Concessionaire by the third party contractor.

Section 9.02 The Board's Maintenance and Utility Obligations

- A. The Board shall provide structural maintenance of the Terminal Buildings and shall (except as provided in the immediately following sentence) maintain and repair the exterior walls of the Premises in the Terminal Buildings. However, maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility.
- B. The Board provides mains and utility lines throughout the terminal buildings. Concessionaire, at its sole cost, shall tie into the mains and the utility lines at the locations as specified by the Board. Supplemental air, electrical needs or other utilities required by Concessionaire in excess of what is customarily available in the terminal buildings will be, if approved, at the expense of Concessionaire.
- C. The Board, its officers, employees, representatives and contractors may, for the benefit of Concessionaire, or for the benefit of others than Concessionaire at the Airport, maintain the utilities within the Premises and enter upon the Premises at all reasonable times to make the repairs, replacements and alterations as may, in the opinion of the Board, be deemed necessary or advisable, and from time to time, to construct or install over, on, in, or under the Premises new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that the Board shall exercise such right in a manner so as to interfere as little as reasonably possible with Concessionaire's operations.
- D. The Board agrees that it will at all times maintain and operate with adequate, efficient and qualified personnel and keep in good repair the Terminal Buildings and all appurtenances, facilities and services now or hereafter connected therewith; provided, however, Concessionaire's sole remedy for interruption of any utilities provided by the Board shall be an abatement of the MAG on a per diem basis. Concessionaire shall have no remedy against the Board for interruption of any utilities or failure of any systems not caused by the Board.
- E. The Board may implement a shared telecommunications system for telephone, facsimile, local access, long distance service, internet, intranet, or other such services. Concessionaire shall use such systems as and when implemented by the Board. The Concessionaire shall implement Payment Card Industry (PCI) compliant components to any system that is required by the Board and as necessary.

Section 9.03 Damage and Destruction

- A. If all or a portion of the Premises are partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by the Board at its own cost and expense subject to the limitations set forth herein, provided, however, that if the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees, Concessionaire shall be responsible for immediately reimbursing the Board for the cost and expenses incurred in the repair.
- B. If such damages shall be so extensive as to render all or a portion of the Premises untenable, but capable of being repaired in thirty (30) days, the Premises shall be repaired with due diligence by the Board at its own cost and expense, subject to the limitations as set forth herein, and rentals and fees payable hereunder shall be reasonably abated in whole or in part depending on the amount and nature of the Premises rendered untenable, from the time of the damage until the time the affected Premises are fully restored and certified by the Board's engineers as ready for occupancy; provided, however, that if the damage is caused by the negligent act or omission of Concessionaire, its, agents, or employees, the rentals and fees will not abate and Concessionaire shall be responsible for reimbursing the Board for the cost and expenses incurred in the repair and within thirty (30) days following completion.
- C. In the event that all or a portion of the Premises are completely destroyed by fire, explosion, the elements, public enemy or other casualty or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, the Board shall be under no obligation to repair, replace and reconstruct the affected Premises, and the Board may terminate this Lease as to the affected Premises. If terminated, or during any period of non-tenability, rentals and fees payable hereunder shall abate as to the part of the Premises thus

destroyed as of the time of the damage or destruction. If within twelve (12) months after the time of the damage or destruction the Premises shall not have been repaired or reconstructed, subject to extension due to delays except force majeure events, Concessionaire may cancel this Lease as regards the affected Premises by giving written notice of cancellation to the Board within ten (10) days after the expiration of such 12-month period, time being of the essence with respect to the giving of such notice. Notwithstanding the foregoing, if all or a portion of the Premises are completely destroyed as a result of the negligent act or omission of Concessionaire, rentals and fees shall not abate and the Board may, in its discretion, require Concessionaire to repair and reconstruct the affected Premises within twelve (12) months of the destruction and pay the costs therefor; or the Board may repair and reconstruct the affected Premises within twelve (12) months of the destruction and Concessionaire shall be responsible for immediately reimbursing the Board for the costs and expenses incurred in the repair.

- D. It is understood that, in the application of the foregoing subsections, the Board's obligations shall be limited to repair or reconstruction of the affected Premises, where applicable, to the same extent and of equal quality as existed at the date immediately preceding the commencement of this Lease. Replacement and redecoration of improvements constructed and/or installed by Concessionaire and replacement of Concessionaire's furniture, fixtures, equipment, and supplies shall be the responsibility, and at the sole cost of, Concessionaire and any such replacement, redecoration and refurbishing or re-equipping shall be of equivalent quality to that originally installed hereunder.

Section 9.04 Actual Repair Required

Should additions or other improvements constructed and/or installed by Concessionaire be destroyed or damaged, they shall in all instances be repaired or replaced by Concessionaire whether or not the damage or destruction is covered by insurance, provided that this Lease has not been canceled in accordance with the terms hereof. If, after restoration by the Board in accordance with this Article, Concessionaire fails to repair or replace the damaged additions or other improvements subject to a schedule approved by the Board, and provided that this Lease has not been canceled, the Board may make the repairs or replacements and shall thereafter be entitled to reimbursement from any insurance proceeds covering the loss. If the insurance proceeds are insufficient to cover the cost and expense of the repair or replacement, Concessionaire shall pay the Board the difference.

ARTICLE 10: CASH DEPOSIT OR SURETY BOND

If Concessionaire is obligated to furnish a Cash Deposit or Surety Bond pursuant to **Article 1**, Concessionaire shall furnish such deposit or bond, at Concessionaire's sole cost and expense at the time in which the construction permit is issued, and shall keep such deposit or bond in full force and effect during the complete term of this Lease and any Extension of this Lease and any holdover period as applicable, as security for the full performance of every provision of this Lease by Concessionaire. DFW reserves the right to review Cash Deposit or Surety Bond amount annually and may increase such deposit or bond based on annual gross receipts, prior year's payment history and/or other non-compliance issues. The Board may apply all or any part of the deposit or bond to cure any default by Concessionaire hereunder, and Concessionaire shall restore to the deposit or bond all amounts so applied upon receipt of invoice from the Board. If a Surety Bond is permitted, it shall be issued by a surety company authorized and licensed to transact business in the State of Texas, in the face amount as required herein, with the Airport Board as obligee, and shall not be subject to reduction in coverage or cancellation except after thirty (30) days' written notice by certified mail, return receipt requested, to the Board. The surety on the bond shall, by appropriate notation thereon, stipulate and agree that no change, extension of time, alteration or addition to the terms of this Lease, shall in any way affect its obligations under the bond, and shall consent to waive notice of any such matters. In the event of cancellation of the bond, and Concessionaire's failure to provide a substitute deposit or bond within (15) days from the date of the cancellation, then such failure shall be deemed a material default by Concessionaire.

ARTICLE 11: INSURANCE AND INDEMNIFICATION

Concessionaire is obligated to furnish Insurance pursuant to **Article 11**. Concessionaire shall furnish such insurance, at Concessionaire's sole cost and expense at the time in which the construction permit is issued, and shall keep such insurance in full force and effect during the complete term of this Lease and any Extension of this Lease and any holdover period as applicable.

All Insurance shall be filed using the technology and procedures designated by the Board at the sole expense of the Concessionaire. If the Board instructs Concessionaire to file Insurance using future technology, the Board shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

Section 11.01 Insurance

A. GENERAL REQUIREMENTS

Concessionaire shall, at its expense, maintain in effect not less than the following coverage and limits of insurance, which Concessionaire shall maintain with insurers, policy forms and deductibles satisfactory to the Board. If the coverage fails to comply with these requirements, Concessionaire agrees to amend, supplement or endorse the existing coverage to comply, at no additional cost to the Board, and to maintain such insurance through the end of the contract, warranty period, or other specified time period, whichever is longer. Any deviation from the requirements outlined below requires the prior written approval of the Department of Risk Management.

All policies must be written through a licensed company authorized by the Texas State Board of Insurance to transact that class of insurance business in the State of Texas, with a minimum rating of "A -", and "VII" by A. M. Best Company or by an approved surplus lines carrier. If the rating of any insurer should fall below this standard, Concessionaire shall cause the policy to be replaced promptly by an acceptable insurer.

All policies shall designate the following parties as "Additional Insured's":

"Dallas/Fort Worth International Airport Board and the cities of Dallas and Fort Worth, Texas"

Should this Lease require the use of contractors, it will be the sole responsibility of Concessionaire to require contractors to provide and maintain the insurance limits and coverage required herein, or to provide said insurance coverage for the contractors by designating the contractors as additional insureds, either by a blanket additional insured endorsement or by specific endorsement.

All policies shall waive the insurer's right of recovery or subrogation against the Board and the Cities.

If any policy is in excess of a deductible or self-insured retention (SIR), the amount of such deductible or SIR must be clearly identified, and may not exceed one (1%) percent of Concessionaire's net worth. The Board reserves the right to reject any deductible or SIR, or require Concessionaire to provide a bond at no additional cost to the Board.

All policies must be primary with respect to coverage provided for the Board.

All policies must be non-contributory with other coverage or self-insurance available to the Board.

B. REQUIRED COVERAGE AND LIMITS

Workers' Compensation:

Statutory Coverage

All employees leased or co-employees, independent contractors, and employees of subcontractors and vendors, occupants of the building as tenants, sub-tenants or sub sub-tenants, performing work for the Board, or entering upon the Board's premises, must be covered by Workers Compensation.

If Concessionaire is a sole proprietorship without employees and will not be using any subcontractors in the performance of this Lease, it may substitute the following for workers compensation insurance: Concessionaire must provide the Board's Risk Management Department with proof of medical insurance covering the sole proprietor and, as sole proprietor.

Workers' Compensation or act rejection medical policies shall waive the insurer's right of recovery or subrogation against the Board and the Cities.

Employer's Liability:

\$ 500,000 Each Accident
\$ 500,000 Each Disease, Each Employee
\$ 500,000 Each Disease Policy Limit

Commercial General Liability (CGL):

\$1,000,000 Limit Any One Occurrence
\$ 5,000 Medical Payments
\$ 100,000 Damage to Rented Premises
\$1,000,000 Personal and Advertising Injury
\$2,000,000 Policy Aggregate (per location or per project)
\$2,000,000 Products and Completed Operations Aggregate

Should the Concessionaire or its hired contractors or subcontractors perform remodeling, construction, alterations or refurbishments, CGL coverage shall include completed operations for not less than two (2) years following substantial completion of the work. The CGL shall be endorsed to include coverage contractual liability and Independent Contractors.

CGL coverage applies unless Concessionaire provides only trucking, (no premises or operations other than driving, loading/unloading), or garage operations (see below).

Business Automobile Liability:

\$500,000 Combined Single Limit for Each Accident

Coverage must apply to all vehicles (owned, non-owned, or hired) operating on the Board's site/location, or transporting the Board's personnel or property off the Board's site, except vehicles operated by Concessionaire or Concessionaire's employees commuting in personal vehicles to the Board's parking facilities, in which case Concessionaire must carry only Employer's Non-Ownership coverage, (same limit), and ensure that such vehicle(s) are personally insured.

Hauling any materials, property, cargo or equipment that contains or may contain hazardous waste must include a Motor Carrier Act (MCS 90) form or broadened pollution liability endorsement. Trailers and other towed equipment and trailer interchange coverage shall be included where applicable.

If your operations are solely a garage (vehicle maintenance and repair), Concessionaire must carry Garage Liability, instead of Business Auto Liability, but the Garage Liability must not be limited to auto liability only, and the same limit applies.

All liability policies, except Pollution & Professional, must be written on an "Occurrence Form." Neither "Modified Occurrence" nor "Claims-Made" policies are acceptable. If the Pollution or Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of Concessionaire's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to this Lease.

Aggregate limits of all liability policies shall be "per project" or "per location," as appropriate. If any aggregate limit is reduced by 25% or more by reserved or paid claims, Concessionaire must notify the Board and promptly reinstate the required aggregates.

All liability policies shall name the Board and the Cities of Dallas and Fort Worth as "Additional Insureds," including coverage for Products/Completed Operations.

All liability shall include Broad Form Contractual Liability covering the indemnification provisions of this Lease. All liability policies shall cover loss caused by Concessionaire's subcontractors, independent contractors, suppliers or other parties providing goods or services in connection with this Lease.

All liability policies must contain a "severability of interests" provision.

All liability policies must cover cross-suits between insureds.

If Concessionaire's operations involve any construction, no liability policy shall contain exclusions for hazards of explosion or collapse.

If Concessionaire's operations involve any construction, reconstruction, repair or similar work, no liability policy may contain any exclusion for such work.

C. ADDITIONAL COVERAGE AND LIMITS

Excess / Umbrella Liability:

Provide applicable coverage

Air Operations Area:

\$10,000,000 (When work is required within air operations area)

Access to the Air Operations Area will not be granted without verification of insurance coverage as required.

Secure/Sterile Side Operations:

\$5,000,000 (When work is required within secure side of terminal, but outside air operations area)

Excess/Umbrella Liability coverage must apply in excess of all required primary liability insurance and must be at least as broad as the underlying liability insurance.

Excess/Umbrella Liability coverage limit may be satisfied by adding the amounts of CGL and Excess/Umbrella Liability to arrive at a total of \$5,000,000 / \$10,000,000. The same would be applicable for Business Auto Liability and Excess/Umbrella Liability to arrive at a total of \$5,000,000 / \$10,000,000.

Pollution Liability Insurance:

\$1,000,000

If Concessionaire has any exposure to asbestos, lead, mold, (including any work that could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, Concessionaire shall provide appropriate Pollution Liability or Environmental Impairment insurance.

If the Pollution Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to this Lease.

Liquor Liability:

\$3,000,000 (if liquor is served by Concessionaire or subtenant)

Not limited to "host liquor" coverage.

Concessionaire, Contractors or Subcontractors Property and Equipment:

If Concessionaire, Contractors or Subcontractors utilize any mobile or other equipment, tools or machinery for their work or operations, they shall maintain all-risk Property and Contractors Equipment coverage for personal property including all owned and non-owned property in their care, custody or control or for which they are legally liable or for which they have agreed to insure or be responsible and include a Waiver of Subrogation in favor of the Board. Concessionaire, Contractors and Subcontractors will ensure, where and when applicable that proper insurance and coverage limits are in place as respects owning and/or operating lifting or crane and rigging equipment and provide such evidence of insurance on their COI and/or by attaching a copy of the policy endorsement.

Deductibles and Retention:

Concessionaire, Contractors or Subcontractors shall be responsible for any and all deductibles or self-insured retention amounts with respect to losses and related investigations, claim administration and defense expenses pertaining to the requisite liability coverages, workers compensation and excess/umbrella insurance policies specified herein.

Aggregate Limits:

If any of the insurance coverages required contain aggregate limits applying to other operations of Concessionaire, Contractors or Subcontractors outside of this Agreement and these limits are diminished by any incident, accident, occurrence, claim, settlement or judgment against their insurance, Concessionaire, Contractors and Subcontractors shall take immediate steps to restore aggregate limits or shall provide other insurance protection for the aggregate limits.

Completed Operations:

Concessionaire shall be responsible for claims that may arise out of the Concessionaire's operations or completed operations whether such operations or completed operations are by the Concessionaire or its hired Contractors, Subcontractors or Independent Contractors.

Adequacy Regarding Coverage:

By requiring insurance herein, Concessionaire does not represent that coverage and limits will necessarily be adequate to protect the Board and such coverage and limits shall not be deemed as a limitation or cap on Concessionaire's liability or indemnities granted to the Board in this Contract.

D. CERTIFICATION OF INSURANCE

Concessionaire or its insurance agents or brokers shall email a Certificate of Insurance to the Board Certificate Inbox, dfwcoi@dfwairport.com or fax to 972.973.5651. Concessionaire shall cause Concessionaire's insurance data to be kept current for the period of time Concessionaire is responsible pursuant to this Agreement.

Concessionaire, upon oral or written request, shall furnish copies of policies, certified by an authorized representative of the insurers, within ten (10) days of request.

All insurance policies shall contain a provision that written notice shall be given to the Board's Risk Management department, at least thirty (30) days prior to cancellation, except ten (10) days for non-payment of premium. In the event Concessionaire is not notified that an insurer intends to terminate or not renew a policy or reduce coverage below requirements of this Lease, Concessionaire shall arrange acceptable alternate coverage to comply with said requirements and cause replacement coverage data to be obtained. In addition, Concessionaire shall cause its agent, broker or insurer to enter a cancellation date into the Board's designated automated insurance reporting system, as soon as the effective date is known to the agency, brokerage, or insurer (if insurer enters data).

No policy submitted shall be subject to limitations, conditions or restrictions that are inconsistent with the intent of the Insurance requirements of this Lease.

Approval, disapproval or failure to act by the Board regarding any insurance obtained by Concessionaire shall not relieve Concessionaire of responsibility or liability for damages and accidents as set forth herein, nor shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Concessionaire from liability.

In addition to the Certificate of the Board reserves the right to request from Concessionaire, Contractors or Subcontractors directly or indirectly employed by Concessionaire copies of insurance coverage endorsements or exclusions as requested herein either by attachment to a COI or by individual submission. The "Project or Contract Name", "Contract Number" and a 'brief' description of the work or contract shall be listed within the Description of Operations box on all COIs as reference to which project, contract, operations or work the COI is intended to apply. Should Concessionaire or Contractors or Subcontractors fail to provide evidence of compliant insurance and COIs prior to the start of work or operations, the Board reserves the right to disallow them from entering the project, work site or performing operations.

Section 11.02 Indemnification and Hold Harmless

A. Concessionaire covenants and agrees to indemnify and hold harmless the Board, and the Cities of Dallas and Fort Worth, including but not limited to the Board's directors, officers, agents, employees, and the Cities' council members, officers, agents, and employees, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and

nature, including but not limited to, personal or bodily injury, death and property damage, made upon them directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE's activities under this Lease, including any acts or omissions of Concessionaire, any agent, officer, director, representative, employee, consultant, subcontractor or subtenant of Concessionaire, and their respective officers, agents, employees, directors, representatives and subcontractors while in the exercise of performance of the rights or duties under this lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the gross negligence of Board in instances where such negligence causes personal injury, death, or property damage. In the event Concessionaire and the Board are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the Board under Texas law and without waiving any defenses of the parties under Texas law. The rights and obligations set forth in this Section and all indemnification obligations of Concessionaire elsewhere in this Lease shall survive the termination or expiration of this Lease.

- B. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- C. Concessionaire shall promptly advise the BOARD in writing of any claim or demand against the BOARD or Concessionaire known to Concessionaire related to or arising out of Concessionaire's activities under this lease.

ARTICLE 12: TERMINATION WITHOUT CAUSE

If the Board determines in its sole discretion that it is necessary or desirable that this Lease be terminated, that Concessionaire, its subtenants, successors or assigns vacate the Premises, the Board may terminate this Lease provided that the Board compensates Concessionaire for its reasonable damages arising from said termination. For purposes of this Article, such reasonable damages shall be exclusively defined as the unamortized capital investment in the Premises, as certified pursuant to Section 8.01. Reimbursement, if any, due Concessionaire shall be paid within sixty (60) days after Concessionaire vacates the Premises and final payment has been received as required by this Article.

ARTICLE 13: DEFAULT AND REMEDIES

Section 13.01 Concessionaire Remedies

- A. This Lease may be terminated by Concessionaire at any time after the happening, and/or during the existence, of one or more of the following events:
 - 1. The permanent abandonment of the Airport or the permanent removal of all certificated passenger airline service from the Airport.
 - 2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in a manner as substantially to restrict Concessionaire for a period of at least one hundred fifty (150) days from operating thereon.
 - 3. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of the injunction for a period of at least one hundred fifty (150) days.
 - 4. The default by the Board in the performance of any covenant or agreement herein required to be performed by the Board and the failure of the Board to remedy the default for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.
- B. In the event of any Board default, recovery of damages by Concessionaire (excluding reasonable and necessary attorney's fees and costs) shall be limited to Concessionaire's unamortized capital investment in that part of the Premises affected by the default, as certified pursuant to Section 8.01, and said default by the Board shall not prejudice the Board's right to terminate the entire Lease without cause on the conditions set forth above. CONCESSIONAIRE EXPRESSLY ACKNOWLEDGES (i) THAT THE BOARD'S INVESTMENT IN THE AIRPORT TERMINALS IS MUCH GREATER THAN CONCESSIONAIRE'S INVESTMENT IN THE CONCESSION, (ii) THAT THE BOARD MUST HAVE TOTAL CONTROL OVER THE

MANAGEMENT OF THE TERMINALS FOR THE SAFETY, CONVENIENCE AND COMFORT OF THE TRAVELING PUBLIC, (iii) THAT THE BOARD IS OBLIGATED BY FEDERAL LAW TO CHARGE RATES THAT ARE AT LEAST FULLY COMPENSATORY OF THE COSTS INCURRED BY THE BOARD, AND (iv) THAT THIS LIMITATION ON CONCESSIONAIRE'S DAMAGES AND REMEDIES IS THEREFORE FAIR AND REASONABLE.

Section 13.02 Board Remedies

- A. Without limiting any other rights or remedies to which the Board may be entitled at law or in equity, or as otherwise provided in this Lease, this Lease may be terminated by the Board at any time in the event:
1. Concessionaire shall be in arrears in the payment of the whole or any part of the Rent, fees or charges due hereunder for a period of thirty (30) days after receipt of written notice from the Board of the failure to make the required payments;
 2. Concessionaire is late in paying Rent, fees or charges more than six (6) times during any year, or more than twelve (12) times during the Term of this Lease, even if all late payments have been paid prior to termination, including Late Payment Charges;
 3. Concessionaire shall make a general assignment for the benefit of creditors;
 4. Concessionaire shall abandon the Premises or any part thereof;
 5. Concessionaire is found to have made a material misrepresentation in bidding for or otherwise soliciting the concession, including without limitation a misrepresentation concerning Concessionaire's experience in operating a retail concession of the type authorized by this Lease;
 6. Concessionaire shall otherwise default in the performance of any of the covenants or conditions required herein to be kept and performed by Concessionaire, and the default continues for a period of thirty (30) days, or such other time as may be provided herein, after receipt of written notice from the Board of the default; provided, however, that if the nature of the default is such that it cannot be cured within thirty (30) days but may with diligence be cured within a reasonable amount of time not to exceed ninety (90) days, Concessionaire shall not be deemed to be in default if it, or its nominees, shall within the applicable period commence performance and thereafter diligently prosecute the same to completion.
- B. If Concessionaire has multiple concession locations pursuant to this Lease, any default constituting grounds for termination as to any location shall entitle the Board to terminate this Lease as to all locations, or fewer than all locations, in the Board's sole discretion. In the event the Board terminates this Lease for cause, the Board shall not be obligated to compensate Concessionaire for its unamortized capital investment.
- C. Without limiting any other rights or remedies to which the Board may be entitled at law or in equity, or as otherwise provided in this Lease, if the Board is entitled to terminate the Lease for cause, then the Board shall also, in its sole discretion, be entitled (with or without terminating the Lease) to recover damages measured by the total rent to be paid over the remainder of the Term, less the fair rental value of the Premises for the same period, discounted to present value. In this event, the total Rent to be paid over the remainder of the Term shall be calculated by using an average of the Percentage Rent paid during the preceding two years, subject to the MAG.
- D. Without limiting any other rights or remedies to which the Board may be entitled at law or in equity, or as otherwise provided in this Lease, if Concessionaire is late in paying Rent, fees or charges more than three (3) times during any year, the Board may (i) increase the required amount of Concessionaire's Cash Deposit or Security Bond to an amount deemed necessary by the Board in its sole discretion; or (ii) cancel Concessionaire's extension options, if any.

Section 13.03 Rights and Obligations Upon Expiration or Termination

- A. Upon expiration or termination of this Lease, Concessionaire shall have the right, subject to the Landlord's Lien set forth below, to remove all removable furniture, fixtures and equipment installed by Concessionaire, and Concessionaire shall immediately remove same. Any damage to the Premises caused by Concessionaire's removal of its property shall be immediately repaired by Concessionaire and at Concessionaire's expense and to the satisfaction of the Airport Concessions Department. Notwithstanding

the foregoing, if Concessionaire fails to remove its removable furniture, fixtures and equipment within thirty (30) days from the date of termination of this Lease, then the Board may, at its option, take title to the said property and sell, lease or salvage the same, as permitted by law. Any net expense the Board incurs in disposing of the property shall be immediately reimbursed by Concessionaire. No act by the Board shall be deemed an acceptance of a surrender of the Premises other than an agreement of acceptance of surrender, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by the Board.

- B. Any holding over by Concessionaire of the Premises after the expiration or other termination of this Lease shall operate and be construed as a tenancy at sufferance with the Rent, fees and charges provided herein prorated by the day; and Concessionaire agrees to surrender the Premises upon twenty-four (24) hours written notice.
- C. Concessionaire shall, upon termination of this Lease, with or without cause, surrender the Premises to the Board peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by Concessionaire or the Board, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore, excepted. Concessionaire shall remove all signage and provide temporary walls to seal all openings of premises that meet the guidelines outlined in the Tenant Design Manual. Concessionaire shall also provide to Airport Concessions any and all keys to doors, window displays or any area of controlled access within the footprint of the space. The Board shall be entitled to exercise the non-judicial remedy of locking Concessionaire out of the Premises as a means of enforcing the Board's right of possession, regardless of whether Concessionaire is delinquent in rental payments, including without limitation the de-activation of Concessionaire's security badges or credentials; and this right of de-activation shall not, and legally cannot, limit or otherwise affect the Board's governmental police powers to de-activate security credentials for security or other governmental reasons.

Section 13.04 Landlord's Lien

All property on the Premises is hereby subjected to a contractual landlord's lien, unless specifically waived by the Board, to secure payment of delinquent rent and other sums due and unpaid under this Lease, any and all exemption laws being hereby expressly waived in favor of such landlord's lien; and it is agreed that such landlord's lien shall not be construed as a waiver of any statutory or other lien given or which may be given to the Board but shall be in addition thereto. It is agreed by Concessionaire that in the event of default by Concessionaire hereunder the Board shall have the right, upon 30 days prior written notice, to sell Concessionaire's property found on the Premises at a public or private sale with proceeds of the sale applied first to the cost of the sale, then to the cost of storage of the property, if any, and then to the indebtedness of Concessionaire, with the surplus, if any, to be mailed to Concessionaire at the address herein designated. Concessionaire further agrees to hold harmless from and indemnify the Airport Board and the Cities of Dallas and Fort Worth including but not limited to: the Board's directors, officers, agents, employees, and the Cities' council-members, officers, agents and employees against any loss or damage or claim arising out of the action of the Board in pursuance of this paragraph, except for any loss, damage, or claim caused by the negligence or willful misconduct of the Board or its employees, acting within the course and scope of employment. The contractual lien granted hereunder is a security interest pursuant to the Texas Business and Commerce Code, and the Board shall have all rights and remedies of a secured party thereunder.

Section 13.05 Attorney's Fees

In addition to all other remedies provided in this Article, either party may recover reasonable and necessary attorney's fees (including time of in-house counsel) and costs incurred in prosecuting or defending any action concerning the subject matter of this Lease.

ARTICLE 14: ASSIGNMENT AND SUBLEASE

- A. Except as explicitly set forth herein, Concessionaire shall not assign, sublet, sell, convey, transfer, mortgage, or pledge this Lease or any part thereof without the prior written consent of the Board. Any restrictions which form a part of any written consent granted shall be incorporated into a written instrument and shall form a part of this Lease. Due to the significance of this Lease and the nature of the services to be provided hereunder, the Board shall have the right in its sole discretion, to withhold its consent. Concessionaire shall not use, or permit any person to use, the Premises, improvements thereon, or any portion thereof, except for the purposes as provided in this Lease.

B. In the event Concessionaire merges, consolidates, acquires, affiliates, or associates with any other person, company, corporation or other entity, or in any manner whatsoever either is bought out or buys out another person, company, corporation or other entity, and such merger, consolidation, acquisition, affiliation, association or buy out results in a change of control or management of the operations authorized herein, then in that event, such merger, consolidation, acquisition, affiliation, association or buy out shall be considered by the Board as an Assignment of this Lease by Concessionaire which requires the prior approval of the Board and any such merger, consolidation, acquisition, affiliation, association or buy out without such consent shall be violation of this Article, and shall subject this Lease to termination by the Board.

C. All subleases shall be subject to all of Concessionaire's obligations hereunder. Subtenants must execute a written sublease containing an agreement to perform all of Concessionaire's obligation hereunder during the term of the sublease. No sublease shall operate to release Concessionaire of its liabilities and obligations arising hereunder.

ARTICLE 15: REPRESENTATIVES OF THE BOARD

Concessionaire agrees that the Board through its Chief Executive Officer, may designate certain of its employees to act in its behalf as its representative. The designation will specify the matter or area in which the representative may act, and any action taken by the representative shall be deemed as the action of the Board.

ARTICLE 16: CITIES' RIGHT OF TRANSFER

The Cities of Dallas and Fort Worth, Texas and/or the Board reserve the right to transfer their interests and obligations herein to any other governmental body set up to or authorized by law to operate the Airport. It is mutually understood and agreed that this Lease shall be subordinate to the provisions of any existing or future agreement between the Board and the United States of America, its Boards, Agencies, Commissions, the Cities, and other governmental agencies, relative to the operation or maintenance of the Airport, the execution of which has been, or may be, required as a condition precedent to the development or operation of the Airport.

ARTICLE 17: AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member or partner resident of the State, or is a foreign corporation, then in any such event Concessionaire does hereby designate the Secretary of State, State of Texas, its agent for the purpose of service of process in any court action between it and the Board arising out of or based upon this Lease and the service shall be made as provided by laws of the State of Texas for service upon a nonresident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of process is not possible after reasonable good-faith attempts, Concessionaire may be served with the process by the registered mailing of the complaint and the process to Concessionaire at the address set out in this Lease and that the service shall constitute valid service upon Concessionaire as of the date of mailing. It is further expressly agreed that Concessionaire is amenable to and hereby agrees to the process so served, submits to the jurisdiction and waives any and all objections and protest thereto, any laws to the contrary notwithstanding.

ARTICLE 18: GENERAL PROVISIONS

Section 18.01 No Waiver of Forfeiture

Any failure or neglect of the Board or Concessionaire at any time to declare a forfeiture of this Lease for any breach or default whatsoever hereunder shall not be taken or considered as a waiver of the right thereafter to declare a forfeiture for like or other or succeeding breach or default.

Section 18.02 Force Majeure

Neither the Board nor Concessionaire shall be deemed in violation of this Lease if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control; provided, however, that these provisions shall not apply to failures by Concessionaire to pay the rentals and fees herein specified. Concessionaire shall not be entitled to any rent relief or other monetary compensation as a result of terminal evacuations ordered by the Board or any other governmental authority.

Section 18.03 Rules and Regulations

The Board may adopt and enforce Rules and Regulations, to be uniformly applied to similar uses and users of similar space, which Concessionaire agrees to observe and obey with respect to the use of the Premises and the Airport, and the health, safety and welfare of those using the same. Concessionaire shall comply, and require compliance by their respective contractors, suppliers of materials and furnishers of services, employees and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the Board, or the Transportation Security Administration (TSA), Federal Aviation Administration (FAA), or other governmental agencies to protect the security and integrity of the Terminal Sterile area, Security Identification Display Area (SIDA), and Aircraft Operating Area (AOA), as defined by the Board, TSA and the FAA, and to protect against access to these areas by unauthorized persons. Subject to the approval of the Board, Concessionaire shall adopt procedures to control and limit access to the Sterile area, SIDA and AOA by Concessionaire, and their respective contractors, suppliers of materials and furnishers of services, employees and business invitees in accordance with all present and future Board, TSA and FAA laws, rules and regulations. **Concessionaire further agrees to indemnify, hold harmless, defend and insure the Board, and the Cities of Dallas and Fort Worth including their directors, council members, officers, agents and employees against the risk of legal liability for death, injury, or damage to persons or property, direct or consequential, arising from entry to the Sterile area, SIDA or AOA permitted, allowed or otherwise made possible by Concessionaire, or their respective contractor, suppliers of materials and furnishers of services, employees, business invitees or any person under the direction of Concessionaire in violation of Airport, TSA and FAA laws, rules or regulations or Concessionaire's Board-approved procedures for controlling access to the Sterile area, SIDA or AOA as provided hereinabove. Concessionaire shall obtain employee identification badges for all personnel authorized by Concessionaire to have access to the Sterile area, SIDA or AOA, in accordance with the provisions of federal regulations, and other laws, rules and regulations or Board policies. If Concessionaire is responsible for a security violation, Concessionaire may be subject to fines, suspension of access to the sterile area, SIDA or AOA and the cost of correction and reinstatement of privileges.**

Section 18.04 Successors and Assigns

Subject to the limitations upon assignment and transfer herein contained, this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

Section 18.05 No Third Party Benefit

No provision contained in or incorporated by this Lease shall create or give to third parties any claim, or right of action, against the Cities of Dallas or Fort Worth, the Board, or Concessionaire, beyond that which may legally exist in the absence of any such provision.

Section 18.06 No Partnership or Joint Venture

Nothing in this Lease shall be construed to create a partnership or joint venture between Concessionaire and the Board. The performance of Concessionaire's obligations pursuant to this Lease is within the exclusive control of Concessionaire, and the performance of the Board's obligations pursuant to this Lease is within the exclusive control of the Board.

Section 18.07 Compliance with Laws

- A. Concessionaire shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, ordinances, rules, regulations, requirements, orders and directions. Failure to observe or comply with the aforementioned laws will subject this Lease to cancellation by the Board. In the event Concessionaire or any of its principals are convicted of any crime involving moral turpitude, a final conviction will be grounds for termination of this Lease.
- B. Concessionaire shall, subject to and in accordance with the provisions hereof, make any and all non-structural improvements, alterations, or repairs of the Premises that may be required at any time hereafter of similar users of similar areas by any rule, regulation, requirement, order, or direction of any entity with authority to do so, including without limitation the Americans With Disabilities Act, and if by reason of any failure on the part of Concessionaire to comply with the provision of this Section, any fire insurance rate on the Premises or the Terminal Buildings and improvements thereto shall at any time be higher than it otherwise would be, then Concessionaire shall pay the Board, upon demand, that part of all fire insurance premiums paid by the Board which shall have been charged because of such violation or failure of

Concessionaire. Concessionaire shall, at its sole cost, remove, or otherwise abate the asbestos or other hazardous material, if any, within the Premises or other areas which will be disturbed by Concessionaire's additions or operations provided such additions and operations are submitted to, and approved in writing in advance by, the Airport Concessions Department.

- C. Concessionaire agrees to comply with all environmental laws, rules, regulations, orders and/or permits applicable to Concessionaire's operations on or in the vicinity of the Airport, including but not limited to required permits and all applicable laws relating to the use, storage, generation, treatment, transportation and/or disposal of hazardous or regulated substances. Concessionaire shall not knowingly use, store, generate, treat, transport or dispose of any hazardous or regulated substances or waste on or near the Airport without first obtaining prior written approval from the Airport Board's Environmental Services Department and without first obtaining all required permits and approvals from all authorities having jurisdiction over Concessionaire's operations on or near the Airport. If Concessionaire determines at any time through any means that any threat of any potential harm to the environment, including but not limited to any release, discharge, spill or deposit of any hazardous or regulated substance, has occurred or is occurring which in any way affects or threatens to affect the Airport, or the persons, structures, equipment, or other property thereon, Concessionaire shall notify immediately by verbal report in person or by telephone, to be promptly confirmed in writing, (1) the Airport Board's Environmental Services Department, (2) the Airport Board's Fire Marshal, and (3) all emergency response centers and environmental or regulatory agencies, as required by law or regulation, and shall follow such verbal report with written confirmation within seventy-two (72) hours. Concessionaire agrees to cooperate fully with the Board in promptly responding to, reporting and remedying any threat of potential harm to the environment, including without limitation any release or threat of release of hazardous or regulated substance into the drainage systems, soils, ground water, waters or atmosphere, in accordance with applicable law or as authorized or approved by any agency having authority over environmental matters. Concessionaire shall be solely responsible to the Board, including for remediation and all costs associated therewith, for Concessionaire's action or inaction which is directly or indirectly responsible for any failure of the Airport to materially conform to all then applicable environmental laws, rules, regulations, orders and/or permits. The rights and obligations set forth in this paragraph shall survive the termination of this Lease.
- D. Concessionaire shall pay all taxes of whatever character, including ad valorem and intangible taxes that may be levied or charged upon the Premises, leasehold, leasehold improvements, personal property, or operations hereunder and upon Concessionaire's rights to use the Premises, regardless of who owns taxable property at the expiration of this Lease. Concessionaire shall pay any and all sales taxes arising in connection with its occupancy or use of the Premises whether the taxes are assessed against Concessionaire or the Board. Concessionaire shall provide to the Board, or to the Cities of Dallas or Fort Worth, upon ten days' notice and at no cost, any information deemed necessary by them to verify taxes paid concerning Concessionaire's sales at the airport, or any other information directly or indirectly concerning amounts to be received by the Board or the Cities pursuant to interlocal tax or revenue sharing agreements.
- E. Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings and any other licenses necessary for the conduct of its operations hereunder. The Board shall assist Concessionaire where necessary in obtaining the permits.
- F. Except for publicly traded stock transactions, or other transactions over which Concessionaire has no control, Concessionaire represents and warrants that neither Concessionaire nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not assign or transfer this Lease to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.
- G. Concessionaire, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in

compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

Section 18.08 General Civil Rights Provisions (Required by the FAA)

- A. Concessionaire agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
- B. This provision also obligates Concessionaire or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.
- C. In these cases the provision obligates the party or any transferee for the longer of the following periods:
 - 1. the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - 2. the period during which the airport sponsor or any transferee retains ownership or possession of the property.

Section 18.09 Title VI Civil Rights Provisions (Required by the FAA)

- A. During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest agrees as follows:
 - 1. Compliance with Regulations: Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - 2. Non-discrimination: Concessionaire, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, 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 Concessionaire of the Concessionaire's obligations under this Lease and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
 - 4. Information and Reports: Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to 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 Concessionaire'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 Concessionaire under this Lease until Concessionaire complies; and/or

b. Cancelling, terminating, or suspending this Lease, in whole or in part.

6. Incorporation of Provisions: Concessionaire 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. Concessionaire 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 Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Authorities—During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) 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 U.S.C. § 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 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- 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 U.S.C. 1681 *et seq.*).

Section 18.10 Occupational Safety and Health and Federal Minimum Wage

Federal Fair Labor Standards Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text.

The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Section 18.11 Merger Clause

This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance.

Section 18.12 Article and Section Headings

The titles and headings contained in this Lease and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Lease.

DFW AIRPORT BOARD SIGNATURES

IN WITNESS WHEREOF, the persons whose names appear below have affixed their signatures hereto on behalf of their respective principals as of the dates shown:

DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD:

Signature: _____

Print Name: Zenola Campbell

Title: Vice President - Concessions

Date: _____

APPROVED AS TO FORM:

Legal Counsel for the Board

CUSTOMER/VENDOR SIGNATURE PAGE:

IN WITNESS WHEREOF, the persons whose names appear below have affixed their signatures hereto on behalf of their respective principals as of the dates shown:

By: _____

Name: _____

Title: _____

Date: _____

Exhibit "A"

PREMISES DESCRIPTION

A. The Premises shall consist of the following location, with estimated allocable square footage:

Terminal	ID Number	Column Number	Gate	Square Footage	Name of Business

B. The estimated square footage allocable to the location of the Premise is hereby adjusted to actual square footage upon completion of construction, using measurement criteria determined by the Board in its sole discretion:

Terminal	ID Number	Column Number	Gate	Square Footage	Name of Business

Acknowledged:

_____ Agent of Concessionaire

_____ Agent of the Board

_____ Date

_____ Date

Any rents, fees or charges based upon square footage will be adjusted based upon actual measurements.

Exhibit "B"

Menu/Merchandise List

See below

In addition, an updated Menu/Merchandise List is due upon execution of the lease and a final Merchandise List is due prior to the location opening for business.

Exhibit "C"

SAMPLE CONSTRUCTION SCHEDULE

TIMELINE SCHEDULE FOR TENANT PROJECTS:

Design Process	Days	for	Completion
▪ Date of Notice to Proceed Letter	Day		1
▪ Predesign Meeting (15 Days)	Day		16
▪ 30% Schematic Design (30 Days)	Day		46
▪ TPC Review of Schematic Design (5 Days)	Day		51
▪ 95% Construction Document Review (30 Days)	Day		81
▪ TPC Review of Construction Doc (5 Days)	Day		86
▪ Code Submittal for permit (5 Days)	Day		91
▪ Code Review (14 Days)	Day		105
▪ Potential Resubmittal (14 Days)	Day		119
▪ Code Approval Permit Issued (14 Days)			
▪ Pre Construction Meeting (5 Days)	Day		138
Construction Process			
▪ Construction Timeline		<u>90 to 150</u>	
Total Project Process			228 to 288

Exhibit "C-1"

CONCESSIONAIRE'S APPROVED CONSTRUCTION SCHEDULE

To be added after code approval.

Exhibit "D"
DFW International Airport - Annual Certified Gross Receipts Report

Location (Gate): _____ Operator/Company: _____ Contract Number: _____ Location ID: _____ Period From: _____ To: _____

Gross Receipts	January	February	March	April	May	June	July	August	September	October	November	December	Total Gross Receipts	Percent Rate	Total Percent Rent
Category 1													\$0.00		\$0.00
Category 2													\$0.00		\$0.00
Category 3													\$0.00		\$0.00
Category 4													\$0.00		\$0.00
Category 5													\$0.00		\$0.00
Category 6													\$0.00		\$0.00
Total	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		

Informational	January	February	March	April	May	June	July	August	September	October	November	December	Total Informational
Amounts deducted for mixed beverage tax & not included above													\$0.00
Other Informational (if needed)													\$0.00
Total Informational	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Comment Box: Explain any variance from Gross Receipts previously reported through CSA.

Total Gross Receipts Subject to Percent Rent	\$0.00
Total Percent Rent	\$0.00
Minimum Annual Guarantee (MAG)	
Greater of MAG or Total Percent Rent	\$0.00
Less: Prior Payments	
Balance Due/(Overpayment)	\$0.00

By signing below, I certify that the Gross Receipts reported to the DFW Airport Board during the period of to are in accordance with the terms of this Agreement.

(Signature*)

(Printed Name)

(Date)

(Company/Title)

*Signature is required from an independent Certified Public Accountant or authorized Corporate Officer, in accordance with the terms of this lease.

EXHIBIT "F"

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) SPECIAL CONTRACT PROVISIONS

An ACDBE participation commitment has been established for this Agreement, as noted in Article One (1) of this Agreement and stated in its *Commitment to Airport Concessions Disadvantaged Business Enterprise (ACDBE) Participation* form. Such participation is a contractual commitment upon execution of this Agreement.

A. GENERAL REQUIREMENTS

1. It is the policy of DFW International Airport ("Airport" or Board") that ACDBEs as defined in 49 CFR Part 23 ("Part 23") shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The Airport has developed and implemented an ACDBE program as required under Department of Transportation 49 CFR Part 23. The ACDBE program objective is to ensure full and fair access to concession opportunities for all businesses and in particular for ACDBE businesses.
2. Concessionaire acknowledges that it is a "concessionaire" as that term is defined in 49 C.F.R. § 23.3.
3. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the performance of this Agreement or any management agreement, subcontract, purchase agreement, or other agreement covered by 49 CFR Part 23. Concessionaire 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. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Board deems appropriate.
4. The Business Diversity & Development Department ("BDDD") is responsible to ensure compliance with all the Airport's Business Diversity Programs, policies and procedures. The Airport's Vice President of BDDD has been designated as the ACDBE Liaison Officer. In that capacity, the Vice President is responsible for compliance with all aspects of the ACDBE program. The Vice President has established an overall, annual ACDBE goal for the Airport.
5. Concessionaire specifically agrees to comply with all applicable provisions of the Board's ACDBE Policy and Procedures Manual and any

amendments thereto. ACDBE and Non-ACDBE business partners, sub-concessionaires and vendors shall also be required to agree to comply with all applicable provisions of the Board's ACDBE Policy and Procedures Manual ("Manual").

6. BDDD and or the Airport may make changes to the existing policy, procedures and contract provisions. Any future changes supersede past policies, procedures, contract provisions. The Concessionaire, business partners and sub concessionaires are responsible to be aware of future changes.
7. Concessionaire shall maintain records showing:
 - (a) Subcontract/supplier awards, including awards to ACDBEs;
 - (b) Specific efforts to identify and award such contracts to ACDBEs;
 - (c) Executed contracts with ACDBEs showing actual ACDBE participation.
8. Failure to comply with the Airport's ACDBE policies or 49 CFR Part 23, or any other applicable laws or regulations, shall constitute a material breach of this Agreement, and shall be cause for termination of this Agreement and entitle to Airport to any and all remedies available at law or equity.

B. ADMINISTRATIVE REQUIREMENTS

1. Concessionaire is charged with knowledge of and is solely responsible for complying with each requirement of Part 23 in maintaining its participation commitment or demonstrating a good faith effort as described below. Should any questions arise regarding specific circumstances, Concessionaire must consult Part 23, appropriate DOT Rules and Regulations, or may contact the BDDD office at 972-973-5500.
2. Concessionaire shall appoint a high-level official, who will report directly to Concessionaire's chief executive officer or equivalent to administer and coordinate Concessionaire's ACDBE contractual commitments and obligations under 49 CFR Part 23.
3. Concessionaire agrees to submit monthly reports of payments and subcontract and/or supplier awards to ACDBEs and Non-ACDBEs in such form and manner and at such times as the Board shall prescribe.
4. Concessionaire shall provide BDDD access to all books, records, accounts and personnel. Such access will be used for, among other purposes, determining ACDBE participation and compliance with the ACDBE Policy and Procedures Manual. Concessionaire may be subject to interim and post-contract ACDBE audits. Audit determination(s) regarding Concessionaire's compliance with the ACDBE Policy and Procedures

Manual may be considered and have a bearing on consideration of Concessionaire for award of future contracts.

C. GOALS AND GOOD FAITH EFFORTS

1. Under the Policies, BDDD establishes an ACDBE Goal for each concessions package. The ACDBE Goal for each package is stated in the Request for Proposal. The ACDBE Goal is a percentage of annual gross receipts for each package.
2. To comply with the proposal requirements of the Policies, a Concessionaire must either meet the ACDBE Goal or demonstrate that it made sufficient good faith efforts to meet the ACDBE Goal. If the Concessionaire will not meet the ACDBE Goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made good faith efforts to meet the ACDBE Goal. This good faith effort documentation must be submitted with the Concessionaire's proposal.
3. In evaluating a Concessionaire's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
4. Determining Responsive, Non-Responsive and Good Faith Efforts (Pre-Award)
 - a. Responsive – compliance with requirements. If a proposal meets the ACDBE Goal or shows an adequate good faith effort in accordance with the Policies, then BDDD shall notify the procuring department to regard the proposal as responsive.
 - b. Non-Responsive - failure to meet requirements. If a proposal subject to an ACDBE Goal does not meet the goal or show an adequate good faith effort, or provide the necessary documentation or forms outlined in the Policies, then BDDD shall notify the procuring department to regard proposal as non-responsive. Such determination shall result in no further consideration of the proposal by the Airport. This decision is not appealable.
5. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the good faith effort criteria under the guidance of 49 CFR Part 26. The responses to the criteria are considered when assessing whether a Concessionaire made good faith efforts to meet the ACDBE Goal. The criteria are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the ACDBE Goal. The criteria should not be considered as a template, checklist or some quantitative formula. A Concessionaire is required to meet all criteria outlined and provide support documentation for good faith efforts to be assessed. Mere pro forma efforts are not good faith efforts to meet the ACDBE Goal. This means that a Concessionaire must show that it took all necessary

and reasonable steps to achieve an ACDBE Goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the ACDBE Goal, even if they were not fully successful. Failure of the Concessionaire to demonstrate adequate good faith efforts as to any one of the outlined criteria shall render the overall good faith showing insufficient and the proposal non-responsive. The Airport will evaluate the good faith efforts on quality, quantity, and intensity of the different kinds of efforts that the Concessionaire has made based on the regulations and the guidance in 49 C.F.R. part 26. NOT SUBMITTING PROPER SUPPORT DOCUMENTATION IS NOT EVIDENCE OF A PROPER DEMONSTRATION OF GOOD FAITH EFFORT. SUBMITTAL OF THE CRITERIA, WITH NO ADDITIONAL DOCUMENTATION, WILL NOT BE CONSIDERED ADEQUATE DEMONSTRATION OF GOOD FIATH EFFORT. Concessionaires are not limited to these particular areas and may include other efforts deemed appropriate. For additional guidance concerning good faith efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 Part 26, Appendix A).

6. Post award, the Concessionaire has a continuing obligation as a covenant of performance to meet the ACDBE utilization to which it committed to at Contract award. If amendments or other modifications are made to agreements with ACDBEs, and if said changes affect the ownership interest, dollar value or scope of work of said ACDBEs, Concessionaire shall immediately inform BDDD in writing of such changes, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification. Concessionaire must make good faith efforts to maintain its ACDBE participation commitment. Concessionaire cannot terminate or otherwise change the terms of its ACDBE commitment without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Concessionaire seeks to perform work originally designated for an ACDBE with its own forces or those of an affiliate, a non-ACDBE or another ACDBE. If Concessionaire during Agreement performance must replace an ACDBE for any reason, it must follow the provisions herein governing the substitution of ACDBEs and make documented good faith efforts to meet its original ACDBE participation commitments.
7. Concessionaire must demonstrate good cause to terminate an ACDBE business partner, contractor or supplier. Good cause includes the following circumstances:
 - (a) The listed ACDBE business partner, contractor or supplier fails or refuses to execute a written contract.
 - (b) The listed ACDBE business partner, contractor or supplier fails or refuses to meet Concessionaire's reasonable, nondiscriminatory bond requirements.

- (c) The listed ACDBE business partner, contractor or supplier becomes bankrupt, insolvent or exhibits credit unworthiness.
- (d) BDDD has determined that the listed ACDBE business partner, contractor or supplier is not a responsible firm.
- (e) The listed ACDBE business partner, contractor or supplier voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
- (f) The listed ACDBE business partner, contractor or supplier is ineligible to receive credit for the type of work required.
- (g) The ACDBE owner dies or becomes disabled with the result that the listed ACDBE business partner, contractor or supplier is unable to complete its work on the contract.
- (h) Other documented good cause as determined by the BDDD.

Good cause does not include where Concessionaire seeks to terminate a ACDBE it relied upon to obtain this Agreement so that Concessionaire can self-perform the work or substitute another ACDBE or non-ACDBE business partner, contractor or supplier to perform the work for which the ACDBE was engaged or listed in the proposal.

Concessionaire must give the ACDBE notice in writing, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the detailed reasons for the request. Please reference CFR, Part 26.53 for additional requirements.

- 8. Good faith efforts during Agreement performance must include, but are not limited to:
 - (a) Solicitation of ACDBEs that are certified in the applicable area of work or specialty;
 - (b) Providing interested ACDBEs with adequate information about the plans, specifications, scope of work and requirements of this Agreement;
 - (c) Fairly investigating and evaluating the interested ACDBEs regarding their capabilities, not rejecting ACDBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving Concessionaire's reasons for its conclusion that it rejected each non-utilized ACDBE because the ACDBE was not qualified;
 - (d) Negotiating in good faith with interested ACDBEs regarding price, using good business judgment and not rejecting reasonable quotes

from interested ACDBEs, and providing written documentation why Concessionaire and any of the ACDBEs contacted failed in negotiating an agreement; and

- (e) Effectively using the services of available minority and women community organizations; chambers and concessionaire groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of ACDBEs.
9. If Concessionaire is found not to have made continuing good faith efforts to meet its ACDBE contractual commitment, it may request administrative review and final reconsideration by the Vice President of BDDD. Concessionaire may elect to meet in person to discuss whether Concessionaire made continuing good faith efforts in accordance with the Policies.
 10. Concessionaire may not require exclusive subcontracting or teaming agreements with other concessionaires, sub-concessionaires, contractors or vendors.
 11. In evaluating Concessionaire's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
 12. Concessionaire must submit an *Intent to Perform* form for each proposed new ACDBE business partner, contractor or supplier. BDDD will approve or disapprove the substitution based on Concessionaire's documented compliance with these provisions.
 13. BDDD will look not only at the different kinds of efforts that Concessionaire has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the commitments, even if they are sincerely motivated. BDDD will also consider if, given all relevant circumstances, Concessionaire's efforts could reasonably be expected to produce a level of ACDBE participation sufficient to meet the ACDBE Goal.
 14. The amount and type of ACDBE participation proposed will become a firm commitment upon execution of BDDD approval, Lease Agreement/Board Approval and will be monitored by BDDD. The Concessionaire agrees, as an expressed condition of its performance, to comply with the requirements of 49 CFR Part 23 and the appropriate provisions under the lease agreement.

D. COUNTING ACDBE PARTICIPATION

1. BDDD will evaluate each proposal to determine the responsiveness of the proposal to the Policies. In determining if a Concessionaire's committed

levels of participation meet or exceed the solicitation's ACDBE Goal, BDDD shall base its determination solely on the information provided in the proposal submission.

2. If a joint venture is proposed to meet the ACDBE Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the ACDBE will perform with its own workforce, reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.
3. When calculating participation levels, percentages and dollar amounts for each ACDBE, Concessionaire cannot round up in determining whether or not the total of these amounts meets or exceeds the ACDBE Goal.
4. The participation of an ACDBE whose ownership interest percentage is less than 10% is deemed as not performing a commercial useful function and therefore shall not count towards an ACDBE goal that is greater than 10%.
5. A Concessionaire cannot require an ACDBE to enter into an exclusive arrangement for purposes of submitting its proposal or require the ACDBE to enter into a non-compete arrangement post award.
6. Post award, the Concessionaire may count towards its ACDBE contractual commitment an ACDBE that is certified by an approved entity during the performance of the Agreement if the ACDBE is added to the Agreement or substituted for a ACDBE pursuant to the SUBSTITUTIONS OR TERMINATIONS section herein.
7. Post award, the participation of a firm not certified as an ACDBE, in accordance with the standards of Subpart D of this section, at the time of the execution of the contract, shall not count towards an ACDBE commitment, except as provided for in §26.87.
8. Concessionaire may not count toward its ACDBE contractual commitment the dollar value of work performed by a ACDBE after it has ceased to be certified as an ACDBE, except where the ACDBE is no longer certified because it has exceeded the size standard.
9. ACDBE Prime Concessionaires can count their self-performance toward meeting the ACDBE Goal, but only for the scope of work and at the percentage level they will self-perform.
10. When an ACDBE participates in a lease agreement, Concessionaire shall count only the value of the work actually performed by the ACDBE toward the ACDBE Goal.
11. Concessionaire may meet its ACDBE obligations in any of the following ways:

- (a) 100% ACDBE Participation: If the concessionaire is a certified ACDBE, count the total amount of the dollar value of the gross receipts the ACDBE earns under this Agreement or the total value of a management contract or subcontract with an ACDBE toward the ACDBE Goal. An ACDBE prime concessionaire can count its self-performance toward meeting the ACDBE Goal, but only for the scope of work and at the percentage levels it will self-perform. If the ACDBE enters into a sub-concession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.
- (b) Percentage Participation: For this option, a percentage of the business is designated to be owned, operated and/or maintained by a certified ACDBE through a sub-lease, management, operating and/or franchise agreement. Count only the portion of the gross receipts earned by the ACDBE under its agreement with the Prime.
- (c) Joint Venture Participation: For this option, a proposer enters into a joint venture agreement with a certified ACDBE partner. If the ACDBE Goal is to be met through a joint venture agreement with an ACDBE partner, count the portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces. To be eligible for credit towards meeting the ACDBE Goal, the ACDBE partner must share in the financial risks and rewards commensurate with the amount of proposed ACDBE participation sought to be credited towards the ACDBE Goal. For purposes of ACDBE participation, joint ventures are not certified as ACDBEs. If Concessionaire will form a new joint venture for any purpose that has not been previously approved by the Airport, it must submit a Draft Joint Venture Agreement to the Airport. Joint Venture Agreements shall be specific to the proposed concept and location.
- (d) Percentage of Goods/Services towards Vendor Purchases: For this option, the proposer designates a percentage of the gross revenue that will be committed to the purchase of goods and services from ACDBE certified vendors. Count the entire amount of fees or commissions charged by an ACDBE for a *bona fide* service, provided that BDDD determine this amount to be reasonable and not excessive as compared with fees customarily allowed 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 services.
- (e) Other Legal Arrangement: For this option, the proposer may propose some other legal arrangement so long as it meets the eligibility standards in 49 CFR Part 23.

12. Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the “build-out”) do not count towards the ACDBE participation commitment.
13. Concessionaire may count the percentage of ownership or equity of an ACDBE towards the ACDBE participation commitment only if the ACDBE is performing a commercially useful function. For purposes of these provisions, the term commercially useful function has the same meaning as in 49 C.F.R. § 26.55(c).
 - (a) An ACDBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the ACDBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether an ACDBE is performing a commercially useful function, BDDD will evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is performing, the ACDBE credit claimed for its performance of the work, and other relevant factors.
 - (b) An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of ACDBE participation. In determining whether an ACDBE is such an extra participant, BDDD will examine, among other relevant factors, similar transaction, particularly those in which ACDBEs do not participate.
 - (c) When an ACDBE is presumed not to be performing a commercially useful function as provided in this section, the ACDBE may present evidence to rebut this presumption. BDDD will determine whether the firm is performing a commercially useful function given the type of work involved and normal industry practices.
14. BDDD will count ACDBE participation where the ACDBE or business partner performs a portion of work on the contract and the percentage of ownership or equity of the ACDBE in a joint venture. BDDD will allow the joint venture to 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 ACDBE business partner performs with its own forces toward the ACDBE commitment and for which it is at risk.

E. CERTIFICATION

1. In order to count the participation of ACDBEs towards the ACDBE Goal, the ACDBE must be certified by an approved entity of the Texas Unified Certification Program (“TUCP”). Other certifications are not acceptable.
2. Affiliate/Affiliation: Regardless of certification by a recognized agency, the ACDBE must be an independent business and not an affiliate of any other business. Affiliate means any business entity that is affiliated with an ACDBE or with owners of such ACDBE or any other business enterprise. Business enterprises are affiliates of each other when:
 - a. One either directly or indirectly, through one or more intermediaries, controls or has the power to control the other; or
 - b. A third party or parties controls or has the power to control both; or
 - c. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
 - d. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
 - e. *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.
3. The Airport Board in its sole discretion shall determine whether an applicant is an independent business.
4. Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another.

Concessionaire must submit to BDDD a properly completed ACDBE certificate or letter, with all required attachments, for all ACDBEs proposed to be utilized as business partners, sub-concessionaires or suppliers to meet the contract ACDBE Goals at the time of proposal submission. The Airport Board reserves the right to reject the participation of a certified firm for credit towards meeting the ACDBE Goal, in its sole discretion. Such rejections shall be in writing and state the reason(s) for the rejection. A

Concessionaire whose proposed certified firm is rejected for ACDBE Goal credit may request reconsideration of the rejection to the BDDD in writing. The request for reconsideration must be received by the BDDD within two (2) business days of the notification of rejection. BDDD's decision on the request shall be final.

5. A firm must be certified as an ACDBE at the time of proposal submission to be counted towards meeting the ACDBE Goal for purposes of determining Contract award.
6. A firm must be certified as an ACDBE at the time of substitution or replacement to be counted towards the participation commitment.
7. BDDD, the Texas Department of Transportation (TxDOT) and the Federal Aviation Administration (FAA) maintain current listings of certified ACDBEs. Concessionaire must utilize these Directories to assist them in locating ACDBEs for the work required on the contract. The ACDBE Directories are located at:
 - BDDD: <https://dfw.diversitysoftware.com/>
 - TxDOT: <https://txdot.txdotcms.com/>
 - FAA: <https://faa.dbesystem.com/Default.asp>
8. ACDBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

F. ACDBE UTILIZATION FORMS AND RELATED DOCUMENTATION

1. Concessionaire must submit completed ACDBE utilization forms as required by BDDD.
2. **ACDBE Commitment Form:** Commitment to meet the ACDBE Goal must be detailed on the ACDBE Commitment Form and be submitted at the time of proposal submission. Submission of the form shall constitute a representation by the Concessionaire to the Airport Board that it commits to maintain the ACDBE participation level to which it committed to at the time of Agreement award throughout the performance of the Agreement.
3. **ACDBE Intent to Perform Form:** Submission of the form shall constitute a representation by the Concessionaire to the Airport Board that it believes such ACDBE to be certified as a ACDBE to perform the work as designated and the ACDBE is not an affiliate with the Concessionaires as defined herein. It shall also represent a commitment by the Concessionaire that it is awarded the Agreement, it will enter into an agreement with such ACDBE for the work described at the ownership interest percentage set forth in the ACDBE Intent to Perform form. The form must be submitted at the time of proposal submission for each ACDBE business partner identified in the proposal.

4. **Concessionaire Information Form:** Must be submitted at the time of proposal submission.
5. **Good Faith Effort Documentation:** Must be submitted at the time of proposal submission if the concessionaire fails to meet the ACDBE Goal.
6. **Request for Approval of Change to Original Joint Venture Commitment Form:** For Concessionaire's participation commitment, where an ACDBE firm is a business partner or sub concessionaire, if the ACDBE's information or status changes, Concessionaire must immediately notify BDDD of the change and provide a written explanation for the change by submitting a Request for Approval of Change to Original Joint Venture Commitment form. No change in the use of an ACDBE firm will change Concessionaire's participation commitment. Any change in the use of an ACDBE firm shall be governed by the SUBSTITUTIONS OR TERMINATIONS provisions herein.
7. If requested, Concessionaire must provide the BDDD copies of all agreements with ACDBE business partners within five (5) business days of the written request.
8. Concessionaire shall timely submit reports and verifications within ten (10) business days as requested by the Vice President of BDDD and shall provide such financial information or other information deemed necessary to support and document the ACDBE commitment and ACDBE participation for this Agreement. The Board shall have the right until five (5) years after the expiration or termination of this Agreement, to review books, records and financial information of Concessionaire, and where applicable, all individuals, business partners or other business entities that are engaged in concession activity under this Agreement, to substantiate compliance with 49 C.F.R. Part 23, as amended, and any guidance issued by the Federal Aviation Administration regarding the interpretation of the federal regulations.

G. COMPLIANCE AND ENFORCEMENT

1. These compliance and enforcement provisions address the additional contractual remedies available to Board as a result of Concessionaire's failure, if any, to comply with the obligations set forth in the ACDBE Program requirements. The contractual remedies set forth in the ACDBE Program are also applicable to any failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to any failure by Concessionaire to comply with other obligations under this Agreement unrelated to the Program requirements or preclude Board's recovery of its actual damages for such unrelated breaches.
2. The Concessionaire and its ACDBE business partners must attend and participate in onboarding, progress, or non-compliance meetings and site

visits upon request. The Concessionaire must forward all necessary documents and information during the course of performance under this Agreement and to close out the agreement and must cooperate with BDDD in providing any information, including the final accounting for ACDBE participation on this Agreement.

3. BDDD is empowered to receive and investigate complaints and allegations by ACDBEs, third parties or Board Staff, or to initiate its own investigations, regarding Concessionaire's compliance with the ACDBE Program requirements. If BDDD determines that an investigation is warranted, Concessionaire must fully cooperate with the investigation and provide complete, truthful information to the Board concerning the investigation and Concessionaire's compliance with the ACDBE Program requirements.
4. The failure of Concessionaire to meet the ACDBE contractual commitment or comply with any other aspect of the ACDBE Program requirements may constitute a material breach of this Agreement, entitling the Board to exercise any remedy available in this agreement/contract, the Program requirements or applicable law.
5. The Board may report any suspected false, fraudulent or dishonest conduct relating to the Concessionaire's performance of the Program requirements to the Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
6. If Concessionaire is in breach of any of the ACDBE Program requirements, the Board may exercise any of following remedies, in addition to any other remedies available to it under this agreement/contract or at law or in equity:
 - (a) withholding funds payable under this agreement/contract, including, but not limited to, funds payable for work self-performed by the Concessionaire or applicable retainage;
 - (b) temporarily suspending, at no cost to the Airport Board, Concessionaire performance under the Agreement;
 - (c) termination of this Agreement;
 - (d) suspension/debarment, in accordance with applicable law, of Concessionaire from participating in any solicitations issued by the Airport Board for severity of breach of contract; and
7. With respect to a concessionaire not meeting its ACDBE commitment on a previous agreement or the underutilization of an ACDBE on a previous agreement, BDDD shall regard as non-responsive any proposal or

competitive selection process proposal received that includes the Concessionaire.

8. With respect to ACDBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) SPECIAL CONTRACT PROVISIONS

An M/WBE participation commitment has been established for this Agreement, as noted in Article One (1) of this Agreement and stated in its **Commitment to Minority/Women Business Enterprise (M/WBE) Participation** form. The M/WBE participation commitment is a percentage of the total dollar value associated with the design and construction of tenant finish outs/improvements, including any change orders and/or modifications. Such participation is a contractual commitment upon execution of this Agreement.

Concessionaires are directed to review the attached M/WBE Special Contract Provisions and the related forms below for compliance requirements.

SPECIFIC TO CONCESSION TENANT FINISH OUTS: M/WBE UTILIZATION FORMS AND RELATED DOCUMENTATION

Pre-Award: Concessionaire must submit completed M/WBE utilization forms as required by BDDD.

- **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
- **M/WBE Compliance Plan** must be submitted at the time of proposal submission.
- **Certification Certificates** must be submitted at the time of proposal submission for each M/WBE identified in the proposal.
- **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Concessionaire fails to meet the M/WBE Goal.

Post Award: Concessionaire through its selected Contractor must submit completed M/WBE utilization forms as required by BDDD:

- **Preliminary Schedule of Subcontractors (Design)** must be submitted at the time of the Airport's 35% Design Review Meeting
- **Final Schedule of Subcontractors (Design)** must be submitted at the time of the Airport's 95% Design Review Meeting
- **Preliminary Schedule of Subcontractors (Construction)** must be submitted at the time of Building Permit Application
- **Final Schedule of Subcontractors (Construction)** must be submitted at the time of request for Certificate of Occupancy

[Insert M/WBE Special Provisions]

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) SPECIAL CONTRACT PROVISIONS

Notification is hereby given that an M/WBE Contract Specific Goal has been established for this Contract. The Contractor/vendor has committed to percent (%) M/WBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement. The commitment is a contractual commitment upon execution of the Contract.

A. GENERAL REQUIREMENTS

1. It is the policy of the Dallas/Fort Worth International Airport Board of Directors ("Airport Board") to support the growth and development of Minority/Women Business Enterprises ("M/WBE") that can successfully compete for Airport construction-related professional services prime contracting and subcontracting opportunities.
2. A "Contractor" is defined as one who participates, through a Contract or any other contractual agreement. For purposes of these Provisions, a Contractor is one who seeks to do business with the Airport Board by submission of a bid or proposal on any such contract or subcontract. A Contractor includes but is not limited to a Contractor, consultant, developer or vendors.
3. It is the policy of the Airport Board to ensure non-discrimination in the award and administration of Airport Board Contracts. Consequently, the Contractor must fully comply with the requirements of the Airport Board's Minority/Women Business Enterprise Program Policies and Administrative Procedures in proposing and performing hereunder.
4. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of the Airport Board's M/WBE Policy and Administrative Procedures. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Airport Board deems appropriate. The Contractor shall insert an Article containing all of the provisions of this Section, including this paragraph, in all subcontracts hereunder, except altered as necessary for the proper identification of the contracting parties and the Airport Board under this Contract.
5. The Business Diversity & Development Department ("BDDD") is responsible to ensure compliance with the Airport Board's M/WBE Policy and Administrative Procedures. BDDD has the mission to proactively facilitate and maximize business and capacity building opportunities for M/WBEs by collaborating with internal customers and implementing effective innovative programs and approaches for prime and subcontracting opportunities.
6. The Contractor specifically agrees to comply with all applicable provisions of the Airport Board's M/WBE Policy and Administrative Procedures and any amendments thereto. M/WBE and Non-M/WBE subcontractors also agree to comply with all applicable provisions of the Airport Board's M/WBE Policy and Administrative Procedures ("Policies"). BDDD and or the Airport Board may make

changes to the existing policy, procedures and contract provisions. Any future changes supersede past policies, procedures, contract provisions. The Contractor and subcontractors are responsible to be aware of future changes.

7. The Contractor shall maintain records, as specified in the Audit and Records Section of the Special Provisions in the Contract, showing:
 - a. Subcontract/supplier awards, including awards to M/WBEs;
 - b. Specific efforts to identify and award such Contracts to M/WBEs, such as when requested copies of executed Contracts with M/WBEs to establish actual M/WBE project participation.

B. ADMINISTRATIVE REQUIREMENTS

1. All Contractors are charged with knowledge of and are solely responsible for complying with each requirement of the Policies in making a bid and, if awarded a Contract, in performing the work described in the Contract documents. These instructions are intended only to generally assist the Contractor in preparing and submitting a compliant bid. Should any questions arise regarding specific circumstances, Contractors must consult with the BDDD office at 972-973-5500.
2. The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out its M/WBE contractual commitments.
3. The Contractor agrees to submit monthly reports of payments and subcontract and/or supplier awards to M/WBEs and Non-M/WBEs in such form and manner and at such times as the Airport Board shall prescribe.
4. The Contractor shall provide BDDD access to all books, records, accounts and personnel in accordance with the Audit and Records section of these Special Provisions. Such access will be used for, among other purposes, determining M/WBE participation and compliance with the Policies. All Contractors may be subject to interim and post-contract M/WBE audits. Audit determination(s) regarding Contractor's compliance with the Policies may be considered and have a bearing on consideration of the Contractor for award of future Contracts.

C. GOALS AND GOOD FAITH EFFORTS

1. Determining Responsive, Non-Responsive and Good Faith Efforts (Pre-Award)
 - a. Each Contractor must comply with the terms and conditions of the Policies in making its bid or proposal and, if awarded the Contract, in performing all work thereunder. A Contractor's failure to comply with any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein may render a bid or proposal non-responsive and may constitute cause for rejection.
 - i. Responsive; compliance with requirements. If a bid/proposal meets the Contract Specific Goal or shows an adequate good faith effort in accordance with the Policies, then BDDD shall notify the procuring department to regard the bid/proposal as responsive.

- ii. Non-Responsive; failure to meet requirements. If a bid/proposal subject to a Contract Specific Goal does not meet the goal or show an adequate good faith effort, or provide the necessary documentation or forms outlined in the Policies, then BDDD shall notify the procuring department to regard the bid/proposal as non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport Board.
- b. Under the Policies, BDDD establishes a Contract Specific Goal for each Contract. The specific goal for this Contract is stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the Policies, a Contractor must either meet the M/WBE Contract Specific Goal or demonstrate that the Contractor has made sufficient good faith efforts to meet the Contract Specific Goal. If the Contractor will not meet the M/WBE goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made good faith efforts to meet the M/WBE goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.
- c. For Contracts awarded using the procurement methods of Indefinite Delivery, Job Order Contract, Construction Management-at-Risk or Design Build, a Compliance Plan is required to address the Contract Specific Goal and the utilization of M/WBEs on such Contract, or for alternative demonstration of good faith efforts by the Proposer. The development, scope and utilization of such compliance plans shall be addressed in a separate document.
- d. In evaluating a Contractor's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
- e. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the following criteria with the bid or proposal. The following factors are taken into account when assessing whether a Contractor made good faith efforts to meet the Contract Specific Goal. These factors are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the Contract Specific Goal. These factors should not be considered as a template, checklist or some quantitative formula. A Contractor is required to meet all factors outlined below and provide support documentation in order for good faith efforts to be assessed. Mere pro forma efforts are not good faith efforts to meet the Contract Specific Goal. This means that a Contractor must show that it took all necessary and reasonable steps to achieve a Contract Specific Goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the Contract Specific Goal, even if they were not fully successful. Failure of the Contractor to demonstrate adequate good faith efforts as to any one of the following categories shall render the overall good faith showing insufficient and the bid/proposal non-responsive. The Airport Board will evaluate the good faith efforts on quality, quantity, and intensity of the different kinds of efforts that the Contractor has made based on the regulations and the guidance in 49 C.F.R. part 26. NOT SUBMITTING PROPER SUPPORT DOCUMENTATION IS NOT EVIDENCE OF A PROPER DEMONSTRATION OF GOOD FAITH EFFORT. SUBMITTAL OF THE

CRITERIA, WITH NO ADDITIONAL DOCUMENTATION, WILL NOT BE CONSIDERED ADEQUATE DEMONSTRATION OF GOOD FAITH EFFORT. Contractors are not limited to these particular areas and may include other efforts deemed appropriate. Complete the Commitment to M/WBE Participation form and attach support documentation only if the Contract Specific Goal is not achieved. For additional guidance concerning good faith efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 Part 26, Appendix A). The required M/WBE good faith efforts are set forth below:

- i. Conducting market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified M/WBEs that have the capability to perform the work of the contract. This may include attendance at any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities (acceptable documentation shall include copies of the meeting sign-in sheets with contractor name noted as signed-in) and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all M/WBEs listed in the State and/or Local respective directories of firms that specialize in the areas of work desired (as noted in the M/WBE directory) and which are located in the area or surrounding areas of the project. *The Contractor should solicit this interest as early in the acquisition process as practicable to allow the M/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the M/WBEs are interested in taking appropriate steps to follow up initial solicitations at least three (3) business days prior to bid opening.*
- ii. Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate M/WBE participation, even when the prime contractor 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 and facilitates M/WBE participation.
- iii. Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- iv. Negotiating in good faith with interested M/WBEs. It is the bidder's responsibility to make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that

were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for M/WBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, 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 M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract M/WBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.

- v. Not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the M/WBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. *A prime contractor's inability to find a replacement M/WBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original M/WBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement M/WBE, and it is not a sound basis for rejecting a prospective replacement M/WBE's reasonable quote.*
- vi. Making efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- vii. Making efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- viii. Effectively using the services of available minority/women community organizations; minority/women 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 M/WBEs.
- ix. At a minimum, DFW will review the performance of other bidders/proposers in meeting the contract goal. For example,

when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, DFW may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. As provided in §26.53(b)(2)(vi), the bidder must submit copies of each M/WBE and non-M/WBE subcontractor quote submitted to the bidder when a non-M/WBE subcontractor was selected over a M/WBE for work on the contract to review whether M/WBE prices were substantially higher; and contact the M/WBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

- f. BDDD will review not only at the different kinds of efforts that the Contractor has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the goal, even if they are sincerely motivated. BDDD will also consider if, given all relevant circumstances, the Contractor's efforts could reasonably be expected to produce a level of M/WBE participation sufficient to meet the goal.
- g. Whether or not the Contract Specific Goal has been met and/or whether there were sufficient good faith efforts is considered a matter of the Contractor's responsiveness. The requirement to submit documentation that the goal has been met or good faith efforts documentation has been submitted in the manner prescribed by BDDD is considered a matter of the Contractor's responsiveness. The Airport Board will only award Contracts to Contractors determined to be responsive and responsible. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the good faith efforts decision. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts to meet the M/WBE Contract goal and, if not, shall recommend that the Contractor be deemed non-responsive.
- h. If a Contractor, that has submitted good faith efforts documentation, desires a review of BDDD's decision, it must file a written request for an appeal within two (2) business days after receipt of the written decision to the following Reconsideration Official:

Executive Vice President
Administration & Diversity
P.O. Box 619428
DFW Airport, TX 75261-9428

- i. As part of the reconsideration, the Contractor will have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Contractor will also have the opportunity to provide written documentation or argument concerning the issue of good faith. Arguments, evidence, and documents supporting the basis for the appeal must be received no later than five (5) business days after the notice of appeal is filed. The Reconsideration Official's decision shall be made based solely on the entire administrative record presented with the original good faith efforts documentation. No new additional information

or documentation can be provided or allowed for review. The Reconsideration Official will issue a final written decision in response to the appeal.

2. M/WBE Commitment Modification Due to Change in Scope of Work (Post Award)
 - a. The Contractor has a continuing obligation as a covenant of performance to meet the M/WBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance is not able to meet its original M/WBE commitment, due to changes to the scope of work made by the Airport Board, the Contractor must notify BDDD immediately to request a Goal Modification.
 - b. Such good faith efforts during Contract performance must include, but are not limited to:
 - i. Solicitation of M/WBEs that are certified in the applicable area of work or specialty;
 - ii. Providing interested M/WBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
 - iii. Fairly investigating and evaluating the interested M/WBEs' regarding their capabilities, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized M/WBE because the M/WBE was not qualified;
 - iv. Negotiating in good faith with interested M/WBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested M/WBEs and providing written documentation why the Contractor and any of the M/WBEs contacted did not succeed in negotiating an agreement; and
 - v. Effectively using the services of available minority and women community organizations; chambers and Contractor groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of M/WBEs
 - c. Modified good faith efforts must be demonstrated to be meaningful and not merely for formalistic compliance with this requirement. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort.
 - d. A Contractor determined not to have made good faith efforts to meet its M/WBE contractual commitments may request administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made good faith efforts in accordance with the Policies. BDDD's determination shall be final.

D. COUNTING M/WBE PARTICIPATION

1. BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the Policies. In determining if a Contractor's committed levels of participation meet or exceed the solicitation's Contract Specific Goal, BDDD shall base its determination solely on the information provided in the bid or proposal document.
2. If a joint venture is proposed to meet the Contract Specific Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the M/WBE will perform with its own workforce, reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.
3. When counting the M/WBE participation on bids with charged reimbursable expenses, deductive or add alternatives, the responsiveness determination shall be based on the base bid. Contractors, however, are strongly encouraged to include M/WBE participation on add alternates and charged reimbursable expenses when feasibly possible. Any participation achieved on add alternates and charged reimbursable expenses will be credited towards the M/WBE goal.
4. When calculating participation levels, percentages and dollar amounts for each M/WBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific Goal.
5. A Contractor cannot require an M/WBE subcontractor to enter into an exclusive arrangement for purposes of submitting its bid or proposal or require the M/WBE subcontractor to enter into a non-compete arrangement post award
6. Post award, the Contractor may count towards its M/WBE contractual commitment a M/WBE that is certified by an approved entity during the performance of the Contract if the M/WBE is added to the Contract or substituted for a M/WBE pursuant to M/WBE SUBSTITUTIONS OR TERMINATIONS section herein.
7. The Contractor may not count toward its M/WBE contractual commitment the dollar value of work performed by a M/WBE after it has ceased to be certified as an M/WBE.
8. M/WBE prime Contractors can count their self-performance toward meeting the Contract Specific Goal, but only for the scope of work and at the percentage level they will self- perform.
9. M/WBE prime Contractors cannot count their self-performance in lieu of meeting an M/WBE subcontracting commitment made at the time of contract award.
10. When a M/WBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the M/WBE toward the Contract Specific Goal.
11. All M/WBE contractors, subcontractors, joint ventures, suppliers, manufacturers, manufacturer's representatives, or brokers listed in the bid or proposal must actually perform a commercially useful function in the work of a contract within the area(s) for which they are certified, and must not act as a conduit. In no case, however, shall an M/WBE act as a conduit, nor shall the participation of an

M/WBE count toward the goal to the extent it fails to perform a commercially useful function.

12. When a Contractor utilizes an M/WBE staffing service to perform work and the employees of the staffing firm are Contract employees that do not receive paid benefits, the Contractor shall count only the amount of fees or commissions charged by the staffing service for providing labor force.
13. A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate subcontractor, as defined in the M/WBE Program Policy and Administrative Procedures, Glossary of Definitions.
14. The Contractor shall count the entire amount of that portion of a Contract (or other Contract not covered by this section) that is performed by the M/WBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the M/WBE for the work of the Contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE subcontractor purchases or leases from the prime Contractor or its affiliate).
15. When a M/WBE subcontracts part of the work of its Contract to another firm, at any tier, the value of the subcontracted work may be counted towards the M/WBE goal only if the M/WBE's subcontractor is itself a M/WBE. Work that a M/WBE subcontracts to a non-M/WBE does not count toward M/WBE goal.
16. The Contractor will count expenditures to a M/WBE subcontractor toward the M/WBE goal only if the M/WBE is performing a commercially useful function on the Contract.
 - a. A M/WBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether a M/WBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, the M/WBE credit claimed for its performance of the work, and other relevant factors.
 - b. A M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether a M/WBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which M/WBEs do not participate.
 - c. If a M/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work forces, or the M/WBE subcontracts a greater portion of the work of a Contract then would be expected on the basis of normal industry practice for the type

of work involved, the Contractor must presume that it is not performing a commercially useful function.

- d. When a M/WBE is presumed not to be performing a commercially useful function as provided in this section, the M/WBE may present evidence to rebut this presumption. BDDD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
17. The Contractor shall use the following factors in determining whether a M/WBE trucking company is performing a commercially useful function:
- a. The M/WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of appearing to meet the M/WBE goal.
 - b. The M/WBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
 - c. The M/WBE shall receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The M/WBE may lease trucks from another M/WBE, including a owner-operator who is certified as a M/WBE. The M/WBE who leases trucks from another M/WBE shall receive credit for the total value of the transportation services the lessee M/WBE provides on the Contract.
 - e. The M/WBE may also lease trucks from a non-M/WBE, including from an owner-operator. The M/WBE who leases trucks from a non-M/WBE is entitled to a credit only for the fee or commission it receives as a result of the lease arrangement. The M/WBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a M/WBE.
 - f. For purposes of this paragraph, a lease must indicate that the M/WBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the M/WBE, so long as the lease gives the M/WBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the M/WBE.
18. Suppliers: A supplier may be a regular dealer, manufacturer, manufacturer's representative or broker. The Contractor shall count expenditures to M/WBEs for materials or supplies towards the M/WBE goal as follows:
- a. On Airport Board contracts of less than five million dollars (\$5,000,000.00), at the time of bid openings or proposal selection, one hundred percent (100%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the M/WBE goal.
 - b. On Airport Board contracts of five million dollars (\$5,000,000.00) or more, at the time of bid opening or proposal selection, sixty percent

(60%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the M/WBE goal.

19. If a M/WBE subcontractor is not certified at the time of the execution of the Contract, supplemental agreement or subcontract, the Contractor may not count the firm's participation toward the M/WBE goal until the firm is certified. Counting of participation is not retroactive. Additionally, the Contractor shall not count the dollar value of work performed under a Contract with a firm after it has ceased to be M/WBE certified.
20. The Airport Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion.
21. The Contractor shall not count the participation of a M/WBE subcontractor toward the goal until the amount has been actually paid to the M/WBE.
22. The following expenditures to M/WBEs may also count toward the M/WBE goal:
 - a. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Airport Board to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. The fees charged for delivery of material and supplies required on a job site (but not the cost of 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 BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. The fees of commission charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
23. Joint Ventures: The Airport Board shall encourage where economically feasible joint ventures to encourage prime contracting opportunities for M/WBEs on all eligible Contracts, including commercial development agreements.
 - a. If a Contractor engages in a joint venture to satisfy its M/WBE commitment, BDDD shall review all contractual agreements or other pertinent documents regarding:
 - i. The initial capital investment of each venture partner;
 - ii. The proportional allocation of profits, losses and risks to each venture partner;
 - iii. The sharing of the right to control the ownership and management of the joint venture;

- iv. Actual participation of the venture partners in the performance of the Contract;
 - v. The method of and responsibility for accounting;
 - vi. The methods by which disputes are resolved; and
 - vii. Other pertinent joint venture factors.
- b. A draft of the proposed joint venture agreement must be submitted with the bid or proposal to BDDD for its approval in writing. BDDD shall determine the degree of M/WBE participation resulting from the joint venture that may be credited towards the Contract Specific Goal.
 - c. BDDD will count M/WBE participation where the M/WBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the M/WBE in a joint venture. BDDD will allow the joint venture to 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 M/WBE joint venture partner performs with its own forces toward the M/WBE commitment and for which it is at risk.
 - d. If, after the award of a contract to a team, any member of the team believes that the terms and conditions of the agreement as approved by BDDD have not been complied with, then such member may seek review and mediation of such agreement before the Vice President of BDDD. The request for review must be made in writing.
 - e. In the event that the mediation with the Vice President, does not resolve all disputes, the Vice President of BDDD shall have the option of referring mediation proceedings to a qualified outside mediator, the costs to be borne by the interested parties.

24. Teaming Agreements

- a. If the bidder or proposer submits a teaming agreement that includes one (1) or More M/WBEs, the value of the commercially useful function to be performed by the M/WBEs in the teaming agreement as the distinct, clearly defined portion of the work of the teaming agreement that the M/WBE performs with its own forces or for which it is separately at risk shall count toward satisfaction of the project goal. The teaming agreement is subject to review and approval by the BDDD, and the teaming agreement shall be provided to BDDD at least ten (10) days prior to the date of bid opening or the date of final project-specific proposal, in the case of a competitive selection process unless otherwise set forth in the request for bids or proposals, as required by BDDD. Teaming agreement participation will count toward the satisfaction of the project goal upon confirmation by the BDDD of the utilization in the teaming agreement arrangement and full integration of work forces by the teaming agreement parties.
- b. BDDD will establish prior to issuing the request for bids or the request for proposals any criteria to evaluate the use of teaming agreements for the project. As to each teaming agreement under this Section, a

written teaming agreement must be completed by all parties to the teaming agreement and executed, which clearly delineates the rights and responsibilities of each teaming party, complies with any requirements of the BDDD department as set forth in the bid documents or otherwise, and provides that the teaming agreement shall continue for, at a minimum, the duration of the project.

- c. BDDD shall review and approve all contractual agreements regarding the terms and provisions of each teaming agreement prior to the award of a contract, including agreements pertaining to:
 - i. Actual participation of the teaming members on the project;
 - ii. The high value work to be performed by the teaming members;
 - iii. The method by which disputes are resolved; and
 - iv. Any additional or further information required by BDDD as set forth in the bid documents or otherwise.
 - d. Teaming parties may submit agreements for pre-approval no later than ten (10) calendar days prior to the date set for receipt of bids or proposals on a project, but in no event later than designated in the bid documents or requests for proposals. A bid or proposal submitted by a teaming relationship that does not include a satisfactory written teaming agreement as applicable, in accordance with the requirements of this Section shall be deemed non-responsive and rejected.
 - e. The teaming parties shall provide the BDDD access to review all records pertaining to teaming agreements before and after the award of a contract in order to reasonably assess compliance with the policy and procedures.
 - f. If, after the award of a contract to a team, any member of the team believes that the terms and conditions of the agreement as approved by BDDD have not been complied with, then such member may seek review and mediation of such agreement before the Vice President of BDDD. The request for review must be made in writing.
 - g. In the event that the mediation with the Vice President, does not resolve all disputes, the Vice President of BDDD shall have the option of referring mediation proceedings to a qualified outside mediator, the costs to be borne by the interested parties.
25. The parties shall provide all records pertaining to the joint venture or teaming arrangement before and after the award of a Contract reasonably necessary to access compliance with these requirements, including but not limited to, certification and financial records.

E. CERTIFICATION

- 1. In order to count the participation of M/WBEs towards the Contract goal, the M/WBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable.

2. In addition to having a valid certification from one of the entities listed above, the M/WBE must have a place of business in the Airport Board's market area at the time the bid or proposal is submitted for credit towards meet the M/WBE goal, which is defined as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties.
3. The M/WBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD. Use of a P.O. Box address, another person's or firm's office space, virtual offices or staffing services are not considered a place of business.
4. Affiliate/Affiliation: Regardless of certification by a recognized agency, the M/WBE must be an independent business and not an affiliate of any other business. Affiliate means any business entity that is affiliated with an M/WBE or with owners of such M/WBE or any other business enterprise. Business enterprises are affiliates of each other when:
 - a. One either directly or indirectly, through one or more intermediaries, controls or has the power to control the other; or
 - b. A third party or parties controls or has the power to control both; or
 - c. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
 - d. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
 - e. *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.
 - f. Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another.
5. The Airport Board in its sole discretion shall determine whether an applicant is an independent business.
6. The Contractor must submit to BDDD a properly completed M/WBE Certification Certificate or letter, with all required attachments, for all M/WBEs proposed to be utilized as subcontractors or suppliers to meet the Contract Specific Goal at the time of bid/proposal submission. The Airport Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion. Such rejection shall be in writing and state the reason(s) for the rejection. A Contractor whose proposed certified firm is rejected for goal

credit may request reconsideration of the rejection to the BDDD in writing. The request for reconsideration must be received by the BDDD within two (2) business days of the notification of rejection. BDDD's decision on the request shall be final.

7. A firm must be certified as a M/WBE at the time of bid or proposal submission to be counted towards meeting the goal for purposes of determining Contract award.
8. Dollars paid to a firm prior to them obtaining an approved certification are not retroactive.
9. BDDD maintains a listing of certified firms that have expressed an interest in doing business with the Airport Board or are currently doing business with the Airport Board. The directory is not a certification database. Certifications listed are provided by third-party service providers. Bidders and proposers may use its Directory to assist them in locating M/WBEs for the work required on the Contract however the certifications should be verified through the approved certification agency.
 - The M/WBE Directory is located at:
<https://dfw.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=dfw&XID=5886>
10. M/WBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

E. PRE-AWARD COMPLIANCE PROCEDURES

1. M/WBE Utilization Forms and Related Documentation
 - a. Each Contractor must submit for all solicitations, bids or proposals, completed M/WBE utilization forms as outlined below to be considered responsive. If the Contract Specific Goal is 0% and no M/WBE participation is proposed, including no M/WBE self-performance, the required forms should be noted as "Not Applicable".
2. Request for Qualifications (RFQ) – Architectural/Engineering Services, Design & Design Management Services
 - **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts.
 - **Certification Certificates** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
 - **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
 - **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.

- **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
3. Request for Proposal (RFP) – Construction-related Professional Services
- **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts.
 - **Certification Certificates** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
 - **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
 - **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
 - **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
4. Request for Proposal (RFP) - Indefinite Delivery: task/delivery order, Job Order Contracts, Construction Manager-at-Risk Services:
- **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - **Compliance Plan** must be submitted at the time of proposal submission.
 - **Certification Certificate for Prime** must be submitted at the time of proposal submission if a certified Prime is claiming credit for self-performance.
 - **Good Faith Effort Documentation.** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
 - **Final Schedule of Subcontractors** must be submitted with each price proposal when a delivery order price proposal is requested from the Contracting Department.
 - **Certification Certificates for Subcontractors** must be submitted with the Final Schedule of Subcontractors for each M/WBE listed on the Schedule.
 - **Intent to Perform as a Subcontractor** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor.
5. Request for Proposal (RFP) – Design Build (Two Programs Apply)
- **Commitment to M/WBE Participation (Design)** must be submitted at the time of proposal submission.
 - **Preliminary Schedule of Subcontractors (Design)** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than the specific dollar amounts.
 - **Certification Certificates (Design)** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.

- **Intent to Perform as a Subcontractor (Design)** must be submitted at the time of proposal submission for each M/WBE subcontractor identified on the Preliminary Schedule of Subcontractors.
 - **Final Schedule of Subcontractors (Design)** must be submitted with the best and final offer and prior to processing an Official Board Action.
 - **Commitment to MBE Participation (Construction)** must be submitted at the time of proposal submission.
 - **Compliance Plan (Construction)** must be submitted at the time of proposal submission.
 - **Certification Certificate for Prime** must be submitted at the time of proposal submission if a certified Prime is claiming credit for self-performance.
 - **Final Schedule of Subcontractors (Construction)** must be submitted at the Airport's Initial Project Kick-Off Meeting for Construction.
 - **Certification Certificates for Subcontractors (Construction)** must be submitted with the Final Schedule of Subcontractors for each certified subcontractor.
 - **Intent to Perform as a Subcontractor (Construction)** must be submitted with the Final Schedule of Subcontractors for each certified subcontractor.
 - **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the M/WBE and/or MBE goal.
6. Commercial Development – Third Party Tenant Leases (Two Programs Apply)
- **Commitment to M/WBE Participation (Design)** must be submitted prior to processing an Official Board Action.
 - **Commitment to MBE Participation (Construction)** must be submitted prior to processing an Official Board Action.
 - **Final Schedule of Subcontractors (Design)** must be submitted at the Airport's Initial Project Kick-Off Meeting.
 - **Final Schedule of Subcontractors (Construction)** must be submitted at the Airport's Pre-Construction Meeting.
7. Any commitments to meet the Contract Specific Goal must be detailed on the **Commitment to Minority/Women Business Enterprise (M/WBE) Participation** form included with the bid/proposal. Submission of the form shall constitute a representation by the Contractor to the Airport Board that it commits to maintain the M/WBE participation level to which it committed to at the time of Contract award throughout the performance of the Contract.
8. The **Schedule of Subcontractors** form must list all subcontractors and suppliers the Contractor intends to use in performing the work of the project, including non-M/WBEs, and detail the preliminary and/or final percentage and dollar commitment of the Contractor to M/WBE participation. Only certified M/WBEs identified and the levels of participation listed for each at the time of bid/proposal submission will be considered in determining whether the Contractor has met the Contract Specific Goal. All M/WBEs must be properly certified under the guidelines of the CERTIFICATION section. Modifications, substitutions or termination of the M/WBEs identified must follow the guidelines of the M/WBE SUBSTITUTIONS OR TERMINATIONS section.
9. Submission of the **Intent to Perform as a Subcontractor** form for each M/WBE shall constitute a representation by the Contractor to the Airport Board that it

believes such M/WBE to be certified as a M/WBE to perform the work as designated, the M/WBE has a place of business in the Airport Board's market area and the M/WBE is not affiliate with the Contract as defined herein. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter into a subcontract with such M/WBE for the work described at the approximate price and percentage set forth in the **Intent to Perform as a Subcontractor** form.

10. The Contractor shall enter into formal agreements with the M/WBE firms for work as indicated on the **Final Schedule of Subcontractors** and **Intent to Perform** forms within 10 (ten) business days after receipt of the Contract executed by the Airport Board or Notice to Proceed executed by the Airport Board. The Contractor, if requested, shall provide to BDDD copies of those agreements within 5 (five) business days of execution. The Airport Board reserves the right to review selected agreements at random.
11. If the M/WBE subcontractor information or status changes after the forms have been submitted but prior to award of the Contract (pre-award), the Contractor must immediately notify BDDD of the changes and a written explanation for the change by submitting a **Request for Approval of Change to Final Schedule of Subcontractors** form. No change in M/WBE participation after bid submission, but prior to Contract award, may change, or be deemed to change, the Contractor's submitted bid amount.
12. Post award, any substitution or termination of M/WBEs that occur after Contract award, must be processed using the Airport Board's Diversity Management System and follow the M/WBE Policy and Administrative Procedures stated in Section XII. CONTRACT SPECIFIC COMMITMENT MODIFICATIONS OR M/WBE SUBSTITUTIONS.
13. Contractors must appoint and designate to BDDD a high-level official to administer and coordinate its contractual M/WBE commitments.
14. Alternative **Compliance Plan**
 - a. Bids/Proposals with the provision of Indefinite Delivery for a period of time and with no delineation of the dollar amount for specific on-call projects, the Contractor shall submit only the anticipated overall percentage of M/WBE contractual commitment and a completed Compliance Plan at the time of bid/proposal submission to demonstrate compliance with the policy and procedures.
 - b. For contracts and/or proposals that are not determined to utilize a Compliance Plan and that do not delineate the dollar amount of a specific project, the bidder or proposer need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts.
 - c. The Compliance Plan shall be developed in accordance with the following requirements:
 - 1) BDDD may require separate Contract Specific Goals for professional services and for construction services, or set a project aggregate Contract Specific Goal. The Compliance Plan may be required to address the professional services goal and

the construction services goal, one or the other, or any project aggregate goal in BDDD's discretion.

- 2) The professional services and/or construction services goal shall be expressed as a percentage of either the total amount of any lump sum Contract awarded to complete a project, or in the alternative, the total estimated "cost of the work" as that term is defined in any guaranteed maximum price Contract awarded to complete a project.
 - 3) Submission and review of a Contractor's proposed Compliance Plan will occur as a solicitation submittal requirement. Failure to comply with the submittal timetable may result in no further consideration of the proposed Compliance Plan and rejection of the proposal.
- d. At a minimum, a proposed Compliance Plan must:
- 1) Comply with the M/WBE Policy and Administrative Procedures, including affirming that BDDD shall have prompt, full and complete access to all Contractor and subcontractor personnel, books and records required to monitor and assure performance of the approved Compliance Plan. The Contractor must acknowledge the Airport Board's right to impose monetary penalties and/or withhold payment in the event of non-compliance and subject the Contractor to sanctions pursuant to the M/WBE Policy and Administrative Procedures.
 - 2) Provide a detailed program for community outreach and support to enhance M/WBE opportunities.
 - 3) Provide a detailed program describing how the Contractor will divide up the anticipated work into economically feasible units calculated to enhance M/WBE opportunities.
 - 4) Describe in detail how the Contractor will make good faith efforts to meet the project goal(s), including work that the Contractor would normally self-perform, and provide for review, reconciliation milestones and audit opportunities for BDDD.
 - 5) If the proposed Compliance Plan is based upon a phased or packaged buy out of the projected construction work, the Contractor will describe the process by which it will address the project goal(s) on a phased/ package or cumulative basis.
 - 6) Describe how the Contractor will comply with the requirements herein as part of the subcontractor buyout of the construction work, including use of commitment forms, Schedule of Subcontractors, Intent to Perform and joint venture forms to adequately document committed participation attained.
 - 7) Contain a specific acknowledgement of the Contractor's continuing duty to meet the requirements of the M/WBE Policy and Administrative Procedures. The Compliance Plan must detail how the Contractor will make good faith efforts to maintain its M/WBE commitments.

- 8) Set forth how the Contractor will comply with BDDD's Diversity Management System for tabulation of participation performance and plan administration and for monitoring and reporting progress and participation performance to BDDD.
 - 9) Recommend methods for supporting BDDD administration and oversight of the Compliance Plan.
 - 10) Set forth a detailed methodology for issuance of notice(s) of non-compliance to the Contractor's subcontractors with the Compliance Plan and a reasonable opportunity to cure.
 - 11) Set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal(s) and Compliance Plan close out.
- e. BDDD shall approve or reject the proposed Compliance Plan. If the proposed Compliance Plan is rejected, BDDD will provide rejection comments and the Contractor may submit a revised Compliance Plan by a date set by BDDD. BDDD in its sole discretion may meet with the Contractor to discuss any deficiencies that must be addressed in the revised Compliance Plan. If BDDD determines the revised Compliance Plan is insufficient to meet the requirements of the M/WBE Policy and Administrative Procedures, it shall notify the Procuring Department to regard the bid/proposal as non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport Board. In no event shall a Contract to construct a project be awarded, executed or continue without an approved Compliance Plan.

G. PAYMENT

1. Monitoring Contractual Commitments and Payments to M/WBEs
 - a. It is Airport Board policy that all Contractor invoices in compliance with Contract payment terms and conditions be paid within 30 days of receipt.
 - b. All Contractors must comply with the Texas Prompt Pay Act (Chapter 2251; Texas Government Code) paying all sums, including retainage withheld from subcontractors, to subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities, including paying such persons or entities within 10 days of receiving payment from the Airport Board their appropriate share of such payment. No Contractor that has received payment of an undisputed amount from the Airport Board may withhold from any subcontractor its undisputed appropriate share of such payment.
 - c. No Contractor may withhold retainage from any subcontractor at a higher percentage rate than retainage is withheld by the Airport Board from Contractor. Except for the Texas Prompt Pay Act requirement that a Contractor release retainage to a subcontractor within 10 days of that subcontractor's invoice for retainage, each Contractor must withhold/release retainage from/to each subcontractor in at least the same manner as retainage is withheld/released by the Airport Board

from/to Contractor (and must include provisions in its subcontracts ensuring this), including, but not limited to mirroring the Airport Board's treatment of retainage withheld/released to Contractor concerning the following subjects:

- i. the percentage amount of retainage withheld/released;
 - ii. the schedule for withholding/releasing retainage;
 - iii. the phased release of retainage according to any phased completion (substantial/final) of portions of the project;
 - iv. the optional cessation of withholding retainage prior to substantial/final completion of, or final payment for, the project (e.g. optional cessation when 50% of project is substantially complete, with an Airport Board's right to resume withholding retainage upon the occurrence of certain events);
 - v. the release of retainage prior to final payment, less an amount withheld to cover a percentage of the value of punch-list work required before final completion is certified (e.g. retention of 200% of the value of punch-list work pending certification of final completion).
- d. Each Contractor must address (and implement) in its subcontracts the subject of retainage so that each subcontractor is treated by the Contractor in the same manner as Airport Board treats the Contractor. Nothing in this provision precludes a Contractor from including in its subcontracts retainage provisions that are more favorable than those contained in the Contract between Airport Board and Contractor, including, but not limited to, provisions withholding retainage at a lesser percentage rate, releasing retainage in part/whole earlier than retainage released by Airport Board and/or withholding less retainage than Airport Board withholds to cover the value of punch-list work required to be completed before final completion certification.
- e. DFW encourages all Contractors and their subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities to make payment of invoices submitted to them more expeditiously than required under the Texas Prompt Pay Act.
- f. Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
- g. The Airport Board may withhold progress payments until the Contractor demonstrates compliance with the payment terms of this Contract or applicable law, including withholding progress payments solely relating to monies payable to Contractor for work it self-performs or associated retainage.
- h. The Airport Board may also exercise any other rights or remedies available to it under this Contract or applicable law if Contractor fails to comply with the payment terms of this Contract or applicable law.
- i. In an effort to remove the race- and gender-neutral barrier of the length of time for subcontractor payments on Airport Board procurements, the Airport Board has an Expedited Payment Policy for eligible Contractors

that may elect to voluntarily participate in. This policy is applicable if a Contractor has been awarded a multi-year Contract for construction and/or maintenance services of at least \$10,000,000 in Contract value. The Expedited Payment program requires those eligible Contractors that voluntarily participate in the program to pay their subcontractors within seven (7) calendar days after receipt of the subcontractor's invoice. The Airport Board would then pay interest and provide other incentives to the Contractor on eligible expedited payments according to the Expedited Payment Process and Policy. The terms for Expedited Payment will be negotiated prior to the issuance of the Notice to Proceed.

- j. To ensure that the Contractor meets its M/WBE contractual commitment, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions from the original Contract period. If a Contract includes an M/WBE contractual commitment, the Contractor must report all M/WBE payments using the Airport Board's Diversity Management System and submit verifying information as outlined below, concurrent with the Contractor's submission of each payment request. The information provided will be utilized to provide constant monitoring of the payments made to the M/WBE as well as non-M/WBE subcontractors in relation to the percentage of work performed. Failure to submit this information with the payment request will result in the invoice being returned to the Contractor.
 - i. As of 2012, Contractors with new contracts are required to report all payments online utilizing the Airport Board's Diversity Management System and submit a data entry confirmation with each payment request. The confirmation is a print out of what was entered into the system.
 - ii. Contracts prior to 2012, are required to submit the original Pay Period Activity Report form with the payment request, unless they choose to report online, when then defaults to Paragraph 10.a.
2. Training for the Airport Board's Diversity Management System: The Contractor is responsible for ensuring its employees who are processing payment requests on its company's behalf are trained on the Airport Board's Diversity Management System. This includes all subcontractors who the Contractor will be utilizing on the contract and will be verifying reported sub payments online.
 3. Contract Close Out: To ensure that the Contractor meets all its M/WBE contractual commitments, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions of the original Contract period, prior to receiving final payment. The Contractor must report all final M/WBE payments using the Airport Board's Diversity Management System and submit a data entry confirmation with the final payment request or **Final Pay Period Activity Report** if the Contract was awarded prior to 2012. In addition, the Contractor must ensure all subcontractor payment verifications are complete in order for BDDD to close out the Contract.
 4. Dispute Resolution: BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or

subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD.

5. On-Site Inspections: Compliance monitoring may also include on-site inspections. The Contractor is responsible for providing BDDD, if requested, a project work scheduler together with a list of all subcontractors for the scheduled work.
6. All reports of noncompliance will be referred by BDDD to the contract administrator, and if appropriate, to the Legal Department.

H. M/WBE SUBSTITUTIONS OR TERMINATIONS

1. If change orders, amendments or any other Contract modifications are issued under the Contract, the Contractor has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase or decrease in the scope of work of such Contract, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
2. If change orders or other Contract modifications are issued under the Contract that include an increase in the scope of work whether by amendment, change order, force account or otherwise which increases or decreases the dollar value of the Contract, whether or not such change is within the scope of work designated for performance by a M/WBE at the time of Contract award, then such amendment, change order or other modification must be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its M/WBE contractual commitment with existing M/WBEs first. If the Contractor is unable to meet its M/WBE contractual commitment with existing M/WBEs, the Contractor shall satisfy its commitment, as it relates to changed scope of work, modifications, and or amendments, by soliciting new M/WBEs and must submit a **Request for Approval of Change to Final Schedule of Subcontractors**, through the Airport Board's Diversity Management System and must be approved in writing by BDDD.
3. The Contractor cannot terminate or otherwise change the terms of its Final Schedule of Subcontractors prior to or after Contract award without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a M/WBE subcontractor with its own forces or those of an affiliate, a non-M/WBE or another M/WBE.
4. The Contractor must demonstrate good cause to terminate or substitute the M/WBE and seek BDDD approval prior to taking any termination or substitution action. Good cause includes the following circumstances:
 - a. The listed M/WBE subcontractor fails or refuses to execute a written Contract.
 - b. The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
 - c. The listed M/WBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.

- d. The listed M/WBE is ineligible to work on Airport Board projects because of suspension and debarment proceedings pursuant to federal or state law or other applicable laws or regulations.
 - e. BDDD has determined that the listed M/WBE subcontractor is not a responsible Contractor.
 - f. The listed M/WBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
 - g. The listed M/WBE subcontractor is ineligible to receive certification for the type of work required.
 - h. The M/WBE owner dies or becomes disabled with the result that the listed M/WBE subcontractor is unable to complete its work on the Contract.
 - i. Other good cause as determined in BDDD's sole discretion,
5. Good cause does not include where the Contractor seeks to terminate an M/WBE it relied upon to obtain the Contract so that the Contractor can self-perform the work or substitute another M/WBE or non-M/WBE subcontractor to perform the work for which the M/WBE was engaged or listed on the **Final Schedule of Subcontractors**.
 6. The Contractor must give the M/WBE notice in writing, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the detailed reasons for the request. The Contractor and the M/WBE must attempt to negotiate a resolution of the situation, and if the negotiation is unsuccessful, the Contractor must document this effort before the Contractor seeks BDDD's approval to substitute the M/WBE.
 7. Contractors must meet the above criteria and process before requesting prior written approval of any material change in the ownership, control, duties, functions and responsibilities of any M/WBE. The Contractor cannot make any changes to the **Final Schedule of Subcontractors** without the prior written consent of BDDD.
 8. If the Contractor proposes to terminate or substitute a M/WBE subcontractor for any reason, the Contractor must make good faith efforts as defined herein to find a substitute M/WBE subcontractor that is already certified for the original M/WBE to meet its M/WBE contractual commitment. Its good faith efforts shall be directed at finding another M/WBE to perform or provide at least the same amount of work, material or service under the Contract as the original M/WBE to the extent necessary to meet its M/WBE contractual commitment. The Contractor may also find additional M/WBEs and/or adjust the current/projected M/WBE participation to meet its M/WBE contractual commitment.
 9. The Contractor must submit an **Intent to Perform as a Subcontractor** form for each proposed new M/WBE subcontractor. BDDD will approve or disapprove the substitution based on the Contractor's documented compliance with these provisions.
 10. All changes to the **Schedule of Subcontractors** form must be submitted for review and approval through the Airport Board's Diversity Management System

utilizing the **Request for Approval of Change to Final Schedule of Subcontractors** form when adding, changing, or deleting any subcontractor.

11. If the Contractor does not comply with these provisions relating to the modification or termination of, and/or substitution for a M/WBE subcontractor, the Airport Board may elect to apply Contract remedies as described in the M/WBE Policy and Administrative Procedures.

I. COMPLIANCE AND ENFORCEMENT

1. These provisions address the additional contractual remedies available to the Airport Board as a result of the Contractor's failure to comply with the obligations set forth in the M/WBE Policy and Administrative Procedures. The contractual remedies set forth are also applicable to the Contractor's failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to the Contractor's failure to comply with other obligations under the Contract unrelated to the Program requirements or preclude Airport Board's recovery of its actual damages for such unrelated breaches.
2. The Contractor must attend and participate in onboarding, progress, non-compliance meetings and site visits upon request. The Contractor must forward all necessary documents and information during the course of performance and to close out the Contract and must cooperate with BDDD in providing any information, including the final accounting for M/WBE participation on the Contract.
3. BDDD is empowered to receive and investigate complaints and allegations by M/WBEs, third parties or Airport Board Staff, or to initiate its own investigations, regarding Contractor's compliance with the Program requirements. If BDDD determines that an investigation is warranted, the Contractor must fully cooperate with the investigation and provide complete, truthful information to the Airport Board concerning the investigation and Contractor's compliance with the Program requirements.
4. The failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements will constitute a material breach of the Contract entitling the Airport Board to exercise any remedy available in this Contract, the Program requirements or applicable law. In addition, the failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements may be considered and have a bearing on future contract award considerations.
5. The Airport Board may report any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements to the Airport Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
6. If Contractor is in breach of any of the Program requirements, the Airport Board may exercise any of following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:
 - a. withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;

- b. temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
 - c. termination of the Agreement/Contract;
 - d. suspension/debarment, in accordance with applicable law, of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.
7. With respect to a firm not meeting a goal on a previous contract or the underutilization of an M/WBE(s) on a previous contract, BDDD shall regard as non-responsive any bid, proposal or competitive selection process proposal received that includes the Contractor, consultant as a Contractor, consultant, subcontractor, subconsultant, joint venture, supplier, manufacturer's representative, or broker.
8. With respect to M/WBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

(End of M/WBE Special Contract Provisions)