

LEASE AND CONCESSION AGREEMENT  
FOR  
DUTY FREE OPERATIONS

Between

PORT OF SEATTLE

And

DUFY-SEATTLE JV

## SUMMARY OF KEY LEASE TERMS

(This page is for quick reference only, please refer to the Agreement for the full detail)

Agreement Date									
Concessionaire:	Ms. Courtney M. Thornton Executive Vice President <b>DUFRY-SEATTLE JV</b> One Meadowlands Plaza, 11 <sup>th</sup> Floor East Rutherford, NJ 07073								
Notice to Open Date	<b>January 1, 2021</b>								
Expiration Date:	Unless earlier terminated, pursuant to any provision of this Agreement, the term shall commence on <b>January 1, 2021</b> and continue for a period of <b>three (3) years December 31, 2023</b> the Expiration Date. Said Agreement may be extended for two (1) additional options period, by mutual consent from both the Port and Concessionaire, <b>so long as both parties have provided to each other written notice consenting to the option not less than</b> one hundred eighty (180) calendar days' prior to the Expiration Date and/or Option Expiration Date.								
Premises:	Units: <b>CA-11</b> <b>CT-07</b> <b>SS-08</b> As more fully defined in Sections 1.35, 3.1 and Exhibit B								
Use of Premises:	For the purpose of Duty-Free concessions with an approved for Duty-Paid concessions within the space.								
Rent Commencement Date:	<b>January 1, 2021</b>								
Minimum Annual Guarantee Amount:	Beginning on <b>January 1, 2022</b> Concessionaire shall begin to pay a Minimum Annual Guarantee, as more fully defined in Section 5.2.								
Percentage Fees:	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><i>Annual Gross Sales</i></th> <th style="text-align: center;"><i>Percentage of Gross Sales</i></th> </tr> </thead> <tbody> <tr> <td>Annual Gross Sales less than \$5,000,000</td> <td style="text-align: center;">16%</td> </tr> <tr> <td>Annual Gross Sales between \$5,000,001 and \$10,000,000</td> <td style="text-align: center;">18%</td> </tr> <tr> <td>Annual Gross Sales equal to or greater than \$10,000,000</td> <td style="text-align: center;">20%</td> </tr> </tbody> </table>	<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>	Annual Gross Sales less than \$5,000,000	16%	Annual Gross Sales between \$5,000,001 and \$10,000,000	18%	Annual Gross Sales equal to or greater than \$10,000,000	20%
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Annual Gross Sales between \$5,000,001 and \$10,000,000	18%								
Annual Gross Sales equal to or greater than \$10,000,000	20%								
Security Deposit	One Million One Hundred Eighty Thousand and 00/100 (\$1,180,000.00) Dollars								
Airport Concession Disadvantaged Business Enterprise Participation	Airport Concessions Disadvantage Business Enterprise participation 12.5%								
Remittance Address For Payments Only:	Port of Seattle PO Box 24507 Seattle, WA 98124-0507								

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THIS LEASE AND CONCESSION AGREEMENT (“Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the PORT OF SEATTLE (“Port”), a Washington municipal corporation, and **DUFY-SEATTLE JV** (“Concessionaire”). For and in consideration of the mutual promises, covenants and conditions set forth in this Agreement, the parties agree:

WITNESSETH;

WHEREAS, the Port owns and operates Seattle-Tacoma International Airport (“Airport”), located on property as legally described in Exhibit A; and

WHEREAS, the Port has agreed to lease to Concessionaire, and Concessionaire has agreed to lease from the Port, certain Premise(s) within the Airport for Concessionaire’s conduct of commercial activity, subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, Port and Concessionaire, for and in consideration of the covenants and conditions and agreement provided hereinafter, do agree as set forth herein.

## ARTICLE I

### SECTION 1: DEFINITIONS

For purposes of this Agreement, the following terms have the following meanings:

- 1.1 **Additional Rent.** “Additional Rent” shall mean other rents due to the Port, including but not limited to, maintenance, repairs, and utility charges, as specified in this Agreement.
- 1.2 **Agreement.** “Agreement” shall mean this Lease and Concession Agreement, including amendments agreed to in writing by the parties.
- 1.3 **Airport.** “Airport” shall mean the Seattle-Tacoma International Airport, a legal description of which is attached as Exhibit A.
- 1.4 **ACDBE.** “Airport Concessions Disadvantaged Business Enterprise” and “ACDBE” shall mean a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as an ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant at 49 CFR Part 23.
- 1.5 **Alterations.** “Alterations” shall mean following the Build-Out Deadline, any non-structural changes, additions, substitution, or improvements.
- 1.6 **Annual Report.** “Annual Report” shall mean a report that reflects the amount of Gross Sales for the preceding calendar year, subject to the provisions of Section 6.3 of this Agreement.
- 1.7 **Build-Out Deadline.** Not Applicable

- 1.8 **Concessionaire.** “Concessionaire” shall mean and refer to the party executing this Agreement with the Port, as identified in the preamble of this Agreement and referenced in the Summary of Key Lease Terms.
- 1.9 **Day.** “Day” or “Days” shall, unless otherwise specified, mean and refer to calendar day(s), not business day(s).
- 1.10 **Default Rate.** “Default Rate” shall mean the rate set forth in Section 5.11 and referenced in the Summary of Key Lease Terms or the maximum rate provided by law for a transaction of this nature, whichever is less.
- 1.11 **Delay Damages.** Not Applicable
- 1.12 **Display Allowances.** “Display Allowances” shall mean the total of all display allowances, placement allowances, special purpose allowances, or other promotional incentives received by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) from vendors, suppliers or manufacturers and any other revenue of this type, and further, if such allowances are received as a part of non-differentiated sales by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) operating at multiple airports, Concessionaire shall, subject to the Port’s review, reasonably allocate the allowances between the airports and designate the amount to be allocated to the Airport for the calculation of Percentage Fees due. Display Allowance shall not include any manufacturer’s or supplier’s rebates and/or volume discounts that are properly considered, under general accepted accounting principles, credits against the cost of goods sold.
- 1.13 **Enplaned Passenger.** “Enplaned Passenger” shall mean all those passengers boarding flights at the Airport from scheduled or chartered flights, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of the same or another airline. Enplaned Passengers shall generally be measured for the entire Airport and separately for Concourse A, Concourse B, Concourse C, Concourse D, the North Satellite and the South Satellite.
- 1.14 **Expiration Date.** “Expiration Date” shall have the meaning set forth in Section 2.1 and referenced in the Summary of Key Lease Terms.
- 1.15 **First Full Year.** “First Full Year” shall mean the first, full calendar year of the Agreement term.
- 1.16 **First Partial Year.** “First Partial Year” shall mean that portion of the calendar year commencing on the Rent Commencement Date and ending December 31 of the year in which the Rental Commencement Date falls.
- 1.17 **Franchise Agreement.** “Franchise Agreement” shall mean granted rights to use any trade name that may be used at the Premises for the entire term of the Agreement, pursuant to a franchise or license agreement.
- 1.18 **Gross Sales.** “Gross Sales” shall mean the total dollar amount derived from the sale or delivery of any food, beverages, or merchandise or the performance of any services from, in, upon or arising out of the Premises, whether by Concessionaire, any subtenants, licensees or

cessionaires of Concessionaire, or any other person on Concessionaire's behalf, whether at wholesale or retail, and whether for cash, check, credit (including charge accounts), exchange or in kind (specifically including the amount of credit allowed for any trade-ins). No deduction shall be permitted for credit card fees (e.g., interchange or processing fees) or thefts, and for uncollected or uncollectible credit or charge accounts. No deduction shall be permitted for sales discounts (such as prompt-payment discounts) that are not specifically reflected on the original invoice/receipt at the time of the sale. Gross Sales shall, without limiting the generality of the foregoing, also include:

- 1.18.1 Orders that originate or are accepted at the Premises, even if delivery or performance is made from or at any other place. All sales made and orders received at the Premises shall be deemed as made and completed therein, even though payment of account may be transferred to another office/location for collection.
- 1.18.2 Orders that result from solicitation off the Premises, but which are delivered or performed from the Premises, or by personnel either operating from the Premises or reporting to or under the control or supervision of any employee employed at the Premises.
- 1.18.3 Mail, catalog, computer, internet, telephone, or other similar order received at, ordered from, or billed from the Premises.
- 1.18.4 Sales originating from whatever source, and which Concessionaire (or Concessionaire's subtenants, licensees or concessionaires) in the normal and customary course of Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) operations would credit or attribute to Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) business conducted in the Premises;
- 1.18.5 Display Allowances, whether received by Concessionaire or its subtenant, licensee or concessionaire; and
- 1.18.6 All monies or other things of value received by Concessionaire (or Concessionaire's subtenant, licensee or concessionaire) from Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) operations at, upon or from the Leased Premises which are neither included in nor excluded from Gross Sales by the other provisions of this definition, including without limitation, finance charges, late fees, and all deposits not refunded to customers.
- 1.18.7 Gross Sales shall not include, and may be adjusted to exclude, the following when properly recorded and accounted for:
  - A. Tips and gratuities paid directly to employees;
  - B. The exchange of merchandise between stores of Concessionaire (or Concessionaire's subtenant, licensee's or concessionaire's) where such exchanges are made solely for the convenient operation of Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) business and not

for the purpose of consummating a sale which has been made at, upon or from the Premises;

- C. Returns to shippers or manufacturers with no mark-up;
- D. Allowances or refunds allowed by Concessionaire to customers because of unacceptable or unsatisfactory goods or services to the extent such allowance or refund was actually granted and adjustment actually made;
- E. Complimentary meals, the amount of any employee discount on meals, and any meals provided by Concessionaire to its employees without cost as a benefit;
- F. The amount of any sales tax or other excise tax imposed upon the customer and collected by Concessionaire as agent for the taxing body imposing the tax and billed to the customer as a separate item;
- G. Revenue from the sale of uniforms or clothing to Concessionaire's employees where it is required that such uniforms or clothing be worn by the employees;
- H. Any sums that represent discounts so long as the amount of the discount is shown on the face of the receipt issued to the customer; and
- I. Any item, such as the cost of third-party shipping, for which the Concessionaire is reimbursed at actual cost therefor; provided, however, in the event that Concessionaire charges a customer more than the actual cost of such item (specifically including through the inclusion of a "handling" or similar charge by Concessionaire), the entire amount shall be includable with Gross Sales and shall not be subject to exclusion.

1.19 **Initial Improvements.** Not Applicable

1.20 **Initial Improvement Amount.** Not Applicable

1.21 **Last Full Year.** "Last Full Year" shall mean the last, full calendar year of the Agreement term.

1.22 **Last Partial Year.** "Last Partial Year" shall mean that portion of the calendar year commencing on January 1 following the Last Full Year and ending on the Expiration Date (or earlier termination date); provided, however, (a) in the event that the Rent Commencement Date falls on January 1, there shall be no First Partial Year, and (b) in the event that the Expiration Date falls on December 31, there shall be no Final Partial Year.

1.23 **Legal Requirements.** "Legal Requirements" shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, including the Port, which may be applicable to or have jurisdiction over the Premises.

- 1.24 **Lien.** “Lien” shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises or the Initial Improvements, Midterm Refurbishment, any Alteration, fixture, or improvement.
- 1.25 **Midterm Deadline.** Not Applicable
- 1.26 **Midterm Refurbishment.** Not Applicable
- 1.27 **Minimum Annual Guarantee.** “Minimum Annual Guarantee” shall mean the minimum annual payment amount by Concessionaire to the Port as described in Section 5.
- 1.28 **Net Book Value of Leasehold Improvements.** “Net Book Value of Leasehold Improvements” shall mean and refer to the dollar amount generated through application of rules established in Section 19.5.
- 1.29 **Notice to Proceed.** Not Applicable
- 1.30 **Notice to Open Date.** “Notice to Open Date” shall mean the date in which the Concessionaire shall begin operations within the Premises (January 1, 2021).
- 1.31 **Operating Standards.** “Operating Standards” shall have the meaning set forth in Section 18.4.1, and shall include, without limitation, the ADR Concessions Operating Standards, as defined in Section 4.3.3.
- 1.32 **Percentage Fee.** “Percentage Fee” shall mean the percentage fee paid by Concessionaire on Gross Sales according to the Proposal and this Agreement.
- 1.33 **Port.** “Port” shall mean the Port of Seattle, a Washington municipal corporation.
- 1.34 **Port Standards.** “Port Standards” shall include, without limitation, the Airport Rules and Regulations, the Regulations for Airport Construction, the Tenant Design and Construction Process Manual, Seattle Tacoma International Airport Construction General Requirements, the Safety Manual, the CAD Standards Manual, the Concession Design Guidelines, the Port’s mechanical, electrical, water and waste, and industrial waste and storm drainage standards and any other, similar document establishing requirements and/or standards for design and construction at the Airport as more fully defined in Exhibit E.
- 1.35 **Premises.** “Premises” shall have the meaning set forth in Section 3 and in the Summary of Key Agreement Terms; provided, however, in the event that the Premises include any units the precise boundaries of which have not, as of the date of execution of this Agreement, been determined, the parties agree that they may – without the need for a formal amendment of this Agreement – substitute a revised lease outline drawing accurately identifying the location and boundaries of the particular unit when the same has been finally determined. This ministerial revision shall be reflected by a countersigned letter that reflects that parties’ agreement on the revised lease outline drawing, and upon such written agreement the revised lease outline drawing shall automatically supersede any such drawing originally included as an exhibit to this Agreement.



For the purpose of this Agreement, Premises shall also include any office or storage space leased by Concessionaire. These Premises may be added or deleted by either the Port or Concessionaires by a countersigned letter that reflects the change in Premises. Concessionaire shall be charged the going rental rate for the area added to the Premises in accordance with similar rates charged for Airport Dining and Retail tenants.

- 1.36 **Proposal.** Not Applicable
- 1.37 **Removable Fixtures.** “Removable Fixtures” shall have the meaning set forth in Section 10.4.
- 1.38 **Rent.** “Rent” shall mean and refer collectively to sums denominated as either Minimum Annual Guarantee, Percentage Fee, Additional Rent or any other sums or charges otherwise payable by Concessionaire under the terms of this Agreement. Failure by Concessionaire to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.
- 1.39 **Rent Commencement Date.** “Rent Commencement Date” shall mean the date on which Concessionaire first opens for business. For the purpose of this Agreement the Rental Commencement Date shall be set as January 1, 2021.
- 1.40 **Security Deposit.** “Security Deposit” shall mean a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, or other security in a form approved by the Port in the amount set forth in the Section 7 and referenced in the Summary of Key Lease Terms.
- 1.41 **Summary of Key Lease Terms.** “Summary of Key Lease Terms” shall mean the cover page to the Agreement that identifies certain key terms of this Agreement.

## SECTION 2: TERM

- 2.1 **Agreement Term.** Unless earlier terminated, pursuant to any provision of this Agreement, the term shall commence on **January 1, 2021** and continue for a period of **three (3) years December 31, 2024** the Expiration Date. Said Agreement may be extended for two (1) additional options period, by mutual consent from both the Port and Concessionaire, with one hundred eighty (180) calendar days’ notice prior to the Expiration Date and/or Option Expiration Date.
- 2.2 **Holding Over.** If Concessionaire, with the written consent of the Port, holds over after the expiration or sooner termination of this Agreement, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. Any holding over by Concessionaire after the expiration or earlier termination of the Agreement with the express, written consent of the Port shall not, in any manner, constitute a renewal or extension of the Agreement or give Concessionaire any rights in or to the Premises.

In order to facilitate transition from Concessionaire’s tenancy to that of another Concessionaire at the expiration of the term of the Agreement, the Port may request, and Concessionaire shall agree, to extend its tenancy as to some or all of the Premises on a month-to-month basis. No later than nine (9) months before expiration of the Agreement, the parties shall meet to discuss

the process for transitioning occupancy of the Premises in order to minimize disruption of service to the traveling public at the Airport.

During such month-to-month tenancy, Concessionaire shall, unless otherwise mutually agreed, pay to the Port the same Rent that was in effect immediately prior to the month-to-month tenancy. Concessionaire will continue to be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

### SECTION 3: LEASED PREMISES

- 3.1 **Premises.** Commencing on the Notice to Open Date, the Port hereby leases to Concessionaire and Concessionaire hereby leases from the Port, the Premises. In the event that there is different Notice to Open Dates for different portions of the Premises, the lease for each portion of the Premises shall commence on its respective Notice to Open Date. Concessionaire may with Port approval operate a temporary operation on the Premises during any construction and/or midterm refurbishment. Such operations will be subject to payment of Rent as identified in Section 5.

Space ID	Approximate Square Footage	Exhibit
CA-11	2,455	B
CT-07	875	B
SS-08	3,728	B

- 3.2 **Acceptance of the Premises.** Concessionaire shall promptly examine the Premises no later than ninety (90) days from the date the Premises are turned over to Concessionaire for build-out. Unless Concessionaire provides the Port with written notice of any defect or problem within ten (10) working days of the examination, Concessionaire shall have accepted them in their present, “as-is” condition, and agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Concessionaire’s use of the Premises and obtain necessary permits therefor.
- 3.3 **Quiet Enjoyment.** So long as Concessionaire is not in default under this Agreement and subject to the specific provisions, covenants and agreements contained in this Agreement, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Premises by Concessionaire shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.
- 3.4 **No Warranty.** The Port makes absolutely no warranty, promises or representations as to the economic viability of any concession location, including the Premises. Passenger counts, passenger flows and other customer traffic are for the most part products of airline schedules and gate utilization. Further, Federal Aviation Administration and Transportation Security Administration rules and regulations governing security and emergency situations may restrict access to the Airport or portions thereof. Except as specifically set forth in this Agreement,

Concessionaire shall not be entitled to any relief in the event passenger counts, passenger flow, customer traffic, or Gross Sales are other than Concessionaire predicted or projected.

- 3.5 **Office and/or Storage Space.** At Concessionaire's request, the Port may add or delete office and/or storage space to this Agreement through an Office/Storage Rider. Concessionaire agrees and acknowledges that it shall be responsible for any rentals and fees associated with such request. Rentals and fees shall be modified from time to time.
- 3.6 **Lease Outline Drawing (LOD).** Concessionaire agrees that the Port may make modifications to the Lease Outline Drawing (LOD) provided in Exhibit B, to reflect final build-out conditions. Such modifications shall be made through a Premise Notice.
- 3.7 **Annual Review.** At the Port's discretion on or about the anniversary of the Rent Commencement Date, the Port and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in a First Class Manner, as required by Section 4.3, and Concessionaire shall, except to the extent any such work is the responsibility of the Port under Section 11.1, promptly undertake any necessary repair, maintenance, or Alterations at Concessionaire's expense. If the Port and Concessionaire cannot jointly agree upon the type and extent of refurbishment necessary, the Port may, as set forth in Section 4.3, determine the refurbishment required. For purposes of this Section, "refurbishment" shall generally be limited to the routine repainting or redecoration of concession space within the Premises, including the replacement or repair of worn carpet, tile, furnishings, fixtures, finishes, or equipment. Nothing in the requirement for an annual review, however, shall relieve Concessionaire from the obligation to maintain Premises in a First Class Manner on an ongoing basis as required by Section 4.3, and Concessionaire shall specifically perform maintenance and refurbishment as needed to continuously comply with that standard. The failure to timely undertake required refurbishment shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

#### **SECTION 4: USE OF PREMISES**

- 4.1 **Use of Premises.** Concessionaire shall use the Premises for:
- 4.1.1 **Duty Free Merchandise.** Duty Free Merchandise shall be sold to international ticketed passengers in accordance with the 19 CFR §§ 19.35 – 19.39, where a duty and/or tax is applied. Merchandise includes but is not limited to, tobacco, alcohol, fashion, electronics, luggage, cosmetics, perfume, confectionary, etc.
- 4.1.2 **Duty Paid Merchandise.** Duty Paid Merchandise shall be merchandise that a ticketed domestic passenger may purchase and shall have all duties and/or taxes applied. Merchandise includes but is not limited to, fashion, electronics, luggage, cosmetics, perfume, confectionary, etc.

as referenced in the Summary of Key Lease Terms and further described in the Proposal, and Concessionaire shall not use the Premises for any other purpose without the written consent of the Port. Concessionaire recognizes that its specific limited use is a material consideration to the Port in order that the Airport will, in the Port's sole discretion, maintain an appropriate tenant mix so as to efficiently serve the traveling public and to produce the maximum Gross Sales possible for all tenants.

4.2 **Rights.** Concessionaire's rights and privileges in the Agreement are:

4.2.2 **Non-Exclusive.** Concessionaire's [Merchandise as more fully defined in Section 4.1.2](#) rights and privileges in this Agreement are non-exclusive, and nothing in this Agreement precludes the Port from entering into an agreement with any other parties during the term of this Agreement for the sale in any part of the Airport of the same or similar food, beverages, merchandise or service which Concessionaire is permitted to sell or offer, whether such agreements are awarded competitively or through negotiations and regardless of whether the terms of such agreements are more or less favorable than the terms of this Agreement.

4.3 **Port Standards.**

4.3.1 **First-Class Operations.** In addition to, and not in lieu of, any other more specific Port Standards that may be set forth in this Agreement, Concessionaire shall maintain a first class standard of service equivalent to the highest standards within the food and retail service industry ("First Class Manner"). For the purposes of this Agreement, "First Class Manner" shall mean the standard of products, cleanliness, and customer service that would be reasonably expected in upscale shopping malls and other similar high-quality airport and non-airport retail and food service facilities. The Port desires to provide the air travelers and the public with facilities, service, food, beverages and retail merchandise of first-class quality. For food and beverage operations, Concessionaire must ensure that the air travelers and the public are provided first class quality foods with adequate portions, comparable to or better, than that offered for sale in similar food service operations in the greater Seattle-Tacoma region offering like products. Unless the Port's determination is shown to be arbitrary and capricious by "clear, cogent and convincing evidence," the Port shall be the final arbiter of what constitutes a First-Class Manner and Concessionaire's compliance or noncompliance with this Section 4.3.1. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 18.4 and Exhibit F.

4.3.2 **General Operating Standards.** Concessionaire shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements or Port Standards, (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, (iii) violate the certificate of occupancy then in force with respect to the Agreement, (iv) constitute a public or private nuisance, (v) impair, in the Port's reasonable judgment, with the character, reputation or appearance of the Airport or the Port, or (vi) occasion discomfort, inconvenience or annoyance to either the Port or its adjoining tenants. Without limiting the foregoing, Concessionaire specifically agrees to

comply with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to (a) the Airport and its terminals, which exist for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public, and (b) the common food and beverage areas located within the Airport. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 18.4 and Exhibit F.

- 4.3.3 **Specific Operating Standards.** Concessionaire shall, at all times, comply with the specific operating standards set forth on Exhibit C, as from time to time amended by the Port (the “ADR Concessions Operating Standards”). Concessionaire expressly acknowledges and agrees that its Premises and operations are subject to inspection as set forth on Exhibit C. The failure to comply with the operating standards shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F. The Port reserves the right, in the Port’s sole and absolute discretion, upon thirty (30) days written notice to Concessionaire, to amend, substitute, supplement and/or extend the ADR Concessions Operating Standards set forth on Exhibit C, including the terms and conditions set forth therein, and upon written notice to Concessionaire of any such modification(s), such modified ADR Concessions Operating Standards shall be complied with by Concessionaire, without need for formal amendment to this Agreement.
- 4.3.4 **Food Handling Standards.** Without limiting any other requirements of this Agreement, Concessionaire shall comply with all local health department and HACCP standards regarding the proper and safe receiving, storage, preparation and serving of all food and beverage items as more fully defined in the ADR Concessions Operating Standards. The failure to comply with these standards shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 4.3.5 **Unified Pest Control Standard.** Without limiting any other requirements of this Agreement, Concessionaire shall comply with the Port’s unified pest control standard as more fully outlined in Exhibit C. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 18.4 and Exhibit F.
- 4.3.6 **Street Pricing Policy.** Concessionaire shall, at all times, comply with the street pricing policy set forth on Exhibit D. Without limiting any other rights that may exist under this Agreement, Concessionaire acknowledges that the failure to adhere to the policy shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 4.3.7 **Franchise Standards.** Without limiting or otherwise reducing any of the standards otherwise imposed under this Agreement, Concessionaire shall also meet or exceed all franchise standards that are imposed on Concessionaire by any Franchisor. Copies of those franchise standards and performance audit forms shall be sent to the Port prior to the Notice to Open Date. Copies of inspections conducted by the Franchisor or any mystery shopper service hired by the Franchisor shall be sent to the Port within ten (10) days of receipt by Concessionaire or any subtenant.

- 4.3.8 **Employment Standards.** It is the stated expectation of the Port of Seattle Commission that Airport employers, including Concessionaires, provide quality jobs for its employees. To this end Concessionaire shall comply with all, applicable federal, state, and local laws and ordinances related to wages and benefits as well as Concessionaire's specific commitments regarding wages and benefits made as part of its Proposal. The Port also expects Concessionaire to participate in, and otherwise provide documentation relevant for, an employment continuity pool established by the Port. Likewise, Concessionaire shall comply with its specific commitments regarding hiring from the employment continuity program made as part of its Proposal. Concessionaire shall, as required by Section 6, provide such reports as may be requested by the Port to document Concessionaire's compliance with these requirements.
- 4.3.9 **Small Business Standards.** It is also the policy of the Port of Seattle Commission to encourage Airport businesses, including Concessionaire, to make every reasonable effort to maximize the contracting opportunities for small business (including ACDBEs, as addressed below in Section 25) in the construction and operation of the concession. To this end, Concessionaire shall comply with its specific commitments regarding use and inclusion of small business that it made as part of its Proposal. Concessionaire shall, as required by Section 6, provide such reports as may be requested by the Port to document Concessionaire's compliance with these requirements.
- 4.3.10 **Airport Rules and Regulations.** The use by Concessionaire of the Premises, the public area and all other area of the Airport shall be subject to such Airport Rules and Regulations as are now or may in the future be adopted by the Port, provided that such Rules and Regulations do no conflict with applicable provisions of state or federal law.

Except in the case of emergency Rules and Regulations, the Port shall give Concessionaire written notice and opportunity to comment on any proposed Rules and Regulations that would affect Concessionaire's operation at the Airport before such proposed Rules and Regulations are adopted by the Port. Within twenty (20) calendar days after receipt of the Port's notice if such proposed Rules and Regulations, Concessionaire may submit in writing, objections to the proposed Rules and Regulations. The Port shall have fifteen (15) calendar days after receipt of the objection to meet and discuss the proposed Rules and Regulations. If the Concessionaire's objections are not resolved, the Port shall provide the proposed Rules and Regulations and the Concessionaire's objections to the Port Commission prior to implementation, and Concessionaire shall have twenty (20) calendar days to comment to the Port Commission on its objections.

After the Concessionaire comments to the Port Commission of its objections, or if the Concessionaire fails to comment to the Port Commission during the allotted twenty (20) calendar day period, the Port shall implement the proposed Rules and Regulations. Exhibit E provides the most current link to the Airport's Rules and Regulations.

- 4.3.11 **Conflict.** Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the Rules and Regulations, any operating standards of the Port (including, without limitation, the ADR Concessions Operating

Standards set forth on Exhibit C), the most stringent law, regulations rule or standard applicable to this Agreement and Concessionaire's performance shall control.

- 4.4 **Franchise.** If the Premises are operated under a franchise or license arrangement, Concessionaire represents and warrants to the Port that Concessionaire has been granted the right to use any trade name, concept or brand that may be used at the Premises for the entire term of this Agreement, pursuant to a franchise or license agreement (the "Franchise Agreement") with the trade name owner (a "Franchisor"). At the Port's request, Concessionaire agrees to provide the Port with a copy of the Franchise Agreement, or a certification from Franchisor that such Franchise Agreement exists, and reasonable evidence that such agreement remains in full force and effect. Concessionaire agrees that the termination of Concessionaire's right to use the licensed trade name, concept or brand at the Premises or to conduct an operation at the Premises of the type then conducted by or under license from Franchisor under Concessionaire's trade name (whether due to modification or termination of the Franchise agreement or otherwise), shall constitute a material breach of Concessionaire's obligations under this Agreement. Concessionaire agrees that if such Franchise Agreement is terminated, the Port shall have the right to exercise any or all of its remedies pursuant to Section 18 of this Agreement.
- 4.5 **No Liens.** Concessionaire will not directly or indirectly create or permit to be created and/or to remain, a Lien upon the Premises, including any Initial Improvements, Midterm Refurbishment, Alterations, fixtures, improvements or appurtenances, except those Liens expressly permitted in writing by the Port. In the event any such Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Concessionaire shall also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding brought on or for the enforcement of such lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises, any Alteration, fixture, improvement or appurtenance to the Premises, or any larger building and/or property of which the Premises may be a part.
- 4.6 **Copyright Clearance.** Concessionaire and Concessionaire's Subtenants are responsible for obtaining permission to transmit any copyrighted music, including but not limited to, radio broadcasts, recorded music, and television broadcasts, in their Leased Premises at the Airport in compliance with Federal Copyright Law found in Title 17 of the United States Code, or as amended.
- 4.7 **Signs.** No signs, promotions or other advertising matter, symbols, canopies or awnings (collectively "Signs") shall be attached to or painted on within, or outside the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. Any permitted Sign shall be professionally prepared. The Port may, without notice and without any liability therefore, enter the Premises and remove any items installed or maintained by Concessionaire in violation of the provisions of this Section 4.7. At the termination or sooner expiration of this Agreement, Concessionaire shall remove all such Signs attached to or painted by Concessionaire at its own expense, and Concessionaire shall repair any damage or injury to

the Premises and correct any unsightly condition caused by the maintenance and removal of its Signs.

If Concessionaire fails to comply with the requirements of this Section 4.7, the Port shall have the right to require Concessionaire to restore the Premises to the condition existing immediately prior to the unauthorized installation or modification of the Sign. In the event that Concessionaire fails to restore the Premises within three (3) days following notice by the Port, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Port may have (whether under this Agreement or in law or in equity), pay the Port liquidated damages as provided in Section 18.4 and Exhibit F until Concessionaire has restored the Premises. Concessionaire and the Port agree that the Port will incur damages as a result of the failure to restore the Premises, which damages are impractical or impossible to determine, and that this amount is a reasonable forecast of the damages to be suffered by the Port.

- 4.8 **Mandatory Programs.** Concessionaire understands that, from time to time, the Port may institute certain programs that the Port believes, in its sole judgment, will be in the best interests of the Airport or its tenants. Such programs shall include, but not be limited to, trash recycling, composting, concession use of durable table ware or compostable/recyclable to-go service ware, commuter trip reduction, and Aircraft Operations Area (AOA) Clean Surface Program for Foreign Object Debris (FOD). Concessionaire agrees to promptly comply with and carry out all obligations issued by the Port under such programs, as the same may exist from time to time.

The Port shall, at Concessionaire's cost as set forth in the then-current Airport tariff, provide pest control services to the Premises as part of the Port's Unified Pest Management Program. Such charges to Concessionaire shall commence with the start of services provided under the Unified Pest Management Program at the Premises.

## **SECTION 5: RENT AND FEES PAYABLE TO THE PORT**

- 5.1 **Calendar Year Accounting.** For the convenience of the Port, this Agreement will generally be administered financially on a calendar year basis. Consequently, in the event that the Rent Commencement Date falls on anything other than January 1 or the Expiration Date falls on anything other than December 31, the Agreement term will include partial calendar years at the beginning and end of the Agreement term.
- 5.2 **Minimum Annual Guarantee.** Beginning on **January 1, 2022**, Concessionaire will begin to pay a Minimum Annual Guarantee (MAG). The MAG will be eighty-five percent (85%) of the total paid in Percentage Fee by Concessionaire to the Port for the previous calendar year. Said MAG will be recalculated on annual basis.
- 5.2.1 **Payment.** The Minimum Annual Guarantee amount shall be divided into equal monthly payments. The Minimum Annual Guarantee shall be payable monthly, in advance, without notice from the Port and without abatement, setoff, or deduction, beginning on the first day of the month after the Rent Commencement Date and thereafter on or before the first day of each and every month during the Agreement term.
- 5.2.2 **Relief for Exceptional Circumstances.**



If the total number of International Enplaned Passengers for any calendar month decreases by more than twenty percent (20%) from the same calendar month of the prior year (the “Reference Month”), then:

- (a) the Minimum Annual Guarantee payment due for the next month (or such later month immediately following the date on which the number of Enplaned Passengers can reasonably be determined) shall automatically be adjusted downward by the percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease;
- (b) the Minimum Annual Guarantee for the Year in which the reduced monthly payment amount falls shall also be reduced by a like dollar amount; and
- (c) the adjustments in (a) and (b) shall be referred to as “Exceptional Enplanement Adjustments.”

If the Reference Month was a month that previously triggered Exceptional Enplanement Adjustments, the Reference Month above shall instead mean the same calendar month of the most recent year that did not trigger Exceptional Enplanement Adjustments for that calendar month.

5.3 **Percentage Fees.** Commencing on the Rent Commencement Date, Concessionaire shall also pay the Port a percentage fee (the “Percentage Fee”) according to the following schedule and referenced in the Summary of Key Lease Terms and the Proposal, to the extent the Percentage Fee is higher than the monthly payment of the Minimum Annual Guarantee paid to the Port pursuant to Section 5.3.

<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>
Annual Gross Sales less than \$5,000,000	16%
Annual Gross Sales between \$5,000,001 and \$10,000,000	18%
Annual Gross Sales equal to or greater than \$10,000,001	20%

For the First Partial Year and the Final Partial Year, any breakpoints identified in the schedule for payment of a higher Percentage Fee shall be pro-rated based on the number of *days* in the partial year.

5.4 **Contract Rent.** The Port and Concessionaire agree that the first seven percent (7%) of Concessionaire’s Gross Sales paid to the Port (whether paid as part of the Minimum Annual Guarantee or as Percentage Fees) shall be the contract rent for the Premises for purposes of the Leasehold Excise Tax Payable pursuant to Chapter 82.29A of the Revised Code of Washington, unless the Washington State Department of Revenue imposes a different percentage allocation. All amounts in excess of the amount deemed subject to Leasehold Excise Tax shall be consideration for the concession rights granted under this Agreement.

5.5 **Additional Rent.** During the term of this Agreement, Concessionaire shall also pay to the Port, within thirty (30) days of invoice, any maintenance and repair charges required by Section 11, any utility charges required by Section 12, any Unified Pest Management charges required by Section 4.8, and such other amounts as may be owing by Concessionaire to the Port pursuant to the terms of this Agreement.

5.6 **Payments; Automatic Transfer.** All Rent due under this Agreement shall be paid in lawful money of the United States of America. Concessionaire may not pay any Rent due under this Agreement utilizing a credit card or other, similar instrument for which the Port must pay a commission or discount on the gross funds remitted; all payments shall be made by check, ACH credit transfer, or other form of payment approved by the Port. In the event the Concessionaire delivers a dishonored check or draft to the Port in payment of any obligation arising under this Agreement, Concessionaire shall pay a service charge in the amount established by the Port from time to time, along with interest thereon at eighteen percent (18%) per annum from the original due date of such dishonored check or draft without further demand. In such event, the Port may require that future payments be made by cashier's check or other means acceptable to the Port.

Instead of requiring Concessionaire to pay Rent or other charges in a manner pursuant to Section 5.8, the Port may, at its sole option, upon not less than sixty (60) days prior notice to Concessionaire, require Concessionaire to promptly execute and deliver to the Port any documents, instruments, authorizations, or certificates required by the Port to give effect to an automated debiting system, whereby any or all payments by Concessionaire of whatsoever nature required or contemplated by this Agreement shall be debited monthly or from time to time, as provided in this Agreement, from Concessionaire's account in a bank or financial institution designated by Concessionaire and credited to the Port's bank account as the Port shall designate from time to time.

Concessionaire shall promptly pay all service fees and other charges connected with its use of an automated debiting system, including, without limitation, any charges resulting from insufficient funds in Concessionaire's bank account or any charges imposed on the Port.

In the event that Concessionaire elects to designate a different bank or financial institution from which any fees or other charges under the Agreement are automatically debited, notification of such change and the required documents, instruments, authorizations, and certificates specified in Section 5.6 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.

Concessionaire agrees that it shall remain responsible to the Port for all payments of Rent and other charges pursuant to the Agreement, even if Concessionaire's bank account is incorrectly debited in any given month. Such fees and other charges shall be immediately payable to the Port upon written demand.

Concessionaire's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this Section 5.8 shall constitute a default of this Agreement.

5.7 **Late Charges.** Concessionaire hereby acknowledges that late payment by Concessionaire to the Port of Rent, or any portion thereof, or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this Agreement. Accordingly, if any installment of Rent, or any portion thereof, or any other sum due from Concessionaire shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice by the Port to Concessionaire, Concessionaire shall pay the Port a late charge equal to five percent (5%) of such overdue amount unless such late charge is specifically waived by the Port in writing. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Concessionaire. Acceptance of such late charge by the Port shall in no event constitute a waiver of Concessionaire's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies in this Agreement.

In addition to the late charges provided for in this Section, interest shall accrue on any unpaid Rent and/or other remuneration, or any other sums due, at the Default Rate of Eighteen Percent (18%) per annum from the date due until paid.

Notwithstanding anything to the contrary in this Section, interest and late charges shall be subject to a minimum, monthly charge of Five Dollars (\$5.00).

5.8 **Accounting Procedures.**

5.8.1 **Records.** Concessionaire will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type of operation permitted by this Agreement) in full accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the Port for the determination of any Rent or other computations, which may be necessary or essential in carrying out the terms of this Agreement. Concessionaire shall maintain its records relating to the operation permitted by this Agreement for a period of at least three (3) years after the end of each calendar year (or until the close of any ongoing audit thereof being conducted by, or on behalf of, the Port); provided, however, that the Port may request that any such records be retained for a longer period of time, in which case Concessionaire, at its option, may deliver such records into the custody of the Port

5.8.2 **Monthly Sales Reporting.** With thirty (30) days written notice from the Port, Concessionaire agrees to submit all monthly sales electronically using the Port provided link. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

5.8.3 **Cash Handling.** Without limiting any more general requirements of this Section 5, Concessionaire shall observe the cash handling and point-of-sale requirements set forth below.

A. **Establish Procedures.** Concessionaire shall at all times observe cash and record handling policies and procedures and maintain cash and record handling systems in accordance with reasonable written policies and procedures adopted by Concessionaire. Concessionaire may revise those procedures from time to time

upon the advent of generally accepted technological changes and shall provide the Port notification in the event that it does so. All of Concessionaire's cash and record handling policies and procedures shall be subject to review and approval by the Port upon request.

- B. **Point of Sale Equipment.** Concessionaire's point-of-sale equipment or devices shall properly, accurately and reliably record all information pertaining to each and every transaction entered into between Concessionaire and its customers. The required information includes but is not limited to, the time and date of the transaction; payment method; the sales amount or amounts for all goods or services purchased; the transaction location and operating name; and all other information obtained from the customer or other sources as pertaining to each transaction.
- C. **Sequentially Numbered Transactions.** Concessionaire agrees to sequentially number all transactions and agrees to provide upon request by the Port a list of transactions that were initiated, but which were eventually voided or cancelled, or for which Concessionaire received no sales or other revenue.
- D. **Changes in Operations.** Concessionaire agrees to notify the Port of any changes in business operations that change or alter the accounting processes or procedures or information storage or data retrieval for Concessionaire's business operations covered under this Agreement.

## 5.9 **Audit.**

5.9.1 **Right to Audit.** The Port shall have the right to time to inspect and audit, through its accountants or representatives, Concessionaire's records with reference to the determination of any matters relevant to this Agreement, and Concessionaire shall make or cause to be made the records readily available for such examination. The Port may undertake such inspection and/or audit at any reasonable time and from time to time. In the event that Concessionaire's records are not maintained in the Puget Sound region, they shall be made available for audit locally within twenty (20) business days of a request by the Port, or Concessionaire shall pay in full, any travel and related expenses of Port representative(s) to travel to the location outside the Puget Sound region. In addition, the Port shall have the right to conduct a "surprise" audit not more frequently than twice every twenty-four (24) months, and, in the event that Concessionaire's books and records are not maintained locally, Concessionaire shall further pay in full, any travel and related expenses of the Port representative(s) to travel to the location outside the Puget Sound region for such "surprise" audit(s).

5.9.2 **Right to Review Records of Concessionaire's Other Stores.** In connection with the audit, the Port or its representative will have the right to inspect the records from any other store operated by Concessionaire, but only if such inspection is reasonably necessary to verify Concessionaire's reportable Gross Sales.

- 5.9.3 **Right to Copy Concessionaire's Records.** The Port or its representatives shall have the right to copy any records of Concessionaire supporting Gross Sales or any other matter the determination of which is relevant to this Agreement.
- 5.9.4 **Concessionaire Must Reconstruct Insufficient Documentation.** If upon examination or audit the Port's accountant or representative determines that sufficient documentation is not maintained, retained, or available to verify Concessionaire's actual Gross Sales or any other matter the determination of which is relevant to this Agreement, Concessionaire shall pay for the cost of such visit, and in addition, should the Port deem it necessary, Concessionaire shall reconstruct, at its sole cost and expense, all records for the determination of Gross Sales or any other matter the determination of which is relevant to this Agreement for any period being audited. If, in the Port's determination, Concessionaire fails to reasonably reconstruct all records in accordance with this Section, then in addition to any remedies under this Agreement or at law, the Port shall be entitled to collect as Additional Rent an amount equal to the greater of: (i) the difference between one hundred twenty five percent (125%) of the Minimum Annual Guarantee for the period in question and the Percentage Fees actually paid for the period in question, or (ii) five percent (5%) of the Percentage Fees actually paid for the period in question.
- 5.9.5 **If Gross Sales Are Under-Reported.** If any such audit discloses that the actual Gross Sales exceed those reported:
- A. Concessionaire shall forthwith pay the Percentage Fee due along with interest at the Default Rate; and
  - B. If the audit reveals a discrepancy of more than two percent (2%) of the Percentage Rent reported in accordance with Section 5.7 above for any twelve (12) month period, Concessionaire shall forthwith pay the cost of such audit along with interest at the Default Rate; and
  - C. The Port shall have, in addition to the foregoing rights to costs and any other rights and remedies available to the Port under this Agreement or at law, the right to terminate this Agreement, if such audit discloses that actual Gross Sales exceeded those reported by more than ten percent (10%).
- 5.9.6 **If Gross Sales Are Over-Reported.** If Concessionaire over-reports its Gross Sales and is due a refund, Concessionaire will be granted a credit toward future rents after first deducting the cost of the audit. In the event the cost of the audit exceeds the refund due, Concessionaire shall not be responsible for the balance of the cost of the audit but shall not be entitled to any refund/credit associated with the over-report of Gross Sales.
- 5.9.7 **Subtenant's Records.** If Concessionaire subleases, licenses, or in any manner allows the Premises to be used by another party, Concessionaire is responsible for ensuring that all of such party(ies) records conform to the requirements of this Agreement. The failure of any such party to maintain its records as required under this Agreement, or correctly

report gross sales, will be deemed a failure on the part of Concessionaire to conform to the requirements of this Agreement.

## SECTION 6: METHOD OF PAYMENTS AND REPORTS

- 6.1 **Reporting and Payment.** On or before the fifteenth (15<sup>th</sup>) of a month, Concessionaire shall submit to the Port a detailed statement showing the Gross Sales generated from the concession during the preceding month (the “Monthly Report”) and shall simultaneously pay to the Port the Percentage Fee due for that preceding month less the monthly payment of Minimum Annual Guarantee already paid by the Concessionaire for that month. The Monthly Report shall be filed using the technology and procedures designated by the Port and shall show such reasonable detail and breakdown as may be required by the Port. If the Port instructs Concessionaire to file the Monthly Report or any other report by computer, e-mail, or internet website, the Port shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 6.2 **Annual Reconciliation.** The Percentage Fees shall be subject to annual reconciliation by the Port at the end of each calendar year following receipt of the Annual Report. Under/over payments of less than Forty Dollars (\$40.00) shall not be subject to adjustment. In the event that Concessionaire has underpaid the Rent by Forty Dollars (\$40.00) or more, Concessionaire shall remit the entire amount of the underpayment together with the Annual Report. In the event Concessionaire has overpaid the Rent by Forty Dollars (\$40.00) or more, the Port will issue Concessionaire a credit that shall be utilized against future Rent payment obligations (or, following the expiration or earlier termination of this Agreement, issue Concessionaire a refund).
- 6.3 **Annual Report.** Concessionaire shall provide the Port with a report (the “Annual Report”), due by the deadline set forth in the Summary of Key Lease Terms, that reflects the amount of Gross Sales for the preceding calendar year; provided, however, in the event the First Partial Year is less than six months in duration, the Annual Report for the First Partial Year may be combined with the Annual Report for the First Full Year. The Annual Report shall be accompanied by a signed certificate of an independent Certified Public Accountant (CPA), Concessionaire’s Chief Financial Officer (CFO) or Chief Executive Officer (CEO) stating specifically that (a) he/she has examined the Annual Report, (b) his/her examination included such tests of Concessionaire’s books and records as he/she considered necessary or appropriate under the circumstances, (c) such report presents fairly the information reflected for the preceding calendar year (or, in the case of a report combining the First Partial Year with the First Full Year, from the period from the Rent Commencement Date until the end of the First Full Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Concessionaire’s report is free from material misstatement.

Notwithstanding the foregoing, in the event that the Port conducts an audit of Concessionaire’s operations pursuant to Section 5.9 and that audit reveals a discrepancy of more than two percent (2%) of the Percentage Rent reported in accordance with Section 5.3 above for any twelve (12)

month period, Concessionaire's Annual Report must thereafter be accompanied by a signed certificate of an independent Certified Public Accountant; Concessionaire's CEO and CFO may not certify the report.

The Annual Report shall be provided in writing and/or electronic format as reasonably specified by the Port, and in addition to such other detail as the Port may reasonably require, the Annual Report shall breakdown Gross Sales by month, location, and product category. Any additional or unpaid Rent or fees due for the prior calendar year shall be submitted with the Annual Report. The failure to timely provide the report required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

In the event that the Annual Report makes a substantial adjustment in Concessionaire's Gross Sales for the preceding calendar year, the Port reserves the right to adjust the amount of the Minimum Annual Guarantee established pursuant to Section 5.2. While the Port will not generally adjust the amount of monthly payment of the Minimum Annual Guarantee unless the adjustment in the prior year's Gross Sales is likely to result in significant over/under payment by Concessionaire, the Port and Concessionaire will specifically take account of any adjustment in the Minimum Annual Guarantee in connection with the annual reconciliation and Concessionaire's submission of the Annual Report for the calendar year following the one for which the adjustment was made.

- 6.4 **Other Reports.** In addition to any reports otherwise required under the terms of this Agreement, Concessionaire shall provide the Port with: (i) a statement, due within thirty (30) days of any request by the Port, of Net Book Value of Concessionaire's Leasehold Improvements (the "NBV Report"), calculated in conformance with the rules set forth in Section 19.5; and (ii) such other and further reports, on such frequency as the Port may reasonably require from time to time, all without any cost to the Port. All such reports shall be provided in writing and/or electronic format as reasonably specified by the Port from time to time. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 6.5 **Quality Jobs and Small Business Reporting.** Concessionaire shall provide the Port, upon reasonable request, one or more reports that document Concessionaire's compliance with, and efforts to further, the Port's quality jobs and small business initiatives. Reports relating to quality jobs will generally encompass information about Concessionaire's employee pool, wage rates, benefits (including time-off and Affordable Care Act compliance), and hiring practices. Reports relating to small business will generally encompass information about Concessionaire's inclusion of small businesses within its day-to-day operations, specifically including as suppliers. Without limiting the generality of the foregoing, the Port shall specifically have the right to request a report that documents Concessionaire's compliance with any commitments made by Concessionaire during any competitive process (whether request for proposals or competitive evaluation process) under which Concessionaire was selected to operate a concession at the Airport; provided, however, nothing in this Section shall require Concessionaire to disclose as part of any report any sensitive personally identifiable information about its individual employees.

- 6.6 **Improvement Reports.** Within one hundred twenty (120) days of the completion of the Initial Improvements, Midterm Refurbishment, and all Alterations for which the Port's consent is required, Concessionaire shall provide the Port with: (a) a certified statement (subject to verification, audit and approval by the Port) specifying the total construction cost (including architectural, engineering and permitting costs) in such detail as reasonably necessary to ascertain the costs of all leasehold improvements, furniture, fixtures and equipment constructed or installed by Concessionaire in the Premises; (b) a certification that the improvements have been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Port Standards; (c) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (d) a reproducible final copy of the plans as-built for all improvements along with computer discs as electronic files in a format compatible with the Port's CAD Standards Manual, to enable the Port to upgrade its existing files to reflect the as-constructed changes made by Concessionaire. The failure to timely provide the reports, statements and certifications required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

## SECTION 7: SECURITY DEPOSIT

- 7.1 **Security Deposit.** Concessionaire shall, prior to the Notice to Open Date, obtain and deliver to the Port a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, or other security in a form approved by the Port in the amount of **One Million One Hundred Eighty Thousand and 00/100 (\$1,180,000.00) Dollars** as referenced in the Summary of Key Lease Terms to secure Concessionaire's full performance of this Agreement, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder. In the event that a late charge is payable under Section 5.7 (whether or not collected) for three (3) installments of Rent in any twelve (12) month period, the amount of the Security shall, at the Port's election, be doubled.

The amount, form, provisions and nature of the Security, and the identity of the surety or other obligor thereunder, shall at all times be subject to the Port's approval. The Security shall remain in place at all times throughout the full term of this Agreement and throughout any holdover period. If the Security is in a form that periodically requires renewal, Concessionaire must renew the Security not less than forty-five (45) days before the Security is scheduled to expire. No interest shall be paid on the Security and the Port shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to the Security.

- 7.2 **Return of Security Deposit.** The Security is a part of the consideration for execution of this Agreement. If Concessionaire shall have fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to Concessionaire within sixty (60) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.
- 7.3 **Application of Security Deposit.** The Port may apply all or part of the Security to unpaid Rent or any other unpaid sum due hereunder, or to cure other defaults of Concessionaire. If the Port uses any part of the Security during the term of the Agreement, Concessionaire shall restore the Security to its then-currently required amount within fifteen (15) days after application of the



Security by the Port. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

## **SECTION 8: MARKETING PROGRAM**

- 8.1 **Program.** The Port has established a marketing program ("Program") to promote the concessions at the Airport. The Program generally includes advertising, media placements, special events, promotional events, social media, brochures, videos and catalogs, etc., promotion and monitoring as appropriate. Annually, the Port will, in consultation with interested Airport concession tenants, develop and establish the Program's annual business plan, objectives, evaluation methodology, and budget for the calendar year based in part on an analysis of the effectiveness of each previous year's Program elements.
- 8.2 **Funding.** The Program will be funded by contributions from the Concessionaire and other concessionaires at the Airport (the "Program Fund"). Concessionaire will contribute to the Program Fund an amount up to one half of one percent (0.5%) of its monthly Gross Sales, but no more than Thirty Thousand Dollars (\$30,000.00) per concession facility, per calendar year (pro-rated based on the number of months in the term for any partial year), to fund the Program; provided, however, in the event the Port assesses a lower percentage rate for other in-line, non-temporary Airport concession tenant's contribution to the Program Fund, Concessionaire's contribution rate will automatically be adjusted to the lowest percentage rate assessed by the Port for any Airport concession tenant. Concessionaire recognizes that certain kiosk tenants and temporary (two years or less) locations will not be required to participate in the Program (or may pay a lesser rate if they elect to participate), and these tenants shall not affect the rate paid by Concessionaire. All contributions to the Program Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Concessionaire shall make its contributions to the Program Fund monthly in arrears concurrently with its payment of the Percentage Fee under this Agreement.
- 8.3 **Right to Discontinue.** The Port reserves the right at any time to terminate the Program and thereafter, continue to provide marketing and promotional services as described in Section 8.1 until the balance remaining in the Program Fund is exhausted.

## **SECTION 9: COMMON AREAS**

- 9.1 **Control of Common Areas by Port.** The Port shall at all times have the exclusive control and management of the roof, walls, parking areas, access roads, driveways, sidewalks, concourses, loading docks, washrooms, elevators, escalators, stairways, hallways and other areas, improvements, facilities and/or special services provided by the Port for the general use, in common, of Airport users and tenants ("common areas and facilities"). Without limiting the Port's right of control and management, the Port specifically reserves the right to: (i) use the same for any purpose, including the installation of signs for directional, advertising or other purposes, (ii) change the area, level, location and arrangement of the common areas and facilities; (iii) provided Concessionaire is not deprived of reasonable access to its Premises, close all or any portion of the common areas and facilities; and (iv) do and perform such other acts in and to the common areas and facilities as the Port shall determine to be advisable with a

view to the improvement of the convenience and use thereof by the Port and tenants of the Airport.

- 9.2 **Common Area Maintenance.** The Port shall have the right to institute and charge a monthly maintenance fee to offset the costs of maintenance and repair of common areas (whether or not public) from which Concessionaire and other concession tenants benefit. The specific amount will be established based on the specific concession type and location reasonably determined by the Port (e.g. retail, service or food & beverage). However, the Port shall have no right to charge Concessionaire, and Concessionaire shall have no obligation to pay, such amount until such time as not less than fifty percent (50%) of other concessions tenants, both in number and total Gross Sales for the particular concession type and location, are subject to payment of such amount.
- 9.3 **License.** All common areas and facilities that Concessionaire is permitted to use and occupy are used and occupied under a revocable license. If the amount of such areas or facilities is revised or diminished, such revision or diminution shall not be deemed a constructive or actual eviction, and the Port shall not be subject to any liability, nor shall Concessionaire be entitled to any compensation or reduction or abatement of Rent.
- 9.4 **Parking.** While the Port may provide parking facilities to the Concessionaire's employees in common with employees of other tenants and users of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. The Port has no obligation to provide parking facilities to Concessionaire's employees.
- 9.5 **Centralized Receiving and Distribution.** The Port reserves the right to develop and manage a Centralized Receiving and Distribution Facility (CRDF) to be used by Concessionaire and other parties receiving deliveries for the Airport terminals, which CRDF may be located at a location off the Airport with regular deliveries to the Airport. The Port may also select a single entity to manage receiving and deliveries and to handle product distribution within the Airport terminals. If the Port chooses to select a delivery and distribution management entity, Concessionaire will be required to use the CRDF and the services of such manager and pay its respective costs of the program, at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time. Upon implementation of a CRDF, do direct deliveries will be allowed to Concessionaire in the Airport terminals.

## **SECTION 10: IMPROVEMENTS**

- 10.1 **Improvements by the Port.** The Port shall have no obligation to make any improvements to the Premises whatsoever. It is, however, understood that the Port may from time to time elect to alter, improve or remodel other portions of the Airport, and Concessionaire agrees that the portion of the Premises, if any, which is visible to the general public may be altered, remodeled or improved at the Port's expense in connection with any such work. The Port shall further have the right, at its sole discretion, to make minor modifications to the Premises to accommodate Airport operations, renovations, maintenance, or other work to be completed on or about the Airport, which modifications will not generally involve the recapture or disruption of more than fifty (50) square feet of the Premises. In the event of any such modifications, the Port will revise

the Premises through a written notice to Concessionaire rather than a formal amendment to the Agreement. Concessionaire agrees that any inconvenience resulting from any such work or modifications by the Port or its contractors and agents shall not be grounds for reduction of rent or fee if the same shall not unreasonably interfere with Concessionaire's use of the Premises.

10.2 **Other Alterations.** Concessionaire, after completion of the Initial Improvements, may from time to time during the term make such changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the Premises, of a non-structural nature, as Concessionaire may reasonably consider necessary and desirable to adapt or equip the Premises for Concessionaire's use and occupancy, provided, however, Concessionaire shall make no Alterations (including as part of the Midterm Refurbishment) that will (a) cost in excess of Fifteen Thousand Dollars (\$15,000), (b) involve structural work or changes, or (c) involve work or changes to the electrical, plumbing, heating, ventilation and air conditioning systems of the Premises without the Port's prior written consent, which shall not be unreasonably withheld or delayed.

10.3 **Standards for Alterations and Improvements.**

10.3.1 **Requirements.** The Initial Improvements, Midterm Refurbishment, and all other Alterations shall be done at Concessionaire's sole cost and expense and at such times and in such manner as the Port may from time to time designate. Initial Improvements, Midterm Refurbishment, and all Alterations shall: (i) be of high quality, (ii) conform to the design criteria approved by the Port, (iii) be of fireproof construction according to the standards of the local rating organization, (iv) be constructed in good and workmanlike manner, (v) be in full and complete accordance with all Legal Requirements and Port Standards, and (vi) be performed in a manner that will not unreasonably interfere with or disturb the Port or other tenants of the Port.

10.3.2 **Permits.** Before commencing the Initial Improvements, Midterm Refurbishment, or any Alterations for which the Port's consent is required, Concessionaire shall prepare plans and specifications and otherwise comply with the Port Standards. Except as otherwise specifically provided in this Agreement, Concessionaire shall obtain all necessary permits, including any discretionary permits. In the event the Port is required or has obtained any of the necessary permits, Concessionaire will reimburse the Port for any permit fees and associated costs in obtaining those permits.

10.3.3 **Coordination.** Concessionaire understands that the Airport is undergoing extensive remodeling. At all times during construction and installation of the Initial Improvements, the Midterm Refurbishment, any Alterations and any furniture, trade fixtures and/or equipment by Concessionaire, Concessionaire, its agents, employees and independent contractors shall cooperate with and coordinate activities and work with the Port construction managers and other concessionaires at or near the Premises.

10.3.4 **Liquidated Damages.** The failure to complete the Initial Improvements, Midterm Refurbishment, and any permitted Alterations in connection therewith, shall subject Concessionaire to such Liquidated Damages as identified in Exhibit F.

- 10.3.5 **Port Resolution 3725.** Concessionaire shall comply with Port Resolution 3725, attached hereto as Exhibit I, in connection with all Initial Improvements and Midterm Refurbishment, and any other Alterations made by Concessionaire to the Premises.
- 10.4 **Ownership of Alterations and Improvements.** Other than those leasehold improvements which are installed and become such a part of the Premises that they cannot be removed without substantial injury to the Premises, said improvements shall immediately become the property of the Port following installation, Concessionaire shall retain ownership of all furniture, trade fixtures and equipment from time to time installed in the Premises by Concessionaire at its sole expense (the “Removable Fixtures”). Concessionaire may remove any of the Removable Fixtures at any time during the term and shall remove all thereof prior to the expiration of the term. Any Removable Fixtures or other property of Concessionaire not removed at the expiration of the term shall, at the election of the Port, become the property of the Port without payment to Concessionaire, or be deemed abandoned and removed by the Port, at Concessionaire’s expense. Upon any removal of such property, Concessionaire shall promptly repair all damage to the Premises caused thereby and reimburse the Port for its costs and expenses in removing any such property not removed by Concessionaire and repairing any such damage not repaired by Concessionaire; this covenant shall survive the termination of this Agreement.
- 10.5 **Visual Artists Rights Act.** With respect to construction or installation of any improvements at the Premises (whether Initial Improvements, Midterm Refurbishment, any Alterations or otherwise) that might implicate the requirements of the federal Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113, as they may be amended from time to time (“VARA”), Concessionaire agrees that it will not (i) hire any artist or permit any sublessee to hire any artist for the purpose of installing or incorporating any work of art into or at the Premises, or (ii) permit the installation or incorporation of any work of art into or at the Premises, without the prior written approval of the Port. Concessionaire shall provide such reasonable documentation as the Port may request in connection with any such approval, and the approval of the Port may be conditioned upon the execution by the artist of a waiver of the provisions of the VARA, in form and substance acceptable to the Port.

## **SECTION 11: MAINTENANCE AND REPAIR**

- 11.1 **Maintenance and Repair by Port.** The Port shall keep and maintain the foundations, roof, common areas and common utilities up to the point of Concessionaire’s connection, and structural portions of the exterior walls of the Premises (excepting any walls which are installed by or on behalf of Concessionaire) in good order, condition and repair. The Port shall perform this work at its sole cost and expense, except to the extent that any such repairs may be required as a result of damage caused by negligence of Concessionaire or its agents, employees, invitees or licensees, in which event the work shall be at the cost or expense of Concessionaire. The Port shall perform such repair or maintenance work called to its attention by Concessionaire within a reasonable period of time after receipt of such notice by Concessionaire. There shall be no abatement or reduction of Rent, and the Port shall not be

responsible for any loss or damages to Concessionaire's business, arising by reason of the Port making any repairs, alterations or improvements.

11.2 **Maintenance and Repair by Concessionaire.** Subject only to the specific obligations of the Port set forth in Section 11.1, Concessionaire shall, at its sole cost and expense, keep the Premises, and every part thereof and any fixtures, facilities or equipment contained therein, in good order, condition and repair at all times. Concessionaire shall likewise comply with any preventative maintenance practices established by the Port and listed in the Airport Dining & Retail Preventative Maintenance Program Manual, as modified from time to time. The manual is available for download on the Port of Seattle's website and Concessionaire is responsible to keep a copy of the most up-to-date version of the manual. Concessionaire shall make all repairs and replacements (ordinary as well as extraordinary, foreseen and unforeseen) which may be necessary or required so that at all times the Premises are in good order, condition and repair. Without limiting the generality of the foregoing, Concessionaire shall keep the heating, air conditioning, electrical, plumbing and sewer systems, floors, doors, security grilles, interior walls, ceilings, window frames, glass and all portions of the storefront area in a good state of repair. Concessionaire shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port.

Concessionaire shall also keep the Premises neat, clean and in sanitary condition and follow best practices for hygiene to keep the Premises free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. Concessionaire shall reimburse the Port for the pest control services provided by the Port pursuant to Section 4.8 at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time. In the event that Concessionaire otherwise contracts for the provision of pest control services, any such services shall be supplemental to those provided by the Port under Section 4.8, and Concessionaire and its pest control contractor shall specifically coordinate its services with the Port's selected Unified Pest Management Program contractor.

Concessionaire shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port. In the event fixtures and/or equipment are installed in, affixed to, or served by, roof vents or other similar air openings serving the Premises, Concessionaire shall keep such vents and openings free from the accumulation of grease, dirt, and other foreign matter, and shall furnish and service all filters or similar equipment considered necessary by the Port, monthly or as often as necessary.

The failure to perform the maintenance and repair required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

## **SECTION 12: UTILITIES**

12.1 **Utilities.** Concessionaire shall be liable for and shall pay throughout the term of this Agreement, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, gas, water, cable television, grease interceptor, sewerage, fire protection, recycling, garbage disposal and janitorial services. For any utility services furnished by the Port,

Concessionaire shall pay the Port for such services at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time.

- 12.2 **Connections and Meters.** Without limiting the generality of the language set forth in Section 12.1, the following additional requirements related to utility services for the Premises shall apply unless otherwise expressly agreed by the Port in writing:
- 12.3 **HVAC.** Concessionaire shall – at its cost – furnish, install and maintain any ductwork and other connections within or leading into the Premises, and shall connect and complete the heating, ventilating and air conditioning (HVAC) from the Airport’s central system. Thereafter, the Port shall, without charge, furnish normal and reasonable quantities of central air from the central HVAC system to the Premises and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the Port shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Concessionaire properly maintains the ductwork and other connections within or leading into the Premises and complies with the recommendations of the Port regarding reasonable occupancy and use of the Premises.
- 12.4 **Electricity and Lighting.** Concessionaire shall – at its cost – furnish, install and maintain an electric meter for the Premises at a location and of a type specified by the Port. Concessionaire shall also – at its cost – furnish, install and maintain all lighting fixtures and wiring for general illumination of the Premises. Levels of illumination and wattage requirements shall be subject to the approval of the Port.
- 12.5 **Water, Natural Gas, and Sewerage.** To the extent water or natural gas is required by Concessionaire for its operations, Concessionaire shall – at its cost – furnish, install and maintain a water and natural gas meter for the Premises at a location and of a type specified by the Port.
- 12.6 **Cabling and Communications.** Concessionaire shall use the Port’s cabling and communications system for its operations at the Airport when such cabling and communications system has been installed by the Port, and Concessionaire shall pay a user fee as will be determined by the Port. In the event Concessionaire is allowed to install communication equipment, any such installation shall be subject to the Port regulation.
- 12.7 **Garbage and Recycling.** Concessionaire shall use the garbage, composting, and recycling system provided by the Port. Concessionaire is required to participate in all garbage and recycling programs. This includes, but is not limited to, composting, mixed cardboard, paper, plastic, metal, and glass recycling, bulk grease recycling and such other programs that may from time to time be adopted by the Port.
- 12.8 **Utility Interruptions.** The Port shall have the right to shut down electrical energy to the Premises (or portions thereof) when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to the Airport’s electrical system (singularly or collectively, “Electrical Work”), regardless of whether the need for such Electrical Work arises in respect of the Premises or elsewhere in the Airport. Whenever

possible, the Port shall give Concessionaire no less than two (2) days prior notice for such electricity shutdown. The Port shall use all reasonable efforts to not shut down Concessionaire's electrical energy for such Electrical Work during business hours unless such Electrical Work shall be: (a) required because of an emergency; or (b) required by the electricity company servicing the Airport or by any governmental or quasi-governmental law, rule, code, directive, or order.

Concessionaire further acknowledges that interruptions in utility services (including, without limitation, electrical service) are not uncommon in facilities such as the Airport, and Concessionaire acknowledges that it will, at its cost and expense, protect any sensitive electronic equipment which may be used in the Premises from utility service interruptions through the use of backup power supplies, surge protectors, and other appropriate safety systems as Concessionaire deems reasonable and necessary. Concessionaire acknowledges that it has taken or will take all precautions it deems necessary to protect its equipment in, on and around the Airport, including the acquisition of insurance.

The Port shall not be liable to Concessionaire for any damages or losses (including, without limitation, indirect or consequential damages or attorneys' fees) sustained to any equipment installed by Concessionaire or otherwise caused by any utility service shut downs, interruptions or failures, nor shall the same constitute an eviction or disturbance of Concessionaire's use or possession of the Premises or a breach of the Port's obligations hereunder. However, if any utility interruption is within the control of the Port, the Port shall use reasonable efforts to restore utility service to Concessionaire promptly. If the Port fails to use such reasonable efforts and such interruption or failure continues for more than two (2) days, then as Concessionaire's sole and exclusive remedy, the Minimum Annual Guarantee shall equitably abate until utility service is resumed.

- 12.9 **Utility Conservation.** The Port shall have the right to institute such reasonable policies, programs and measures as may be necessary or desirable, in the Port's discretion, for the conservation and/or preservation of water, energy or energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

## **SECTION 13: TAXES**

- 13.1 **Payment of Taxes.** Concessionaire shall be liable for, and shall pay throughout the term of this Agreement, all license fees and all taxes payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Concessionaire on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, the rentals payable hereunder, whether imposed on Concessionaire or on the Port. With respect to any such taxes payable by the Port which are on or measured by the Rent payments hereunder, Concessionaire shall pay to the Port with each Rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Concessionaire shall be payable by Concessionaire to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided,

that Concessionaire shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

- 13.2 **Personal Property Taxes.** Concessionaire shall pay or cause to be paid, prior to delinquency, all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Concessionaire. If any such taxes on Concessionaire's personal property or trade fixtures are levied against the Port or the Port's property, and if the Port pays the taxes based upon such increased assessment, Concessionaire shall, upon demand, repay to the Port the taxes so levied.

#### **SECTION 14: INDEMNITY**

- 14.1 The Port, its officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Concessionaire or by others, including but not limited to all persons directly or indirectly employed by Concessionaire, or any agents, contractors, subcontractors, licensees or invitees of Concessionaire, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Concessionaire's use or occupancy of the Premises and adjacent areas.
- 14.2 To the maximum extent permitted by law, Concessionaire shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all claims, loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs arising, directly or indirectly, from: (a) the condition of the Premises or out of the occupancy by the Concessionaire or any subtenant, licensee, concessionaire, or contractor of Concessionaire; and (b) any accident, injury, death or damage, however caused, to any person or property on or about the Premises; and (c) any fault or negligence by Concessionaire or any subtenant, licensee, concessionaire or contractor of the Concessionaire or of any officer, agent, or employee of any such person; and (d) any failure on Concessionaire's part to comply with any of the covenants, terms and conditions contained in this Agreement; *provided, however*, nothing herein shall require Concessionaire to indemnify the Port from any accident, injury, death or damage arising out of the sole negligence of the Port or its Commissioners, officers, agents and employees. Concessionaire agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Concessionaire expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity. Such waiver shall not, however, prevent Concessionaire from asserting such immunity against any other person or entity.
- 14.3 Notwithstanding anything to the contrary in Section 14, in the event of the concurrent negligence of Concessionaire, its subtenants, licensees, concessionaires, contractors, or any officer, agent, or employee of any such person on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Concessionaire's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Concessionaire's negligence



and that of Concessionaire's subtenants, licensees, concessionaires, contractors, and any officers, agents, and employees of any such person, including Concessionaire's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

- 14.4 **CONCESSIONAIRE AND PORT ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS SECTION 14 ARE THE PRODUCT OF MUTUAL NEGOTIATION.** Concessionaire's obligations under this Section 14 shall survive the expiration or earlier termination of this Agreement.

## **SECTION 15: INSURANCE**

- 15.1 **Required Policies.** Concessionaire shall obtain and keep in force, at its sole cost and expense the following types of insurance, in the amounts specified and in the form hereinafter provided for:

- 15.1.1 **General Liability Insurance.** Concessionaire shall obtain and keep in force a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects Concessionaire and the Port, as an additional insured using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant thereto, and specifically including the action/inaction of any subtenant, licensee or concessionaire. Such insurance shall be on occurrence basis providing single limit coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. The policy shall contain a minimum One Hundred Thousand Dollars (\$100,000) sub-limit that covers damage to premises rented or leased to Concessionaire, including fire damage. This limit shall be identified on the Certificate of Insurance. The Port shall be submitted upon Agreement inception, a copy of the additional insured endorsement, that validates the Port has been added as an additional insured. Additional endorsements shall include one to validate the Concessionaire's insurance is primary and non-contributory and a waiver of the transfer of the rights of recovery.

Concessionaire shall purchase coverage or add coverage by endorsement to the commercial general liability coverage policy for any liquor, beer, or wine operations by Concessionaire in which liquor, beer, or wine is sold, purchased, distributed, or served on the Premises. Coverage shall be on a per occurrence bases with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and cover liability as it relates to property injury and bodily injury. The Port of Seattle shall be an additional insured on this policy or coverage enhancement.

- 15.1.2 **Automobile Liability Insurance.** Concessionaire shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that provides coverage for claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations. Concessionaire shall provide a Waiver of Subrogation on this policy in favor of the Port.

Such insurance shall cover any “Auto” (i.e. owned, hired and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. Driving on the non-movement side of the airfield at STIA will require limits of Five Million Dollars (\$5,000,000) per occurrence.

15.1.3 **Property Insurance.** Concessionaire shall obtain and keep in force property insurance using an ISO CP 10 20 Cause of Loss Broad Form (or an equivalent manuscript form) insuring Concessionaire’s personal property and Alterations (specifically including “betterments and improvements”) made by or for Concessionaire against physical damage, including loss of use of the Premises. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of damaged property including any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be procured on a replacement cost basis (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause. The Port of Seattle shall be included as an Additional Insured and Loss Payee on Concessionaire’s property insurance policy with respect to the Port’s interest in Alterations.

15.1.4 **Other Insurance.** Concessionaire shall further obtain and keep in force such other and further insurance as the Port may from time to time reasonably request for the protection by insurance of its interest in the Premises.

The limits of insurance specified in this Section shall be subject to periodic adjustment to reflect changes in insuring practices for similar properties in the same geographic area and changes in insurance products.

## 15.2 **Insurance Policies.**

15.2.1 **Insurance Companies.** Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of ‘A-’ or better and a financial rating of ‘IX’ or better, as set forth in the most current issue of “Best’s Insurance Guide.”

15.2.2 **Deductibles.** No insurance required herein shall contain a deductible or self-insured retention in excess of Two Hundred Thousand Dollars (\$200,000) without the prior written consent of the Port.

15.2.3 **Cancellation/Non-Renewal.** Insurance is to remain current throughout the term of the Agreement. The Port shall receive documentation annually to include a certificate of

insurance and any applicable endorsements to validate the insurance required herein has been purchased and is compliant with the Agreement requirements within ten (10) days of each insurance renewal. Should any insurance required herein be terminated, cancelled, or not renewed, the Concessionaire will have five (5) days to obtain replacement insurance from the date of the termination, cancellation or non-renewal notice Concessionaire receives from their insurer(s). In the event the insurance is not replaced within the five (5) days, the Agreement shall – notwithstanding any other notice period provided for – be in Default under 18 and the Port shall have the right, under Section 21.5, to procure such insurance as the Port considers reasonable to protect its interests without further notice to Concessionaire.

- 15.2.4 **Evidence of Insurance.** Concessionaire shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Agreement, and the amounts of all deductibles and/or self-insured retentions. Upon request by the Port, Concessionaire shall deliver or cause to be delivered to the Port, certified copies of the policies of insurance that Concessionaire has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the Concessionaire’s insurance policies.
- 15.2.5 **Subtenants.** The Port may require all subtenants, at subtenant’s sole cost and expense, to maintain additional insurance coverage, during the subtenant’s occupancy of the Premises, and Concessionaire shall cause to be delivered to the Port, certificates which shall include but not be limited to the following: Worker’s Compensation as required by Washington State law, Comprehensive General Liability Insurance, Property Insurance, Business Automobile Liability Insurance, Product and/or Liquor Liability Insurance.
- 15.2.6 **No Limitation of Liability.** The limits of insurance required by this Agreement or as carried by Concessionaire shall not limit the liability of Concessionaire nor relieve Concessionaire of any obligation hereunder.
- 15.3 **Waiver of Subrogation.** Without affecting any other rights or remedies, Concessionaire (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Concessionaire arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, Concessionaire shall cause each insurance policy required by Section 15 to be further endorsed to provide a waiver of subrogation in favor of the Port. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.
- 15.4 **Increase in Port’s Cost of Insurance.** Concessionaire shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or

structures of which the Premises are a part, and to the extent allocable to the term of this Agreement, may be added to the amount of Rent and shall be paid by Concessionaire to the Port upon the monthly rental day next thereafter occurring.

## **SECTION 16: DAMAGE OR DESTRUCTION**

- 16.1 **Duty to Repair.** If the Premises or any buildings or structures of which the Premises are a part are damaged by fire, the elements, earthquake, accident or other casualty (collectively, “Casualty”), the Port shall, except to the extent either party has the right to terminate this Agreement under Section 16.2, use reasonable efforts to repair and restore the Premises and/or the buildings or structures of which the Premises are a part to substantially their former condition to the extent permitted by then-applicable Legal Requirements; *provided, however*, the Port’s obligation to repair and restore shall not extend to any Initial Improvements, Midterm Refurbishment, Alterations or any of Concessionaire’s personal property, specifically including the Removable Fixtures.
- 16.2 **Right to Terminate.** The Port may elect to terminate this Agreement in the event that the Port in its sole judgment, concludes that the damage to the Premises or any buildings or structures of which the Premises are a part cannot be repaired within thirty (30) days of the Casualty (with the repair work and the preparations therefor to be done during regular working hours on regular work days). In the event that the Port elects to terminate this Agreement, the Port shall advise Concessionaire of that fact within thirty (30) days of the date of the Casualty and notify Concessionaire of the date, not more than ninety (90) days after the Casualty, on which the Agreement will terminate.
- 16.3 **Abatement of Rent.** Unless the casualty results from Concessionaire’s negligence or breach of the terms of this Agreement, the Minimum Annual Guaranty (if any) shall be abated in the same proportion that any portion of the Premises that is rendered untenable or inaccessible bears to the whole thereof from the period from the date of the Casualty through the date of substantial completion of the repairs to the Premises (or to the date of termination of the Agreement if either party shall elect to terminate the Agreement). Percentage Fees shall not abate. The Port shall not otherwise be liable to Concessionaire for any loss of the use of the whole or any part of the Premises (including loss of business) and/or any inconvenience or annoyance occasioned by the Casualty, by any damage resulting from the Casualty, or by any repair, reconstruction or restoration.
- 16.4 **Concessionaire’s Duty to Repair.** Except to the extent the Port elects to terminate this Agreement under Section 16.2, Concessionaire shall, at its sole cost and expense, be responsible for all repairs or restoration of any Initial Improvements, Midterm Refurbishment, Alterations or any Removable Fixtures, which repair or restoration may be necessary as a result of any casualty.
- 16.5 **Waiver.** Except as specifically set forth in this Agreement, Concessionaire hereby waives any right that Concessionaire may have, under any applicable existing or future law, to terminate this Agreement in the event of any damage to, or destruction of, the Premises or any buildings or structures of which the Premises are a part.

## SECTION 17: ASSIGNMENT AND SUBLEASE

17.1 **Prohibition.** Concessionaire shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Concessionaire of all or any part of the Premises, without the prior written consent of the Port in each instance. Concessionaire shall at the time the Concessionaire requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee, subtenant or licensee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, subtenant or licensee together with the proposed form of assignment, sublease or license. Within thirty (30) days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (i) to consent to such proposed assignment, sublease or license, (ii) buyout Concessionaire's interest in the Agreement as provided in Section 17.3, or (iii) disapprove the assignment, sublease or license, setting forth the grounds for doing so.

17.1.1 As a condition for the Port's consent to any assignment, sublease or license, the Port may require that the assignee, sublessee or licensee remit directly to the Port on a monthly basis, all monies due to Concessionaire by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Concessionaire pursuant to Section 17.2). In addition, a condition to the Port's consent to any assignment, sublease or license of this Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, sublessee or licensee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Concessionaire hereunder.

17.1.2 In the event of any assignment, Concessionaire and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the tenant then in possession without notice to or consent of any assignor, including Concessionaire; and any extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Concessionaire and of each respective assignor.

17.1.3 Concessionaire agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Agreement or the Port should buy out Concessionaire's interest pursuant to Section 17.3, then the subtenant or licensee, at the request of the Port, will attorn to the Port and the sublessee or licensee, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant or licensee in such circumstances only by privity of estate. The Port may, in its sole discretion, accept or reject the attornment.

17.1.4 No assignment, subletting or license by Concessionaire shall relieve Concessionaire of any obligation under this Agreement, including Concessionaire's obligation to pay Rent

or any other sum hereunder. Any purported assignment, subletting or license contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

Concessionaire shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Concessionaire for consent to an assignment, subletting or license.

- 17.2 **Excess Rental.** If in connection with any assignment, sublease or license, Concessionaire receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, after appropriate adjustments to account for any improvements or alterations made by Concessionaire and to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Concessionaire in connection with such assignment, sublease or license, are appropriately taken into account, Concessionaire shall pay to the Port seventy-five percent (75%) of the excess of each such payment of rent or other consideration received by Concessionaire after its receipt.
- 17.3 **Buyout.** Within the time provided by Section 17.1, the Port shall notify Concessionaire whether it is interested in negotiating a buy-out of Concessionaire's interest in this Agreement. The Port shall have no right to buy-out Concessionaire's interest in this Agreement in the event that a proposed assignment is directly as a result of a proposed merger, acquisition or sale of substantially all of the assets of Concessionaire. If the Port is interested in a buy-out of Concessionaire's interest, the Port shall have sixty (60) days from the date of its notice to Concessionaire to enter into an agreement to buy out Concessionaire's leasehold interest in this Agreement upon substantially the same terms and conditions as proposed between Concessionaire and the third party. The purchase price to be paid by the Port under this buy-out right shall be the proposed transaction purchase price as set forth in the letter of intent or proposed agreement between Concessionaire and the third party.

If the Port and Concessionaire fail to enter into a written agreement for such a purchase within the period of time provided by Section 17.3 then the Port shall be deemed to have waived its buy-out right. Subject to the other provisions of this Section 17, Concessionaire may then transfer its interest in this Agreement, but only upon the same terms and conditions as reviewed by the Port.

If the proposed terms and conditions of any transfer by Concessionaire to a third party are at any time materially altered from the proposed terms and conditions of such sale that were presented to and reviewed by the Port, the Port's buy-out right shall be deemed applicable to the altered transfer terms, and the Port shall have sixty (60) days after the date it receives notice of the material alteration to consider and enter into a written agreement for the purchase of Concessionaire's interest in this Agreement. It is further understood that, in the event that the Port does not exercise this buy-out right, this provision shall nevertheless be applicable to any further or future transfer, which is subject to this provision.

- 17.3 **Scope.** The prohibition against assigning or subletting contained in this Section 17 shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this Section 17, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Concessionaire (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall be deemed an assignment. If this Agreement be assigned, or if the underlying beneficial interest of Concessionaire is transferred, or if the Premises or any part thereof be sublet or occupied by anybody other than Concessionaire, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess Rent so collected in accordance with the terms of Section 17.2, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Concessionaire from the further performance by Concessionaire of covenants on the part of Concessionaire herein contained. No assignment or subletting shall affect the continuing primary liability of Concessionaire (which, following assignment, shall be joint and several with the assignee), and Concessionaire shall not be released from performing any of the terms, covenants and conditions of this Agreement.
- 17.4 **Concessionaire's Responsibility for Subtenants.** In the event that Concessionaire subleases any portion of the Premises, Concessionaire shall be responsible for managing all of its subtenants and for ensuring that all its subtenants adhere to the terms of this Agreement. Concessionaire is responsible for ensuring all of its subtenants adhere to proper cash-handling techniques, including without limitation any point-of-sale system and cash-handling criteria required by the Port hereunder. If a subtenant fails to open its unit or goes out of business, Concessionaire is responsible to put up appropriate temporary storefront barriers, curtains, display boxes or signage as directed by the Port. And if Concessionaire fails to comply with this paragraph in the time period specified by the Port, Operator agrees to pay the Port liquidated damages as provided in Section 18.4 and Exhibit F until such temporary installation is complete. Concessionaire is responsible for terminating any sublease and/or license with subtenants, locking out a subtenant (if legally permissible), instituting suit for rent or for use or occupancy or proceedings for recovery of possession when (a) subtenant defaults; or (b) Concessionaire is entitled to terminate the subtenant's sublease and/or license. All legal expenses incurred in bringing such action are Concessionaire's sole responsibility. The Port agrees not to terminate this Agreement under 18 if the event of default is a result of an action or omission of a subtenant if and only if; (i) after notification to the Port, Concessionaire has taken or is taking all legally permissible corrective action, including initiation of termination actions with respect to its sublease/subcontract with the defaulting subtenant; and (ii) Concessionaire has made the Port financially whole.

## **SECTION 18: DEFAULT**

- 18.1 **Defaults.** The occurrence of any one or more of the following events constitutes a default of this Agreement by Concessionaire with or without notice from the Port:

18.1.1 The vacating or abandonment of the Premises by Concessionaire.

- 18.1.2 The failure by Concessionaire to make any payment of Rent, or any other payment required by this Agreement, when due.
- 18.1.3 The failure by Concessionaire to observe or perform any covenant, condition, or agreement to be observed or performed by Concessionaire in this Agreement.
- 18.1.4 The discovery by the Port that any required report, financial statement or background statement provided to the Port by Concessionaire, any successor, grantee, or assignee was materially false.
- 18.1.5 The filing by Concessionaire of a petition in bankruptcy, Concessionaire being adjudged bankrupt or insolvent by any court, a receiver of the property of Concessionaire being appointed in any proceeding brought by or against Concessionaire, Concessionaire making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Concessionaire's interest in the Premises or on any personal property kept or maintained on the Premises by Concessionaire.
- 18.2 **Remedies.** Whenever any default (other than a default under Section 18.1.5 above, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues un-remedied, in whole or in part, for: (i) ten (10) days after written notice is provided by the Port to Concessionaire in the case of default for failure to pay any Rent, or other required payment when due, or (ii) thirty (30) days after written notice is provided by the Port to Concessionaire for any non-monetary default, this Agreement and all of Concessionaire's rights under it will automatically terminate if the written notice of default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Concessionaire all unpaid Rent or other payments and damages incurred because of Concessionaire's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the Default Rates from the date such Termination Damages are incurred by the Port until paid.

In addition to Termination Damages, and notwithstanding termination and reentry, Concessionaire's liability for all Rent or other charges which, but for termination of the Agreement, would have become due over the remainder of the Agreement term ("Future Charges") will not be extinguished and Concessionaire agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a Rental Deficiency. "Rental Deficiency" means, at the Port's election, either:

An amount equal to Future Charges, less the amount of actual rent and concession fees, if any, which the Port receives during the remainder of the Agreement term from others to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port's option either:

- 18.2.1 In an accelerated lump-sum payment discounted to present value; or



18.2.2 In monthly installments, in advance, on the first day of each calendar month following termination of the Agreement and continuing until the date on which the Agreement term would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

18.2.3 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Agreement term, reduced to present worth. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subparagraph, "present worth" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

18.3 **Termination For Default by Concessionaire.** If this Agreement is terminated for default as provided in this Agreement, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Agreement term), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Concessionaire's obligations under this Agreement be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent due upon such re-letting.

In addition to the rights granted by Section 10.4, if upon any reentry permitted under this Agreement, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Concessionaire. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Concessionaire of the Port's action. All risks associated with removal and storage shall be on Concessionaire. Concessionaire shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property that has been stored for a period of thirty (30) days or more, unless Concessionaire has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Concessionaire to the Port. The balance of sale proceeds, if any, will then be paid to Concessionaire.

If the Port elects to terminate this Agreement, it will in no way prejudice the right of action for Rents arrearages owed by Concessionaire.

18.4 **Liquidated Damages.** This Agreement provides for the imposition of liquidated damages in a variety of circumstances, specifically include the Delay Damages and the schedule of liquidated damages set forth on Exhibit F. The following provisions shall apply to any such amounts.

18.4.1 **Noncompliance.** The Port's ADR Manager or the ADR Manager's authorized representative shall have the right to make reasonable objections to Concessionaire's

failure to create and maintain a vibrant first-class concession at the Airport in accordance with all of the terms of this Agreement, including, without limitation, the standards set forth in Section 4.3 (and any requirement or standard imposed by any Exhibit to this Agreement) (collectively, the “Operating Standards”) and to operate its business in a manner satisfactory to the ADR Manager or the ADR Manager's authorized representative. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within the cure period stated in any written notice issued by the ADR Manager or the ADR Manager’s authorized representative. “ADR Manager” shall mean the Airport’s Senior Manager, Airport Dining and Retail, or the ADR Manager’s successor in function.

- 18.4.2 **Reasonable Forecast of Harm to Port.** Concessionaire’s failure to adhere to the Agreement (specifically including any requirement imposed by any Exhibit) is reasonably anticipated to result in inconvenience to the public, adverse effects on the overall business of the Airport, a reduction in the amount of Rent to be paid to the Port, and a significant expenditure of Port resources to address the failure. The parties agree that the damages sustained by the Port for violations of the provisions of the Agreement and these Port Standards will be difficult to determine and track. Therefore, the parties agree that the amounts set forth in the Agreement and its exhibits are reasonable estimates of the damages anticipated to be suffered or incurred by the Port.
- 18.4.3 **Notice and Opportunity to Cure.** The Port may assess liquidated damages immediately, and without opportunity to cure, for the Delay Damages and for violations pertaining to (i) minimum hours of operation, (ii) failure to remove a product deemed objectionable by the Port within the time provided for removal, (iii) fire safety, (iv) health and human safety, and (v) for any other violation if the Port has previously provided Concessionaire notice of such violation two or more times in the past twelve months (whether or not liquidated damages were actually imposed). For any other violation, the Port will not assess liquidated damages unless the violation continues for more than three (3) days following written notice thereof. If the violation is such that it cannot reasonably be corrected within three days, the Port will refrain from imposing liquidated damages so long as Concessionaire shall, within the three days, commence the correction, identify the timeframe reasonably necessary to complete the correction and, thereafter, diligently proceed to complete the correction within the stated timeframe.
- 18.4.4 **Failure to Cure.** The failure to promptly address or cure any violation for which liquidated damages are payable may, itself, also be cause for continued assessment of liquidated damages.
- 18.4.5 **Payment.** Concessionaire shall pay all liquidated damages within thirty (30) days of the imposition thereof. The failure to pay liquidated damages shall represent a separate default under this Agreement.
- 18.4.6 **No Waiver; No Obligation.** The Port’s failure to impose sanctions for any violation shall not waive any right, or prohibit the Port from doing so for subsequent violations. The Port shall have no obligation, whether to Concessionaire or any third party, to

impose fines on or otherwise take action against any party at the Airport for violation of the Agreement or any Operating Standards.

18.4.7 **Other Fines.** Other fines and liquidated damages amounts may be set forth in the Port Standards, and nothing in this Agreement is intended to limit the ability of the Port to impose those fines and amounts as specifically provided by the Port Standards.

18.5 **Remedies Cumulative.** All rights, options and remedies of the Port contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement. Furthermore, payment of any liquidated damages amount shall not relieve Concessionaire of its responsibility for physical damage, personal injury, or any other harm caused by Concessionaire, its employees, agents, contractors, tenants and licensees. Concessionaire may, in its discretion, assess a subtenant or other licensee for any fines imposed with respect to that subtenant's or licensee's unit.

## SECTION 19: RELOCATION OR TERMINATION OTHER THAN FOR DEFAULT

19.1 **Relocation for Performance.** In the event that Concessionaire either (a) experiences a decrease in its sales per Enplaned Passenger of more than twenty percent (20%) for the Premises, or any discrete portion thereof, for two (2) quarters in any twelve (12)-month period, (b) loses the franchise rights under which the concession for the Premises, or any discrete portion thereof, was operated, or (c) experiences a decline in Gross Sales for the Premises, or any discrete portion thereof, for two (2) consecutive years without a corresponding decrease in the number of Enplaned Passengers for the same two-year period, the Port may initiate a discussion with Concessionaire about termination of this Agreement or the discrete portion of the Premises to which such issue pertains. If the parties mutually agree, then a termination agreement shall be executed under which the Port shall agree to remarket the space and the Concessionaire shall agree to terminate the lease and vacate the space if and when a new tenant lease for the space is executed and the new tenant design for the space is approved by the Port.

19.2 **Airport Operational Needs.** If at any time (whether before or after Concessionaire commences operations at the Premises) the Port determines that the Premises (or any portion thereof) are necessary for the operation, safety, security or convenience of the Airport, the Port may require Concessionaire to close, reduce or relocate (to a location designated by the Port) the Premises, or any discrete portion thereof. In such event, the Port shall provide Concessionaire at least sixty (60) days advance written notice. Concessionaire shall have the right to accept or reject any proposed reduction or relocation of the Premises. If accepted, the Port and Concessionaire shall negotiate, in good faith, for the payment of any costs associated with such change. If Concessionaire rejects the reduction/relocation, or if the parties are unable to reach agreement regarding the payment of costs associated with such change, the Port may, at the Port's election, terminate this Agreement. If Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination and, as applicable, reimburse Concessionaire the Net Book Value of Leasehold

Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses.

- 19.3 **Condemnation.** In the event that any federal, state or local government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of all or a portion of the Premises, the Port may, at its option, terminate this Agreement as of the date of such taking, and if Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination. In addition, Concessionaire shall be entitled to participate in any compensation paid in the event of a taking, not to exceed the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses, except to the extent such relocation expenses may be awarded to Concessionaire as part of any condemnation proceeding.
- 19.4 **Court Decree.** In the event that any court having jurisdiction in the matter renders a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Agreement, then either party may terminate this Agreement by ten (10) days' written notice, and all rights and obligations of this Agreement (except for any undischarged rights and obligations that accrued prior to the effective date of termination) shall terminate. If Concessionaire is not in default of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses.
- 19.5 **Net Book Value of Leasehold Improvements.** As used in this Agreement, "Net Book Value of Leasehold Improvements" shall mean the dollar amount generated through application of the following rules:
- 19.5.1 **Eligible Improvements.** "Eligible Improvements" shall mean any permanently affixed alterations or improvements made to the Premises and to cabinetry and display fixtures that were custom designed by Concessionaire for the Premises and have no practical use or value outside the Premises: (a) for which the Port's consent has been sought and obtained in writing, (b) for which any and all information required by Section 6.6 or any Port consent has been timely submitted, and (c) consistently appearing on any NBV Report requested by the Port pursuant to Section 6.4, and (d) then currently in use and in such condition as would warrant its continued use. Eligible Improvements shall, however, specifically exclude the Removable Fixtures (other than custom designed cabinetry and display fixtures set forth above) and any inventory maintained by Concessionaire.
- 19.5.2 **Cost of Eligible Improvements.** The "Costs of Eligible Improvements" shall mean the direct costs expended by Concessionaire for any Eligible Improvements, including the cost for the demolition of any existing improvements necessary for the installation of such Eligible Improvements. The Costs of Eligible Improvements shall not, however,

include any of the Excluded Costs. The Costs of Eligible Improvements” shall be determined from the information timely submitted by Concessionaire pursuant to Section 6.6 or any Port consent, subject to verification by the Port. “Excluded Costs” shall mean the (i) financing costs; (ii) interest; (iii) inventory; (iv) office equipment and furnishings; (v) pre-opening expenses; (vi) intra-Concessionaire charges related to construction; (vii) professional fees and costs related to design and engineering of Eligible Improvements in excess of twelve percent (12%) of the initial minimum investment; and (viii) professional fees and costs related to the design and engineering of Leasehold Improvements in excess of twelve percent (12%) of the minimum mid-term refurbishment.

**19.5.3 Calculation of Net Book Value of Leasehold Improvements.** For each Eligible Improvement that does not become the Port’s property under Section 10.4, the Cost of that Eligible Improvement shall be amortized over the useful economic life of such Eligible Improvement. The useful economic life shall in no instance exceed the period of time commencing on the date such Eligible Improvement is installed and terminating on the expiration of this Agreement, or any lesser period that may be specified in any consent, sublease or other writing, on a straight-line basis with no salvage value. The “Net Book Value of Leasehold Improvements” shall be the sum of the unamortized portion (as of the effective date of the applicable termination) of the Cost of Eligible Improvements for each Eligible Improvement directly affected by such deletion or termination. As used in this Section, “useful economic life” shall specifically be determined with respect to the initial investment in the Eligible Improvement, Concessionaire’s repair and maintenance of the Eligible Improvement, and Concessionaire’s custom and usage for assets similar to the Eligible Improvements, both at the Airport and elsewhere.

## **SECTION 20: ACCESS; EASEMENTS**

20.1 **Access to Premises.** The Port may, at any time, enter upon the Premises to ascertain the condition of the Premises or whether Concessionaire is observing and performing its obligations under this Agreement, all without hindrance or molestation from the Concessionaire. The Port shall also have the right to enter the Premises for the purpose of making or performing any necessary maintenance and repair work, for providing pest control services, for performing any work that may be necessary by reason of Concessionaire’s failure to make any such repairs or perform any such work, or for any other reasonable purpose. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance oral or written notice to Concessionaire (except that no notice shall be required in the event of an emergency) or an authorized employee of Concessionaire at the Premises.

20.2 **Easements.** The Port hereby reserves such continuous access and utilities easements within the Premises, as may in the opinion of the Port from time to time are desirable for the purpose of enabling it to exercise any right or reservation or to perform any obligation contained in this Agreement or in connection with the Port’s ownership or operation of the Airport. If the Port exercises this reservation of easement in any manner which substantially and negatively impacts Concessionaire, the Port agrees to negotiate an equitable adjustment in the Rent, or to bear reasonable costs of any permanent modifications to the Premises necessary to permit

Concessionaire to continue to operate its business. In no event, however, shall the Port be responsible for any reduced efficiency or loss of business.

## **SECTION 21: NONWAIVER; RIGHT TO PERFORM**

- 21.1 **Receipt of Monies Following Termination.** No receipt of monies by the Port from Concessionaire after the termination or cancellation of this Agreement in any lawful manner shall (i) reinstate, continue or extend the term of this Agreement; (ii) affect any notice previously given to Concessionaire; (iii) operate as a waiver of the rights of the Port to enforce the payment of any Rent and fees then due or falling due later; or (iv) operate as a waiver of the right of the Port to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Agreement, or after the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, the Port may demand, receive and collect any monies due, or falling due later, without in any manner affecting such notice, proceeding, suit, action or judgment; and any such monies collected shall be deemed to be payments on account of the use and occupation and/or Concessionaire's liability under this Agreement.
- 21.2 **No Waiver of Breach.** The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the covenant and option shall remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by Concessionaire requiring the Port's consent or approval shall not be deemed to waive or render unnecessary the Port's consent or approval to or of any subsequent similar acts by Concessionaire.
- 21.3 **No Waiver of Rent.** The receipt by the Port of any installment of Rent or of any amount shall not be a waiver of any Rent or other amount then due.
- 21.4 **Application of Payments.** The Port shall have the right to apply any payments made by Concessionaire to the satisfaction of any debt or obligation of Concessionaire to the Port, in the Port's sole discretion and regardless of the instructions of Concessionaire as to application of any such sum, whether such instructions be endorsed upon Concessionaire's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by the Port of payments by other parties shall in no way affect Concessionaire's liability hereunder nor shall it be deemed an approval of any assignment of this Agreement or subletting by Concessionaire.
- 21.5 **Port's Right to Perform.** Upon Concessionaire's failure to perform any obligation or make any payment required of Concessionaire under the Agreement, the Port shall have the right (but not the obligation) to perform such obligation on behalf of Concessionaire and/or to make payment on behalf of Concessionaire. Concessionaire shall reimburse the Port the reasonable cost of the Port's performing such obligation on Concessionaire's behalf, including

reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate.

## SECTION 22: SURRENDER

- 22.1 **Surrender.** At the expiration or sooner termination of this Agreement, Concessionaire shall promptly surrender possession of the Premises to the Port broom-clean, in their improved condition, wear and tear consistent with Section 11.2 excepted, remove all its Removable Fixtures and other property, and shall deliver to the Port all keys that it may have to any parts of the Premises. If the Premises are not surrendered as provided in this Section, Concessionaire shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Concessionaire in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay.
- 22.2 **Removal of Wires.** Within ten (10) days following the expiration or earlier termination of this Agreement, the Port may elect by written notice to Concessionaire to either:
- 22.2.1 Retain, without necessity of payment, any or all wiring, cables, conduit, risers and similar installations installed by Concessionaire (“Wiring”), whether in the Premises or the larger building of which the Premises are a part. In the event that the Port elects to retain the wiring, Concessionaire covenants that: (i) it is the sole owner of the assets transferred or passing to the Port, (ii) it shall have right to surrender the assets transferred or passing to the Port, (iii) the Wiring transferred or passing to the Port are free from all liens and encumbrances, (iv) the Wiring transferred or passing to the Port is in good condition, working order, in safe condition and comply with the requirements of this Agreement, and (v) that all wiring or cables included within the Wiring transferred or passing to the Port is properly labeled at each end, in each telecommunications/electrical closet and junction box, and otherwise as may be required by Port regulations. OR
- 22.2.2 Remove, or require Concessionaire to remove, all such Wiring and restore the Premises and any larger property of which the Premises are a part to their condition existing prior to the installation of the Wiring, all at Concessionaire’s sole cost and expense.

This Section shall survive the expiration or earlier termination of this Agreement.

## SECTION 23: AIRPORT SECURITY

- 23.1 **Airport Security.** Concessionaire covenants that it will, at all times, maintain the integrity of the Airport Security Plan and Transportation Security Administration (TSA) Regulations currently in effect or as may be implemented or modified from time to time, and that it will always maintain the security of the Airport and/or any access which Concessionaire maintains. Concessionaire also hereby agrees that it shall also be responsible for any and all actions of its employees, subcontractors, suppliers, agents, and/or representatives, and shall provide any and all necessary escorts as outlined in the Airports Security Plan, at all times. Concessionaire covenants that it will always maintain the security of any airfield access which Concessionaire maintains. Should Concessionaire allow unauthorized access to the Airport Operations or Security Area, and/or should the Port be cited for a civil penalty, Concessionaire agrees to

reimburse Port from any monetary civil penalty which may be imposed by the Federal Aviation Administration, the TSA, or any appropriate agency.

- 23.2 **Airport Security Program.** Concessionaire shall be responsible for obtaining and coordinating any TSA required and Port administered criminal history record checks, security threat assessments, badging, and/or other activities required to ensure Concessionaire is in compliance with Port Rules and Regulations and TSA Regulations 49 CFR Parts 1500, 1520, 1540, 1542, 1544, 1546, 1548, and 1550, as promulgated, and the terms and conditions of this Agreement.
- 23.3 **Background Checks.** Concessionaire shall be responsible for the proper preliminary background checks for its employees, vendors, etc., for which it requests and/or obtains an Airport Security badge. Such checks include those in support of TSA required criminal history record checks, and security threat assessments. In the event Concessionaire fails in its responsibilities for proper certifications, background checks or to return such Airport-issued badges upon cessation of employment or other circumstances, as described in Section 23.6, and/or any cause of action that either singularly or collectively would require the Port to be in violation of TSA Regulations, Port-TSA approved Airport Security Program, and applicable Part 1543 security directives, Concessionaire shall bear the tot cost of such TSA-issued monetary civil penalties and/or the re-badging process.
- 23.4 **Security Regulations.** Concessionaire covenants that it will at all times preserve the integrity of the Airport's Security program and TSA Regulations 49CFR Part 1500, 1520, 1540, 1542, 1544, 1546, 1548, and 1550, as promulgated, and that it will always preserve the security of any Secure Areas/SIDA access which the Concessionaire maintains. Concessionaire agrees that it shall be responsible for any and all actions of its employees, subcontractors, suppliers, agents, and/or representatives and shall provide any and all escorts as outlined in the Airport's Security Program, at all times. Concessionaire agrees that it shall be responsible for its employees, subcontractors, suppliers, agents, and/or representatives shall adhere to all Airport and TSA security policies, procedures and rules.
- 23.5 **Compliance.** Should Concessionaire, its employees, subcontractors, suppliers, agents, and/or representatives cause any TSA Letter-of-Investigation (LOI) or TSA monetary civil penalty to be assessed against the Port, Concessionaire agrees to reimburse the Port for all costs which may be imposed by TSA. Concessionaire may have badge/access privileges immediately suspended and/or revoked by the Aviation Managing Director or designee for failure to adhere to the Airport Security Program or for failure to return all badges within the timeframes specified herein. In the event of a severe incident, such actions may also result in the immediate suspension and/or termination of this Agreement, at the sole discretion of the Aviation Managing Director.
- 23.6 **Badging.** In accordance with the Airport Security Program, Concessionaire must obtain Airport security badging and fingerprinting for its eligible employees, subcontractors, suppliers, agents, and/or representatives, and pay any and all related costs associated with this privilege. Note at the sole discretion of the Aviation Managing Director or designee, the rates may be subject to change. Said badges will only be valid for the term of this Agreement and must be returned to



the Credential Center Office within twenty-four (24) hours or the next business day after expiration or suspension and/or termination of this Agreement. Concessionaire is responsible to return the badges of employees and representatives that are no longer employees by Concessionaire. Concessionaire agrees to pay any associated fees and/or penalties for all badges not returned within this time frame. Concessionaire will be required to comply with all security requirements currently in effect or as may be implemented from time to time, including but not limited to background checks for each badge requested.

Concessionaire will be required to have each employee continuously display any issued Airport security badge while on Airport property. Failure to do so may result in the immediate suspension and/or termination of badge access and this Agreement.

If the badge holder's Airport access is deactivated due to badge expiration, termination, suspension and/or other cessation of employment and/or termination of this Agreement, or such other terms as may be designated by the Aviation Managing Director or designee, Concessionaire must immediately report such information to the Port. Concessionaire is responsible for ensuring all Airport-issued badges are returned to the Port for any circumstances as described above.

Concessionaire will have some or all badge/access privileges immediately suspended and/or revoked as appropriate in the sole discretion of the Director Aviation Security for failure to adhere to the Airport Security Plan or for failure to return all badges within the time frames specified herein, and issue Liquidated Damages as provided in Section. Such actions may result in the immediate termination of this Agreement, at the sole discretion of the Port.

## **SECTION 24: ENVIRONMENTAL STANDARDS**

- 24.1 **Definitions.** "Law" or "Regulation" as used in this Agreement shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. "Hazardous Substances" as used in this Agreement shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.
- 24.2 **Hazardous Substances.** Concessionaire shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Concessionaire shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Upon request from the Port, Concessionaire shall provide the Port with Concessionaire's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS) or Generator Annual Dangerous Waste Reports/ Concessionaire shall provide the Port with all environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Concessionaire receives from, or provides to, any governmental unit or agency in connection with Concessionaire's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

- 24.3 **Violation of Environmental Law.** If Concessionaire, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Concessionaire shall promptly take such action as is necessary to mitigate and correct the violation. If Concessionaire does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Concessionaire (Concessionaire hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Concessionaire is in violation of any Law or Regulation, or that Concessionaire's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Concessionaire upon presentation of an invoice therefor.
- 24.4 **Inspection; Test Results.** The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Concessionaire shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Concessionaire shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Concessionaire shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Concessionaire, and Concessionaire shall provide copies to the Port.
- 24.5 **Removal of Hazardous Substances.** Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Concessionaire shall remove any Hazardous Substances placed on the Premises during the term of this Agreement or Concessionaire's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Concessionaire upon termination or expiration of this Agreement.
- 24.6 **Remedies Not Exclusive.** No remedy provided under this Agreement shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Concessionaire whenever the Port incurs any costs resulting from Concessionaire's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).
- 24.7 **Environmental Indemnity.** In addition to all other indemnities provided in this Agreement, Concessionaire agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous

Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this Agreement, or (2) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement.

## **SECTION 25: ACDBE REQUIREMENTS; NON-DISCRIMINATION**

25.1 **Airport Concessions Disadvantaged Business Enterprises.** It is the policy of the Port to support participation of Airport Concessions Disadvantaged Business Enterprises (ACDBE), as defined in 49 CFR, Part 23, in concession activities at the Airport. To the extent Concessionaire is required to operate the Premises as an ACDBE, Concessionaire agrees to submit to the Port, upon execution of this Agreement, certification from the State of Washington that Concessionaire is a certified ACDBE. Likewise, at all times during the term of this Agreement, Concessionaire shall be and remain certified as an ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and shall timely file all applications, together with all supporting documentation, necessary to maintain such certification. In the event that Concessionaire is certified as an ACDBE and that certification is necessary to satisfy the requirements of this Section, prior to any change in ownership, control or organization of Concessionaire, Concessionaire shall (in addition to any requirements that may be imposed by Section 17.1) similarly obtain ACDBE certification for Concessionaire as so changed and provide the Port with proof of the same. If Concessionaire shall at any time cease to be so certified, the Port may, at its sole option, terminate this Agreement on not less than ninety (90) days advance written notice to Concessionaire. So long as Concessionaire in good faith sought certification, reasonably complied with all requirements and deadlines necessary to maintain certification, and nonetheless ceased to be so certified, the Port shall pay to Concessionaire the Net Book Value of Leasehold Improvements in the event of such termination.

It is the policy of the Port to ensure that ACDBE and other small businesses have an equal opportunity to receive and participate in U.S. Department of Transportation (DOT)-assisted contracts. The Port encourages Concessionaire to make every reasonable effort to maximize the contracting opportunities for ACDBE and other small businesses in the architectural, engineering and construction of the Premises, and in the procurement of goods and services necessary for the operation of the concession at this Airport.

Concessionaire shall submit quarterly ACDBE participation reports to the Port starting on the first day of the second month after the commencement of this Agreement. Concessionaire shall submit such reports as may be required by the Port, for the purpose of demonstrating compliance with 49 CFR Part 23.

As part of the Proposal, Concessionaire has committed to maintain a **Twelve and One Half Percent (12.5%)** ACDBE participation level throughout the term of this Agreement.

25.2 **Nondiscrimination.** This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and the DOT's regulations, 49 CFR Part 21. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, subcontract, purchase or lease agreement or other agreement covered by

49 CFR Part 21. Furthermore, during the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest (for purposes of this Section and its referenced exhibits only, “contractor”) agrees to both (i) comply with the covenants set forth on Exhibit G and (ii) comply with the non-discrimination statutes and authorities set forth on Exhibit H.

**SECTION 26: MISCELLANEOUS**

26.1 **Notice.** Each provision of this Agreement or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by one party to the other shall be deemed to be complied with when and if made in compliance with this Section 26.1.

**Notice to the Port.** All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier.

For any notice directed to the Port, the address shall be as follows:

Street Address:

Port of Seattle  
Seattle-Tacoma International Airport  
17801 International Blvd.  
Seattle, WA 98158  
Attn: Aviation Commercial Management

Mailing Address:

Port of Seattle  
Seattle-Tacoma International Airport  
P. O. Box 68727  
Seattle, WA 98168  
Attn: Aviation Commercial Management

For payments only as referenced in the Summary of Key Lease Terms, the address shall be as follows:

Port of Seattle  
P.O. Box 24507  
Seattle, WA 98124-0507

**Notices to Concessionaire.** All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier.

For any notice directed to Concessionaire, the address shall be as follows:

**Legal Notices:**

Ms.. Courtney Thornton  
Executive Vice President  
**DUFY-SEATTLE JV**  
One Meadowlands Plaza, 11<sup>th</sup> Floor  
East Rutherford, NJ 07073

Either party may, however, designate a different address from time to time by providing written notice. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day

after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iii) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient. Payments may be made in the manner provided for notice or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by the Port.

- 26.2 **Agreements with the United States.** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the Port and the United States, including any FAA grant assurances to which the Port is subject, the execution of which or compliance with has been or may be required as a condition precedent to the transfer of federal rights or property to the Port for Airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport or airport system.
- 26.3 **Right to Develop Airport.** Concessionaire agrees that the Port reserves the right to further develop or improve the Airport and all landing areas and taxiways as the Port may see fit, regardless of the desires or views of Concessionaire and without any interference or hindrances from Concessionaire.
- 26.4 **Agreement Subject to Aviation Priority.** Concessionaire's right to use the Premises for the purposes as set forth in this Agreement shall be secondary to, and subordinate to, the operation of the Airport. Concessionaire acknowledges that because of the location of the Premises at the Airport, noise, vibrations, fumes, debris and other interference with Concessionaire's permitted use of the Premises will be caused by Airport operations. Concessionaire hereby waives any and all rights or remedies against the Port arising out of any noise, vibration, fumes, debris and/or interference that is caused by the operation of the Airport. The Port specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft.
- 26.5 **Modifications Required by FAA.** In the event that the FAA or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements, subject to the provisions of this Agreement.
- 26.6 **Brokers.** The Port and Concessionaire each warrant to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Agreement. The Port and Concessionaire each agree to indemnify and hold the other harmless from and against all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker. No commission(s) or

finder's fee(s) shall be paid to Concessionaire, employee(s) of Concessionaire or any unlicensed representative of Concessionaire.

- 26.7 **Force Majeure.** In the event that either party shall be delayed or hindered in or prevented from performing any act required under this Agreement by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar nature beyond the reasonable control of the party (and not caused by the act or neglect of Concessionaire), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party; and after the Rent Commencement Date, the provisions of this Section shall not operate to excuse Concessionaire from the prompt payment of Rent as required by this Agreement and shall not extend the term of this Agreement.
- 26.8 **Labor Peace.** Concessionaire acknowledges that the Port has a significant proprietary interest in the success of the ADR program and so it is in the Port's economic interest to eliminate disruptions to its tenants' operations due to labor disputes that can also negatively impact customers using the Airport as well as airline operations.
- 26.9 **Consent.** Whenever the Port's prior consent or approval is required by this Agreement, the same shall not be unreasonably delayed but may, unless otherwise specifically provided by this Agreement, be granted or denied in the Port's sole and absolute discretion.
- 26.10 **Wireless Devices.** Concessionaire shall not install any wireless devices and/or transmitters on or about the Premises without the prior written consent of the Port and subject to all conditions in such consent. Concessionaire specifically grants to the Port the power to regulate and control the use of unlicensed frequency bands (including, but not limited to, FCC Part 15 Subpart C, FCC Part 15 Subpart D (both asynchronous and Isochronous), IEEE 802.11 and Bluetooth (ISM), and FCC UNII 1 and UNII 2 (IEEE 802.11a)) on or about the Premises.
- 26.11 **Relationship to the Port and Concessionaire.** Nothing in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Concessionaire and the Port shall be deemed to create any relationship other than that of landlord and tenant.
- 26.12 **Time.** Time is of the essence of each and every one of Concessionaire's obligations, responsibilities and covenants under this Agreement.
- 26.13 **Recording.** Concessionaire shall not record this Agreement or any memorandum thereof without the Port's prior written consent.
- 26.14 **Joint and Several Liability.** Each and every party who signs this Agreement, other than in a representative capacity, as Concessionaire, shall be jointly and severally liable hereunder. It is understood and agreed that for convenience the word "Concessionaire" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Agreement,

regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual lessee or lessees under this agreement.

- 26.15 **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 26.16 **Governing Law; Venue.** This Agreement shall be construed under the laws of Washington. Exclusive jurisdiction and venue for any action relating to this Agreement shall be in the state or federal courts located in King County, Washington.
- 26.17 **Attorneys' Fees.** In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Port by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle, Washington.
- 26.18 **Washington Public Records Act.** Concessionaire acknowledges that the Port is subject to the provisions of the Washington Public Records Act, Chapter 42.56 RCW et seq. ("PRA"), and all documents and information prepared or provided by Concessionaire under this Agreement may be subject to the provisions of the PRA. The Port may disclose any such documents, information or other materials as required: (i) to comply with the PRA; (ii) to comply with orders of governmental entities that have jurisdiction over it; and/or (iii) as otherwise required by law. In the event of a request for disclosure under the PRA, any obligation to keep materials confidential shall be subject and subordinate to the Port's obligation to comply with law. In the event of a request to the Port for disclosure of such documents, information or other materials, time and circumstances permitting, the Port will make a good faith effort to advise Concessionaire of such request in order to give Concessionaire the opportunity to object to the disclosure of any of materials Concessionaire may consider confidential, proprietary or otherwise exempt from disclosure. Concessionaire shall be solely responsible for and will bear the full costs of taking legal action to prohibit disclosure of documents, information or other materials. If Concessionaire elects to commence suit to oppose disclosure of any such materials, Concessionaire agrees to defend, indemnify, and save and hold harmless the Port, its commissioners, officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of Concessionaire's intervention including, but not limited to, prompt reimbursement to the Port of all reasonable attorney fees, costs and damages that the Port may incur directly or may be ordered to pay in connection with any such suit.
- 28.19 **Invalidity of Particular Provisions.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or enforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

- 26.20 **Survival of Indemnities.** All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Concessionaire shall, at the Port’s option, defend the Port at Concessionaire’s expense by counsel satisfactory to the Port.
- 26.21 **Entire Agreement; Amendments.** This Agreement, together with any attached exhibits, shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained in this Agreement. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.
- 26.22 **Exhibits.** The exhibits referenced in this Section and listed in the Summary of Key Lease Terms are attached to this Agreement after the signatures and by this reference incorporated as a part of this Agreement.

Exhibits to Agreement:	A – Legal Description of Airport B – Premises C – ADR Concessions Operating Standards D – Street Pricing Policy E – Links to key Ports Standards F – Schedule of Liquidated Damages G – Additional Non-Discrimination Covenants H – Pertinent Non-Discrimination Authorities I – Resolution 3725
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**SECTION 27: SIGNATURES**

IN WITNESS WHEREOF the parties hereto have signed this Agreement as of the day and year first above written.

**PORT OF SEATTLE**

**DUFREY – SEATTLE JV**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_



**ACKNOWLEDGMENT FOR CONCESSIONAIRE**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT FOR THE PORT**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the PORT OF SEATTLE, a Washington municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT A

– Legal Description –

Main Terminal

THE WEST 2125 FEET OF THE EAST 3300 FEET OF THE NORTH 1850 FEET ALONG WITH THE NORTH 700 FEET OF THE WEST 600 FEET OF THE EAST 1775 FEET OF SECTION 33 AND THE WEST 2125 FEET OF THE EAST 3300 FEET OF THE SOUTH 675 FEET OF SECTION 28, ALL IN TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON.

North Satellite

THE NORTH 900 FEET OF THE SOUTH 1500 FEET OF THE EAST 400 FEET OF THE SOUTHWEST QUARTER AND THE NORTH 1550 FEET OF THE WEST 600 FEET OF THE SOUTHEAST QUARTER, ALL IN SECTION 28, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON.

South Satellite

THE NORTH 200 FEET OF THE WEST 900 FEET OF THE SOUTHEAST QUARTER; THE NORTH 200 FEET OF THE EAST 250 FEET OF THE SOUTHWEST QUARTER; THE SOUTH 800 FEET OF THE WEST 900 FEET OF THE EAST 250 FEET OF THE NORTHWEST QUARTER, ALL IN TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON.

EXHIBIT B

– Premises –

EXHIBIT C

- Operating Standards -

**Operating Standards for Concessionaires  
at  
Seattle-Tacoma International Airport**

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  - 8.8 Food Donation Program**
- 9. SAFETY AND SECURITY**
  - 9.1 Emergency Evacuation Plans**
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**9.4 Lost and Found**  
**9.5 Maintenance and Mid-Term Refurbishment Construction and Repairs**  
**10. INFORMATION SYSTEMS AND TELECOMMUNICATIONS**  
**11. EMPLOYEE SERVICES**

**11.1 ID Badges**  
**11.2 Parking**  
**11.3 Employment Opportunities**

**1. DEFINITIONS & ACRONYMS**

- “ACC” is short for the Airport Communications Center
- “ADA” is short for the Americans with Disabilities Act
- “ADM” is short for an Airport Duty Manager
- “ADR” is short for Airport Dining and Retail
- “Agreement” means and refers to the Lease and Concession Agreement.
- “Airport” means the Seattle-Tacoma International Airport, which is owned and operated by the Port of Seattle (the Port).
- “COOP” is short for Continuity of Operations Plan
- “Music Program” means the live performances and overhead music heard throughout the Airport.
- “Concessionaire” means the Concessionaire identified in the Agreement.
- “Port Representative” means any Port employee with the authority to act regarding these standards or the Lease and Concession Agreement (to which these standards are attached). Port Representatives will generally be identified in writing, but if the Concessionaire has any questions regarding whether a particular person has authority to act, the Concessionaire should contact their Airport Dining and Retail Business Manager for clarification.
- “Premises” means the unit spaces, either individually or collectively, as identified in the Agreement.

**2. GENERAL OVERVIEW**

The Airport Dining and Retail Program (ADR) at Seattle-Tacoma International Airport places a significant importance on creating an exceptional passenger experience, which is one of the key strategic goals of the Airport.

This manual identifies requirements for the ADR Program that match the expectations and needs of our passengers. It outlines customer service standards for all Concessionaires, facility and maintenance standards for ADR locations, as well as general operations and security standards for the airport. We expect every Concessionaire to refer to the standards outlined in this manual in addition to any supplemental documents provided by ADR, to

ensure compliance. Provided the revisions do not materially increase the cost of Concessionaire's operations at the Airport, these standards are subject to modification from time-to-time to address the ever-changing Airport environment. Failure to comply with these standards may subject Concessionaire to liquidated damages and/or default under the terms of Concessionaire's Agreement.

### 3. FIRST CLASS STANDARDS

The Port desires to provide air travelers, Airport employees, and the public with facilities, service, food, beverages and retail merchandise in First Class Manner. As defined in the Agreement, a First Class Manner refers to a standard of products, cleanliness, and customer service that would be reasonably expected in upscale shopping malls and other similar high-quality airport and non-airport retail and food service facilities.

To ensure compliance, the Port requires that all concessionaires provide a detailed plan of operations including Preventative Maintenance Schedules for all equipment, Emergency Evacuation Plans, and Sanitation Checklists for each location to the ADR Business Manager, no later than ninety (90) days prior to the opening of the space.

#### 3.1 On-Site Manager

To ensure that this standard is met at all times, all of Concessionaire locations must be under the supervision and direction of an active, qualified, competent, and experienced on-site Manager, who will at all times be authorized to represent and act for the Concessionaire on all management, maintenance, and operations issues. The on-site Manager should have a designated duty station or office inside one (or more) of the Concessionaire's units where he or she will be available during business hours. If or when that manager is absent for whatever reason, the Manager or other Concessionaire Management Representative must assign one or more qualified assistant managers to assume and be directly responsible for carrying out the on-site Manager's supervisory duties. Concessionaire will provide (and update) contact information for Concessionaire's Managers so that a Port Representative may contact them in emergencies or during non-business hours.

#### 3.2 Cleanliness

The Port is responsible for providing maintenance and janitorial services in common-use areas only. Janitorial and maintenance deficiencies observed in common areas of the Airport should be reported by calling the Airport Communications Center (ACC) at (206) 787-5406. Concessionaires are responsible for providing janitorial services within their Premises as well as the storefront and any attached signage. The following general requirements detail specific guidelines for Concessionaire's locations:

- Units must always appear clean, uncluttered, organized, well maintained, and free of debris and of unpleasant odors.

- Excess stock, merchandise, and products must be stored neatly out of view of the customer.
- Aisles and hallways (both inside and outside the unit) must be free of carts, pallets, dollies, crates, boxes, trash, equipment, etc. per the fire code.
- All seating must be clean and well maintained.
- Employee personal belongings must not be stored in the public view.
- Windowsills must be clean and free of dirt, debris and dust.
- Windows, display cases and all other glass must be clean, free of smudges/food/dirt, noticeable streaks and dust both inside and out.
- Trash receptacles and wastebaskets must be cleaned inside and out, odor free, and continually emptied to avoid overflow; trash receptacles must contain approved trash liners at all times.
- Walls/columns must present a freshly painted or clad appearance and be free of dirt, marks, chips and graffiti.
- Carpet, rugs and/or mats must be:
  - Free of all dirt, debris, and loose or embedded gum.
  - Thoroughly vacuumed in all areas every day
  - Free of all spots, stains, rips, or cracks.
  - Free of dust build-up at or around carpet edges, corners, chair bases, stanchions or other objects that are placed on the carpet.
  - Carpet maintenance must include the removal of surface and embedded sand, soil, stains, spots and bacteria on a regular and frequent schedule in order to ensure an acceptable appearance and to remove soil that would shorten the useful life of the carpet.
- Hard surface floors must be:
  - Free of all dirt, debris and loose or embedded gum.
  - Free of all deep surface scratches and abrasions that haze the floor's appearance.
  - Free of spots and finish discoloration due to previous cleaning or lack of addressing spills in a timely manner.
  - Free of dust or grime build-up at, or around, floor surface edges, corners, chair bases, stanchions, or other objects that are placed on the floor.
  - When liquid is spilled, appropriate signs must be provided until clean up occurs. Janitorial services must be notified.
  - Floor grout must be in good repair, free of water, dirt and grime buildup.
- Ceilings, grids and tiles must be dust, cobweb free and unsoiled. Ceiling tiles must be present, positioned in place to provide a clean appearance and without any gaps or tears
- Fans, grills, vents, light fixtures, & assemblies must be clean and dust free.
- Railings, gates and fencing must be tightened, clean and free of dust and grime.
- All structures must be free of dirt, dust and graffiti.

### 3.3 Condition



- Seating must be clean and free of rips, tears, and broken parts. Seating that is ripped, torn or broken must be replaced immediately or removed from the area. If damage occurs and will require an extended period to repair or replace, Business Manager must be notified within 48 hours of damage occurring. Furniture must be decommissioned until repair or replacement can take place; duct tape, paper or similar temporary repair materials are not allowed
- Point of sale and cashier areas must appear neat, organized and clean.
- All equipment must be operational and be clean and free of dust and dirt.
- Fans, light fixtures, assemblies, and bulbs must be operational, clean and free of dust.
- Carpets must not be worn or frayed; tile and stone flooring must be free of large cracks or gouges and broken pieces.
- Tile, terrazzo, and all flooring must be free of cracks, gouges and broken pieces.
- Physical facilities, such as counters, booths, display fixtures, coolers, and kiosks must be in good repair and like new condition.
- All locations must have a pleasant atmosphere and present an inviting appearance, which is free of clutter and debris.
- Apparel and accessories must be neatly folded or hung in appropriate areas with pricing clearly labeled.
- Trash, packaging, shipping materials, debris and delivery carts/totes must be stored out of the public view or removed promptly from the public areas.
- Furniture, display cases, fixtures, and shelving must be in a like-new condition with no deep cuts, scratches, graffiti, or broken pieces. Concessionaires must immediately remove any damaged furnishing that will pose a safety hazard to the customer. Furnishing placement must comply with all applicable codes to ensure appropriate width for persons with disabilities and permit free movement by customers with carry-on-baggage. All furnishings must remain aligned with the permitted layout approved previously approved by the Port.
- Roll gates and other types of entry security equipment must be in working condition. Concessionaire must take immediate measures to ensure repairs are completed and notify the Port when repairs are completed; yearly maintenance is required.
- Fire extinguishers/fire protection/life safety systems including CO2 tanks must have current certification, be operational and properly mounted per fire code.
- Concessionaire's areas must be free of any signs of insects or rodents.
- Consistent issues with the maintainability of the Concessionaire's Premises may result in liquidated damages.

#### 3.4 Functionality

- Customer comment cards must be readily available. In lieu of comment cards, a customer comment line/email must be provided on all receipts.
- All doors/gates must be maintained, in good working order and must comply with applicable codes. Doors/gates must be free of noticeable smudges, dirt, grime and obstacles that would impede the public's path or employees' ingress/egress.
- Music audible to customers within individual units must be provided by the Concessionaire's audio system and approved in writing by the Port; approved music must be at a level appropriate for customer enjoyment within the Premise and must be appropriate content for all audiences (must not contain any vulgarity or graphic language or undertones)
- Music systems must be clear/audible and in good working condition with appropriate volume levels that do not to interfere with the Airport address system, cause annoyance to Airport patrons, or conflict with the Music Program.
- Seating must not be removed from designated areas. All tables, fixtures, chairs, kick rails, and table bases must be free of debris, dirt build-up, and scuff marks.
- Refrigerators and coolers must be in good working condition and free of odor and spills.
- Trash receptacles and wastebaskets must be in good working condition, sufficient in number, cleaned nightly and must not obstruct the path of the public.
- Counters and cash wrap areas must be neat and clean in appearance.
- Lighting must be adequate in all areas and in compliance with applicable codes and design standards.
- Contractors' or vendors' supplies and equipment must be stored out of customers view when not in use. A complete concession cleaning kit containing supplies for dust, glass, and wood cleaning products must be maintained in all units and stored out of public view.
- Television monitors must be in good working condition; to ensure compliance with the Americans with Disabilities Act (ADA) the closed captioned feature must be enabled at all times.
- All Premises must adhere to the Americans with Disabilities Act (ADA) requirements, providing unobstructed, and code compliant pathways.
- Fire extinguishers/fire protection/life safety systems must be operational and checked/inspected annually and properly mounted as appropriate per code.
- Mop, mop bucket, strainer, and mop sink must be maintained and clean at all times.
- All merchandise and areas that hold store merchandise must be free of dust and spilled product. All cabinetry, shelves, display units, and wall bays must be free of marks, dust, and spilled product.

- All menu boards, cash wraps, nesting tables, fixtures, and condiment bars must be free of dust, stains, residue, spills, trash and clutter.
- All windows, lighting, non-glass doors, glass areas, brass, and chrome surfaces must be free of dust, spills, handprints, scuffmarks, and splashed product.
- The Point-of-Sale (POS) systems and surrounding area, as well as other equipment must be organized, clean, free of marks, and dust.
- No freestanding or mobile signs, fixtures, display carts, merchandise display units, or racks of any kind are allowed outside of the lease line without prior written approval from the Senior Manager of ADR.
- Storefronts must be open, inviting and clutter-free.
- Auction, fire, bankruptcy, close out, distress, liquidation, going-out-of-business sales or operating as an outlet/surplus store are not allowed in the Premises; Periodic seasonal, promotional or clearance sales are not precluded and must be approved in writing by the Business Manager.
- Any national or locally-branded operation must accept company-branded “cash cards” or “gift cards” for purchase at all of Concessionaire’s Airport locations, unless Concessionaire can demonstrate to the satisfaction of the Port Representative that in order to enable such acceptance additional equipment or systems would be required to be installed and are not viable for the operation.
- Concessionaire must accept traveler’s checks and at least three (3) nationally recognized credit or debit cards (e.g., American Express, Master Card, VISA or as designated by the Port Representative) for any purchase amount.
- Concessionaire is not permitted to add a “tip,” “gratuity,” “service charge,” “concession recovery charge” or other similar charge to customer invoices. The only exception to this is locations with table service. In such cases, for parties of eight (8) customers or more, the Concessionaire may add a gratuity of no greater than eighteen percent (18%), so long as it is noted on the menu that such charge will be added, the server informs the party that such charge will be added to the bill for the table, and the Concessionaire pays the entire amount collected to the server and/or appropriate staff. Concessionaire may provide a business case for the insertion of “concessions recovery charge” or “service charge” language to be added to menus for locations with table service to the Port. Written approval from the Senior Manager of ADR must be provided in advance of enacting such charge or printing of menus.
- Placement of a tip jar or container in public view (i.e. on counters in counter service locations, etc.) is only allowed in coffee concept units and must be professionally made. No handwritten notes requesting “tips” will be allowed.
- “Take-a-penny/leave-a-penny”, fundraiser and charitable donation cups are prohibited.

- Written approval by the Port Representative must be obtained by the Concessionaire prior to the installation of sound systems, radios, televisions, or other similar devices.

### 3.5 Products

- The Port Representative reserves the right to approve or disapprove all products, prices, and product displays.
- The Port Representative has the right to require Concessionaire to discontinue the sale of any product he/she, deems unsatisfactory, distasteful, or inappropriate for any reason and to require Concessionaire to modify product displays for any reason. Concessionaire will comply with any such direction within twenty-four (24) hours following notice. Failure to comply with such direction may result in liquidated damages.
- At the Port Representative's written request, the Concessionaire will provide for the sale of any merchandise or the furnishing of any reasonable services that may be determined necessary for increased sales and passenger satisfaction.
- Concessionaire will keep in stock and have ready for sale at all times of operation, a sufficient supply of current-season merchandise, articles, and goods, as may be appropriate to the operation, to meet the demand of customers at the Airport.
- Concessionaire must ensure that product variety is adequate at each location.
- Concessionaires will use durable (i.e. washable) service ware where feasible at restaurants with sit-down dining.
- A list of approved compostable and recyclable service ware (i.e. plates, bowls, cups, lids, straws, cutlery, clamshells, etc.) by the Airport's compost and recycling service providers can be found in the Rules and Regulations. Concessionaires may request exemptions in writing to the Port Representative for specific food service ware items (e.g. plastic spoons, foil wraps) for which compostable/recyclable alternatives are not readily available or suitable for use.
- All food and beverage menu items should be made available "to go" for customers if they so request. The carry out or "to go" containers and service ware should be either compostable or recyclable and of high quality and substantial enough for the customer to take on an airplane. Expanded polystyrene foam ("Styrofoam") service ware is strictly prohibited.
- Concessionaire will develop and implement creative merchandising techniques to entice customers to purchase food, beverages, and retail merchandise, including without limitation, food and beverage displays; retail merchandise displays; display cases; promotional displays; attractive and durable packaging; menu boards or tabletop menus; and pictures of food and beverages or retail merchandise. All additional display fixtures must be approved in writing by the Port Representative.

- Alcoholic Beverages
  - All Concessionaires will be required to obtain their own liquor licenses and permit through the proper procedures with the Washington State Liquor and Cannabis Board and any other required government agency.
  - The legal drinking age in the State of Washington is 21 or older and must be **strictly** enforced by all concessionaires.
  - All alcoholic beverage consumption will be restricted within the concessionaire’s Premise in an enclosed and clearly defined dining space and closely monitored by concessionaires employees, manager, Airport Police and TSA.

3.6 Prohibited Items

**PROHIBITED ITEMS:**

For any kind of knife (including box cutters), tools or other items prohibited by the TSA (see <https://www.tsa.gov/travel/security-screening/prohibited-items> for latest list of items), the following procedures must be adhered to:

Prohibited items fall into to two (2) categories (Sharps and Tools). Examples can be found below HOWEVER this is not limited or restricted to these items shown below:

<b>Sharp Objects</b>	<b>Tools</b>
<b>Knives (except for plastic and/or round bladed butter knives)</b>	<b>Drills and Drill bits; including portable power drills</b>
<b>Meat Cleavers</b>	<b>Tools greater than seven (7) inches in length</b>
<b>Blades</b>	• <b>Screwdrivers/Wrenches/Pliers</b>
<b>Scissors pointed tips and blades greater than four (4) inch from the fulcrum)</b>	<b>Saws; including portable power saws</b>
<b>Box Cutters</b>	<b>Crowbars</b>
<b>Razors types blades, Utility Knives</b>	<b>Hammers</b>
<b>Ice Axes/Ice Picks</b>	<b>Axes and Hatchets</b>

All Concessions/Lounges operating in the Sterile Area at Sea-Tac International Airport must adhere to the Aviation Security Prohibited Items Policy in order to maintain consistency in all Concessions locations and comply with current regulations. This policy will help Concessions better manager the security of the “Tools of Trade” and the safety of the travelling public. Each Concession must agree to the following:

1. Submit a “**Prohibited Items Safety Plan**” describing:
  - a. The need and purpose of the Prohibited Items
  - b. Accountability during the hours of operation
  - c. Responsibility; Who check them in/out
  - d. Secure storage inside the facility

- e. Training employees received

**\*Concessions/Lounges who do not have Prohibited Items within their location or Storage Unit in the Sterile Area must submit a letter stating that fact.**

2. Sign the **Acknowledgement and Accountability Form**. By signing this document, Concessions will agree to abide by the rules and regulations put in place ensure Safety and Security in the Sterile area.
3. Submit a detailed inventory, listing the type and quantity of Prohibited Items within each Concession. This will serve as a benchmark for future inspections and audits.

**3.6.1 Prohibited Item Procedures:**

- Any changes in the number of Prohibited Items must be documented on the company's Prohibited Inventory List
- All Prohibited Items must be brought in through the Airfield Operation Area and not through the Checkpoint
- You are responsible to secure Prohibited Items which are job-related and allowed to be brought into the Sterile/Restricted Area for performing your job.
- All items should be visibly labeled for accountability purposes. Best practice is to engrave the blade or the handle.
- All items must be accounted for at all times.
- All items must be stored in a locked container (safe, cabinet, and drawer) or office
- The Manager or Designated individual opening the location at the start of the business day should be the only individual who will inventory these items and issue the items at the start of the day.
- At the close of the business day, the Manager or Designated individual will collect the Prohibited Items and account for them being returned.
- The items will then be stored in the designated safe, cabinet, or container.
- Any missing or unaccounted items should be reported immediately to the Airport Security Department.
- **AT NO TIME** should Prohibited Items be left unattended. When an employee leaves a work station, knives must be secured. Knives in view of the public must be secured or inaccessible at all times.
- The Prohibited Items Log must be posted and completed at the beginning and end of each business day.
- Each location must start a new Prohibited Items Log at the beginning of each month
- The Prohibited Items Log must be turned in to the Compliance Coordinator no later than the 5<sup>th</sup> of the following month to [bakam.h@portseattle.org](mailto:bakam.h@portseattle.org), [waterton.a@portseattle.org](mailto:waterton.a@portseattle.org) or faxed to (206) 787-6120.

### 3.6.2 Enforcement

Aviation Security Personnel will conduct monthly audits of Concessions operating in the Sterile Area to ensure that they are in compliance with the regulations. Audit points include (but are not limited to) the following:

- The Prohibited Items Log will be checked to ensure it is properly completed
- The Inventory Log will be checked to ensure all items are accounted for
- The audits will ensure that Concessions are not selling Prohibited Items to the travelling public and that items in use are not accessible to passengers.

Each stores management/supervisors/employees will ultimately be held responsible for any violations to the above described policy. Any violations to the above Prohibited Items procedures will be documented and will be treated as a default of the Unit Concession Agreement under Section 23.01 and are subject to any and all local, state and federal penalties of Prohibited Items within the Sterile Area of the Airport.

Violation notices will be issued to the alleged violators within five (5) business days of an incident. Notices will be delivered either by email, certified mail, or in person. It is the responsibility of every airport ID badge holder to ensure the correct email address and/or mailing address is on file in the Port of Seattle Credential Center.

Some examples of possible violations related to Prohibited Items are:

- Leaving Prohibited Items unattended
- Failure to inventory a Prohibited Item
- Failure to log a Prohibited Item

All infractions will be to penalties from the Airport Security Department. Infractions will be subject to the following penalties:

- **First Offense:** Confiscation of ID badge for three (3) days, a fine of \$200 and the offender will be required to retake the SIDA training.
- **Second Offense:** Confiscation of IS badge for seven (7) days, a fine of \$400 and the offender and the Store Manager/Supervisor will be required to retake the SIDA training.
- **Third Offense:** Permanent confiscation of ID badge/access cancelled

Federal violations fall under:

**49 Code of Federal Regulations (CFR) § 1540.105(a) (1) and (2).**

50 § 1540.105 Security responsibilities of employees and other persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this subchapter.

(2) Enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

\*An appeal process is available to those who receive a violation. The Airport Security Appeals Board (ASAB) convenes at least once a month. Please contact the Port of Seattle Aviation Security Department for additional details and to schedule a hearing. If a person chooses to use the appeals process, decisions made by the ASAB are binding and final.

### 3.7 Hours of Operations

The Premises must be open to the public seven (7) days per week, three hundred sixty-five (365) days per year to adequately serve the traveling public. The Port determines the minimum hours of service based on traveling public demand and the Airport's flight schedules.

- Unless otherwise approved by the Senior Manager of of ADR, all Concessionaires must adhere to the minimum hours of operations as stipulated by the Port. The minimum hours of operation are: All Concessionaires are to be open two (2) hours before the first flight and must remain open until the last flight within the concourse. Concessionaire may request a deviation of hours by providing an analysis of the optimum arrangement, but the final determination of minimum hours of operation will be made by the Senior Manager of ADR.
- Store hours will be extended to accommodate passengers due to flight delays.
- Stores must be staffed to accommodate the operations from opening to closing. Deviation maybe approved by the Port Representative for inventory or other circumstances; however, all requests must be submitted at least 48 hours before the event to allow for processing and approval.
- No concession locations will be blocked off or closed at any time during the designated minimum hours of operation.

#### 3.7.1 Holiday Reduced Hours

- Requests for reduced hours for the Thanksgiving Day and Christmas Day must be submitted 30 days prior to the Thanksgiving or Christmas holiday. Reduced hours of operations will be approved at the discretion of the Senior Manager of ADR based on the flight schedules within the areas adjacent to each proposed space. Concessionaires must inform all employees that approved reduced hours may change due to operational issues, delays or situations that mandate adjusting the prior approved schedule.



### 3.8 Delivery Schedule

Concessionaires are responsible for their operational delivery and distribution system whether it is on-site or off-site. The Airport recognizes the following activities as a delivery:

- Deliveries from off Airport sites to the Concessionaire's unit.
- Deliveries from off Airport sites to the Concessionaire's storage space.
- Concessionaire moving items from a storage location to the unit.
- Deliveries to the Airport's main terminal load dock must occur between:

DAY	HOURS
Monday	7:00 AM – 3:00 PM
Tuesday through Friday	7:00 AM – 4:00 PM
Saturday	5:30 AM – 2:00 PM

All deliveries should observe assigned delivery times to better utilize parking spaces and freight elevators. The load dock hours are subject to change at any time without advance notice.

- **Deliveries to the units must be made between 9.a.m.-11.a.m. and 2:00 p.m. and 6:00 p.m. all days of the week.**

### 3.9 Delivery Standards

- Concessionaires and/or their vendors/contractors will be responsible for reporting any problems with the freight elevators and will work with the Airport to maintain safe and efficient elevators. Costs to repair elevators damaged by Concessionaires (or their vendors/contractors) will be billed to the Concessionaire found responsible for the damage. To report elevator problems call ACC at (206) 7878-5406.
- Cart wheels and hand trucks must have non-marring/pneumatic tires and be silent.
- Carts must be in like-new condition. No maintenance of carts, dollies, hand trucks, etc. is allowed in the terminal on the concourse level at any time. All damaged or non-operable carts, etc. must be removed from the area immediately.
- Weight loads must not exceed the maximum limits specified by the transporting equipment's manufacturer.
- Merchandise and products must be delivered to Concessionaire's locations without interfering with public traffic in the Terminal.
- Daytime deliveries are not authorized without prior approval of the Port.
- Deliveries must not be transported on the passenger elevators, moving sidewalks, or the train system. In the event that train service is needed, the

Concessionaire must coordinate the use of the train in advance with Aviation Maintenance at (206)787-7930.

- The number of vehicles on the Airport ramp is limited during normal hours of operation by delivering the majority of products and merchandise during the night and early morning hours. Airport safety is our primary concern and every Concessionaire will cooperate with all Airport Rules & Regulations (which can be found at <http://www.portseattle.org/Business/Airport-Tenants/Pages/default.aspx>).
- Concessionaires will ensure the restocking of the unit occurs during non-peak hours as specified in the Deliveyr Standards
- The load dock supervisors will monitor all daytime activity. Parking is at a premium during the day, and coordination for extended use of parking spaces is vital. Delivery drivers should inform the loading dock supervisor of the estimated duration of time for the escort or delivery.
- Concessionaires may request authorization from the ADR Port Representative to receive and restock newspapers and magazines during daytime hours; however, the product totes or containers are not allowed to remain in the unit unless they are actively being restocked.
- Concessionaires and their vendors are not allowed to deliver, store or stage boxes, cartons, barrels, or other similar items, in an unsightly or unsafe manner, on or about the Premises or in the common areas.
- Pallet jacks are not allowed on the granite flooring.

### 3.10 Storage Standards

- Unless otherwise provided for in the Agreement, no persons may use any area of the Airport for storage of equipment, product, or other property without first obtaining formal written permission from a Port Representative.
- All Concessionaire storage is located within designated areas per the Agreement or a Supplement to the Agreement
- Storage areas are to remain clean, with a clear path of travel , at all times.
- Storage is not to be used to house trash or recyclables under any circumstances
- All inventory must be placed within the designated storage areas within 90 minutes of delivery
- All pallets must be stacked horizontally, in the designated areas and picked up within 24-hours of delivery by the vendor. Pallets may not be stacked vertically, in walkways, or against cages.
- All crates must be stacked in a single row against the designated storage cage for pick up by the vendor within 24-hours of delivery. Crates may not block the path of travel at any time.

- All wrapping for pallets, crates, boxes etc., must be broken down and disposed in the designated trash areas immediately following delivery break down.

### 3.11 Premise Signage

- All signs internal and external, signage stand holders, menu boards, and blade signs must be clean, free of dust, and in good working condition.
- Pictures, displays, and frames (whether art or advertising) must be clean and free of tears, scratches and dust.
- All illuminated signs must be in proper working condition. Tubular or neon lighting is not preferred; and must be approved by a Port Representative before installation.
- Unauthorized postings are not permitted.
- **Handwritten and/or unprofessional signs are strictly prohibited. No exceptions will be allowed.**
- Signs must not obstruct any life safety devices, AED machines, smoke detectors, or fire sprinklers.
- Signs must not impede the functionality of light fixtures or air conditioning grills.
- Exit doors must be operational, illuminated, and clearly signed.
- Enforcement/warning signs must be appropriately posted.
- Dynamic signs must operate properly and display the correct information.
- No Concessionaire will make any alterations of any nature whatsoever to signage on any building, ramp, wall, or other Airport space.
- Signs must be visible and illuminated (if applicable) and in proper working condition.
- Store policies regarding credit cards, returns/refunds, etc. must be clearly displayed in the unit preferably near the checkout areas.
- Prices must be clearly displayed (either item or category priced).
- **Flashing or blinking signs are strictly prohibited.**
- Evacuation routes must be clearly posted for customers and employees. For Food & Beverage locations, evacuation plans must be posted in both the kitchen and available in the front of house.
- During flight delays, hours of operation may be extended to accommodate passengers at the discretion of the ADR Senior Manager.
- **“Going Out of Business”, “Store Closing”, “Liquidation” and similar signage is strictly prohibited.**

#### 3.11.1 Advertising and Promotional Signage

- Concessionaires must receive written approval from a Port Representative prior to the installation of any promotional banners or signage.

- Menus, signs and/or graphics on counter back walls must receive written approval from a Port Representative in advance of installation.
- Flashing, laser, or blinking signs are strictly prohibited.
- No persons without written authorization from a Port Representative may post commercial signs, banners, or distribute advertisements, literature, circulars, pictures, sketches, drawings, handbills, or any other form of printed or written commercial matter or material at the Airport.
- Retail advertisements can/must be displayed within the leased premises.
- **Handwritten signs are strictly prohibited.**

### 3.12 Promotional Events and Prohibited Activities

All promotional activities or events must obtain prior written approval from a Port Representative. All promotional activities in the Terminal, with the exception of the Airport's promotions and advertising contracts, will be of limited duration and will be subject to the discretion of the Port Representative. Such promotional activities may be permitted only where they do not interfere with normal operations of the Terminal. Promotional activities will be limited to the following:

- Approved art and displays that provide public service messages
- Promotions conducted within the limits of the leased areas unless otherwise approved in writing by a Port Representative.
- Approved advertising conducted under the terms of the Airport's advertising contract.

Promotional activities requiring tents, cooking facilities, pyrotechnics or events where the number of people will exceed the normal occupancy of the designated area will require approval by the Fire Marshal and Port Representative. The Fire Marshal may require permits or a fire watch as applicable.

- With the exception of concession promotions, the sale/or give away of food and beverages associated with a promotion is prohibited.
- Literature and promotional items cannot be distributed outside of the location lease line unless otherwise approved by the ADR Senior Manager.
- Banners to promote new services and/or awards in the Terminal must first be approved in writing by the Port Representative and may only be displayed for a period not to exceed two weeks unless otherwise approved.
- Clean up activities associated with any promotion, unless otherwise specified are the responsibility of the entity organizing the promotion.
- Requests to conduct promotional activities in the terminal must be made in writing to the ADR Senior Manager for written approval.
- Concessionaire is prohibited from offering/selling the following items in their Premises: vending machines, pay telephones, advertisements not pertaining to Concessionaire's operations; coin-operated amusement machines, ATMs; hotel, motel, or ground transportation reservation information; liquor, beer, and bottles of wine for off-premises consumption (unless otherwise approved as part of the

concept); Wi-Fi services; or helium-filled balloons. This is not a comprehensive list and all items are subject to approval by the Port Representative.

### 3.13 Repairs and Preventative Maintenance

The Concessionaire has the sole responsibility for maintenance and facility upkeep within the unit. Without in any manner limiting the specific requirements of your Lease and Concession Agreement, this includes HVAC system, floors, walls, equipment (i.e. cooler, registers), and other non-Airport maintained devices. Concessionaire must keep the premises and all improvements in good repair and in a clean, neat, safe and sanitary condition at all times. If damage is determined to come from the building roof or exterior, contact ACC at (206) 787-5229 to address the source of the problem. As determined by the Port Representative, the Concessionaire will repair, replace and/or repaint fixtures, furnishings and/or equipment that is damaged, worn or in disrepair if it becomes reasonably necessary during the term of the Lease and Concession Agreement other than in the midterm. It is mandatory that all maintenance issues and repairs be identified and repaired immediately to keep the operation compliant with First Class Concessions Standards. The following inspections are required to be performed throughout the year at varying intervals. Concessionaires are required to provide proof of completed inspections for the following systems:

- Type 1 Hood Systems (Grease Hood)
- Type 2 Hood Systems (Steam Hood)
- Ansul Systems
- Fire Extinguishers
- Make Up Air Units
- Remote Refrigeration Lines/Systems
- Grease Cooking Equipment
- Floor Drains, Sanitary and Grease Waste Lines
- Gas Connections
- Backflow Prevention system(s)
- Flushing Beer Lines
- Hot Water Tanks

Specifics for systems cleaning and maintenance procedures can be found in the Preventative Maintenance (PMP) Manual located on the ADR website at <https://www.portseattle.org/sea-tac/dining-retail>.

### 3.14 Parking

Employee parking is available for purchase either by Concessionaire or by individual employee. Price and information can be found on the Port's website at: <http://www.portseattle.org/employee-services/employee-parking/Pages/default.aspx>

#### 4. FIRST CLASS CUSTOMER SERVICE STANDARDS

The Port expects First Class, customer-focused service by all Concessionaires at all times. Without limiting any of the more specific requirements set forth in these Operating Standards, service will be timely, attentive, and friendly. In order to accomplish this, Concessionaire must employ a sufficient number of properly trained personnel to manage and operate the Premises at its maximum capacity and efficiency. A sufficient number is one that consistently provides customers with no unreasonable delay or inconvenience in moving through point of sale or selecting products or service. At a minimum, customers will be promptly attended to in a friendly and courteous manner. Self-service elements will be easily seen and accessible by customers. Processing of payments will be prompt with receipts properly itemized, reflecting precisely the products and services purchased, and will present individual prices, total and taxes. In addition, all customers will be thanked for their patronage. Other expectations of all Airport employees include, but are not limited to the following:

- Guarantee a quality product or service that meets or exceeds a customer's expectations.
- Have an overall understanding of the layout of the Airport and be willing to offer assistance as needed.
- Have responsibility for uncompromising levels of cleanliness.
- Maintain a positive workplace image (ex. appropriate in-store conversation between employees)
- Provide customers their full attention during the interaction and address concerns immediately.
- Respond to customer questions or complaints within three business days whether verbal or written.
- Provide a friendly and professional, verbal audible greeting within 10 seconds of a customer entering an establishment, thanking them for their business and inviting them to return as they exit.
- Maintain a well-groomed, neat, professional clean appearance at all times.
  - Uniforms will be clean and appropriately fitted at all times. In the absence of Concessionaire standardized uniform standards, the requirement will be to wear black shirts with black pants.
  - Hair will be neatly groomed and pulled away from the face at all times.
  - Airport ID badges and Concessionaire nametags must be appropriately displayed at all times.
  - Employees must maintain eye contact while conversing with customers and fellow employees.
- Employees will refrain from using foul or inappropriate language at any time in the workplace, in the Airport, or while traveling to/from work via employee shuttles or public transportation and while wearing the company's uniform and/or Airport ID badge.
- Employees will refrain from eating, drinking, chewing gum, or talking on the

phones in the presence of customers. Personal electronic devices or ear phones/buds are not permitted at any time while employees are on duty.

- Employees will refrain from taking breaks in the corridors, hallways, and gate lobbies.
- Employees are not allowed to use or move furniture or equipment anywhere or anytime for the purpose of sitting or eating during their breaks.

#### 4.1 ADR Employee Customer Service Standards

The ADR Staff holds every Concessionaire accountable to the Airport Dining and Retail Program and the Airport's customer service standards. Every Concessionaire's customer service program must meet or exceed the Airport's service standards. To achieve a first class level of service throughout the ADR Program, the Port has implemented additional service standards above those stated in the Concessionaire's Agreement that will help ensure a positive customer experience. For this reason, each Concessionaire's employees must also comply with the following:

- Greet all customers in a friendly and professional manner with a sincere smile.
- Always be properly identifiable as an Airport concessions employee by making sure to wear both their Airport ID and Concessionaire provided nametag at all times.
- Display a positive attitude toward all customers and be sensitive to special needs of passengers.
- Speak clearly; enunciate fully to clearly communicate with customers.
- Listen carefully, and show empathy when encountering an upset customer. Resolve problems quickly and effectively in the most equitable way possible.
- Use a courteous tone of voice and proper vocabulary with customers. For example, use words such as "please," "yes," "hello", and "thank you."
- While working indoors, remove sunglasses to facilitate eye contact. This standard does not apply to employees prescribed to wear sunglasses indoors by a doctor.
- Respond appropriately to customers' needs or refer them to another person who might be better suited to provide assistance.
- Be well informed, capable of providing directions, and know where and how to obtain requested items, services or information for customers even when language barriers arise.
- Ensure the customer's question(s) have been answered before walking away or completing the transaction.
- Obtain the facts, state any applicable policy clearly and politely, and be able to offer a solution or an alternative to a difficult customer.
- Do not leave a customer in your establishment unattended unless it is deemed an official emergency.
- Resolve complaints promptly and maintain records for Port Representative follow-up.
- Employees must provide a receipt and correct change with every transaction.
- Staffing levels must be high enough to greet customers within the 10 seconds standard and prevent wait times longer than 2 minutes at the cash registers. It

is highly recommended that there be at least (2) employees staffed in each store at all times.

- Provide all services to customers on a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; except when giving such reasonable and nondiscriminatory discounts or other similar price reductions to its and other Airport employees.

#### **4.1 Customer Service Training**

Customer service training is essential in establishing consistent guidelines for employees to ensure that all Concessionaires are addressing the customers' demands appropriately. Concessionaires are required to provide Customer Service training to all of their employees throughout the year. All Concessionaires and their employees are required to attend the Port Customer Service and Preventative Maintenance Trainings; Concessionaires and their employees must fully participate and pay its share of any costs associated with such program(s).

### **5. QUALITY ASSURANCE PROGRAM**

#### **5.1 Reports and Rating System**

The Quality Assurance Program and Reports is managed by the Port Representative to record periodic audits and inspections of all ADR locations. The primary focus of these audits and inspections is to: (1) evaluate the level of customer service, first class concessions complaints and make recommendations to correct concerns, (2) improve customer service by identifying critical areas of focus; and, (3) create a historical record of the Concessionaire's performance for future reference.

Audit and inspections include a detailed observation and evaluation of the following areas:

- Facility Appearance and Preventative Maintenance Management
- Customer Service
- Merchandise Quality and Food Safety
- First Class Concessions Compliance

Each evaluation is scored from 1 to 7 (with 1 being the lowest and 7 as the highest), which translates to one of four ratings – Unacceptable, Needs Improvement, Acceptable, Excellent.

The following is the rating system equivalent based on a 100%:

<u>Rating</u>	<u>Scoring Equivalent</u>	
Excellent	100 - 95%	(Score of 7)
Acceptable	94 - 85%	(Score of 6)
Needs Improvement	84 - 79%	(Score of 4 - 5)
Unacceptable	78% and Below	(Score of 1 - 3)



To ensure all Concessionaires' locations meet and exceed the customer service standards outlined, Concessionaires must score at least an acceptable rating of 6. Outlined below is the standard for the rating system.

**Unacceptable Rating 1-3**

Any Concessionaire who receives an Unacceptable rating of 1 through 3 did not meet a majority of the acceptable customer service or, first class concessions standards or they failed to meet a significant level of performance. Additionally, any ratings of 1 through 3 are unacceptable and the Concessionaire must take corrective actions within 48 hours of notification and provide a written response to the Port Representative within three (3) business days with an action plan addressing deficient areas to prevent reoccurrence.

**Needs Improvement Rating 4 – 5**

Any Concessionaire who receives a Needs Improvement rating of 4 or 5 did not meet the minimum acceptable customer service standards or first class concessions standards. Any rating of 4 or 5 requires corrective action within 5-7 days and Concessionaire must provide a written response to the Port Representative within three (3) business days addressing the infractions with solutions to prevent further reoccurrences.

**Acceptable 6**

A Concessionaire who receives an Acceptable rating of 6 has satisfactorily met the minimum acceptable customer service or first class concessions standards. An acceptable rating of 6 does not require a written response; however, the Concessionaire should address all noted problem areas.

**Excellent 7**

A Concessionaire who receives an Excellent rating of 7 has exceeded the minimum acceptable customer service of first class concessions standards. This rating requires no action on the part of the Concessionaire.

5.2 Comments and Complaints

Passengers may record comments of their Airport experience by utilizing any one of the following methods: comment cards that are accessible throughout the Airport, the Port's/Airport's website, comment/complaints sent to the King County Public Health Office, and/or letters, emails or phone calls sent to the Port or Aviation Division's main office. These comments (or complaints) are tracked and compiled through the Airport's Customer Service Group in Airport Operations. The Customer Service group forwards all complaints relating to Concessionaires to the Port Representative. The Port Representative will in turn forward the customer complaint to the respective Concessionaire within three (3) business days of receipt. The Concessionaire must respond to all customer complaints within three (3) business days and forward a copy of all correspondence to the Port Representative.

6. FOOD HANDLING

All Concessionaires are required to comply with all local health department and HACCP standards regarding the proper and safe receiving, storage, preparation, and serving of all food and beverage items. Concessionaire shall also ensure that all appropriate kitchen personnel are ServSafe certified (or equivalent) and that the kitchen work force maintains a

minimum of two ServSafe instructors (or equivalent). In the event that the Concessionaire is found to be non-compliant with the safe food handling practices per the public health department, or similarly empowered public agency, the Concessionaire must immediately notify the Port and provide the Port with a written incident report and subsequent action plan to remedy the issues within 48-hours' notice of the violation. Failure to comply with these standards will result in the imposition of liquidated damages as provided in Section 18, Table of Liquidated Damages. The Health Department and the Port Supplemental Health Standards are provided in Exhibit F.

#### 7. PEST CONTROL/UNIFIED PEST MANAGEMENT (UPM)/SANITATION

The standard for cleanliness at the Airport has been set at an optimal level, this includes pest control activities, facility and equipment maintenance, housekeeping and best practices. Concessionaire must implement and maintain aggressive internal controls that will ensure total compliance with sanitation standards and the Unified Pest Management Program implemented by the Airport.

Therefore, all Concessionaires must adhere to the following:

- Each Concessionaire is required to participate in the Unified Pest Management Program (UPM) as designated by the Port.
- Each Concessionaire is required to participate in Sanitation Best Practices training as designated by the Port.
- Recommendations provided by the Unified Pest Management Program on monthly reports including Sanitation Audits, Quality Assurance Audits and Pest Control provider Audits must be addressed immediately.
- UPM and Sanitation Audit findings may be provided via email to the local and regional operations contacts for Concessionaires.
- Depending on the severity of the offense, the Port may assess liquidated damages and/or shut down the location for a period of time. Approval to reopen can only be provided by the Senior Manager.
- Supplemental Pest Control programs, paid for by the Concessionaire, must be approved in advance by the Port Representative. Supplemental service treatments must comply with the Port's mandated application methods.
- Self-treatment or treatment by unlicensed personnel is prohibited.
- Concessionaires must comply with all rules, regulations and directives provided by the Port, the Pest Management Program, or Health Department authorities.
- Concessionaire must maintain the standard of cleanliness required by the Port at all times. Violations associated with cleanliness and sanitation standards will be subject to liquidated damages as reflected on the fee schedule as outlined in Section 18, Table of Liquidated Damages.

#### 8. ENVIRONMENTAL AND WASTE REMOVAL

Concessionaires must separate and dispose of their trash, recycling, composting and used cooking oil. Costs for this program are published in the Tariff and will be invoiced directly to the Concessionaire. Concessionaire must request trash keys to access compactor areas from the Port Representative at [AVUTil@portseattle.org](mailto:AVUTil@portseattle.org). In the event of a change to this process, a written notification will be provided to the Concessionaire.

Disposal containers for trash, recycling, and composting and other Concessionaire-generated waste materials are located at compactor rooms and loading docks throughout the Airport. Trash build-up and/or compactor outages are to be reported immediately to ACC at (206) 787-5229. If Concessionaire is responsible for the mess/spill/damage, or the cross-contamination of recyclable or compostable collection containers, it is the Concessionaire's duty to clean it up immediately. In the event that other clean up, repairs or damage to compactors/containers/bins/used cooking oil tanks or surrounding areas are caused by the Concessionaire or Concessionaire Representative and the repairs are remedied by the Port, the Concessionaire will be invoiced directly. Trash violations are a serious issue both for safety and Foreign Object Debris (FOD) on the airfield. Violations will result in liquidated damages per Section 18, Table of Liquidated Damages.

At no time are Concessionaires permitted to transport or pile bags, boxes, cartons, or other similar waste items, in an unsightly or unsafe manner.

#### 8.1 Trash

- All trash must be contained in appropriate bags and moved through the Airport in covered receptacles. These receptacles must be cleaned daily. Concessionaires are responsible for keeping all service corridors, hallways, storage areas and elevators neat, clean and safe.
- Stocking of pallets, crates, boxes, trash, shipping equipment, staging equipment, etc. in hallways, pathways, or on the exterior of the premises is strictly prohibited.
- Concessionaires are responsible for sorting trash inside the proper trash bags: Trash (Black Bags), Recyclables (Clear Bags), Food and Compostable Products (Green Bags) as required by the Port. Concessionaires should not fill the trash bags to capacity. Thin trash bags and bags filled beyond capacity will tear thus creating a mess and unsanitary conditions. When an unsanitary condition exists, the Concessionaire responsible will be required to correct the problem and/or be invoiced for the clean-up services if performed by the Port.

#### 8.2 Recycling

- Recyclables include clean and/or empty cardboard, cartons, paper, cups, plastic containers and lids at least 3" in diameter, bagged plastic bags, cans, bottles and jars (plastic, aluminum, or glass). Cardboard **must** be flattened prior to depositing in Airport recycling compactors.
- Glass bottles and jars must be rinsed and deposited in designated glass recycling containers. Glass **does not** need to be in bags. Broken beverage glasses are not recyclable.

#### 8.3 Composting

Composting materials include food, uncoated food-soiled paper, napkins, cardboard, coffee grounds, coffee filters, tea bags, and any approved compostable packaging.

Composting materials must be deposited directly in the composting bins or in compostable bags approved by the Airport's compost service provider and then placed in composting bins.

#### 8.4 Waste Collection and Signage

Concessionaires providing food for consumption on or off premises using recyclable or compostable "to-go" food service ware shall:

- Provide conveniently located and clearly marked recycling, compost, and garbage containers in back-of-house areas for employee use and in front-of-house dining areas where customers may discard compostable or recyclable food service ware and garbage.
- Provide signage visible to patrons when picking up their orders or where self-service customers pickup service ware, and on discard bins in dining areas clearly identifying which service ware is recyclable, which is compostable (including food scraps), and which is garbage.
- Food and beverage concessionaires are encouraged to use signage best practices and bins and labels provided by the Port of Seattle.

#### 8.5 Used Cooking Oil (UCO)

The Concessionaire must purchase and utilize Port-designated containers to collect and transport UCO to designated collection tanks located in the compactor rooms and loading docks. Concessionaires must promptly clean any spills or leaks that occur during transport including areas near UCO collection tanks. Concessionaires are not to tamper with the functions of the collection tanks under any circumstance. Training on proper use of the collection tanks is available for all Concessionaire employees.

#### 8.6 Hazardous Materials/Waste

Concessionaires are responsible for properly managing the disposal, off Airport property, of any hazardous materials or waste generated through their operations, maintenance and construction activities. This includes, but is not limited to all types of batteries, florescent light tubes, refrigerants, paints, stains, and other hazardous chemicals.

Dumping of hazardous waste, construction materials, electronic scrap, universal waste, and CFC containing appliances are not accepted at the Port. The Concessionaire is responsible for scheduling the removal of these items. Violations associated with improper dumping will be subject to liquidated damages as reflected on the fee schedule as outlined in Section 18, Table of Liquidated Damages.

#### 8.7 Training

Concessionaires are expected to participate in current and future recycling or other environmental programs. Participation in these programs is coordinated through the Airport's Environmental and Solid Waste Departments. Initial training, education/outreach materials, and recycle bins for back-of-house areas in each Concessionaire's units. Concessionaires are responsible for training their employees on the proper use, sorting and disposal of all waste removal items at least annually or as part of new employee orientation (depending on job function). The Port will offer training on a quarterly basis as well as offer a train-the-trainer program for all Concessionaires to ensure coverage for all new employees.

#### 8.8 Food Donation Programs

The Port facilitates a Food Donation Program in partnership with the Airport's local food bank and encourages Concessionaires to donate unsold food through this program. Concessionaires desiring to find out more about participating in this program can contact the Airport's Environmental Dept.

### 9. SAFETY AND SECURITY

Safety and security is everyone's business. All Airport tenants are required to follow the Airport Rules and Regulations, Safety and Emergency requirements and procedures. This information can be found at <http://www.portseattle.org/Business/Airport-Tenants/Pages/default.aspx>. The following sections are in addition to and not in lieu of the safety and security requirements:

#### 9.1 Emergency Evacuation Plans

The Concessionaire is required to submit an individual Emergency Evacuation Plan and Map at the opening of their location(s). Every Premise location is required to have a site specific evacuation plan separate from the General Evacuation Map provided by the Port.

- All maps must detail the evacuation path from the unit space and storage areas a Concessionaire designated evacuation assembly point.
- A written evacuation plan including emergency procedures must accompany the map and be placed in both the back and front of house.
- Front of House placement may be within a binder and all employees must be trained on the evacuation process.

#### 9.2 Secured Units

Concessionaires are responsible for locking gates and doors when a unit is closed for business or construction. If the gates or doors are found open by any Airport personnel, the Concessionaire is subject to the fines (as outlined in Section 18, Table of Liquidated Damages).

#### 9.3 Prohibited Items Log

Concessionaires are responsible for adhering to the guidelines set forth from the Airport's Security department for the tracking and reporting, and addition or disposal of prohibited items (knives, box cutters, large scissors, etc.).

#### 9.4 Lost and Found

All items found in the Airport must be turned into the Airport's Lost and Found Office within 24 hours. If occurrence happens after the Lost and Found Office's normal business hours, then the return attempt must be made by the following business day.

#### 9.5 Maintenance and Mid-Term Refurbishment Construction and Repairs

The Port has established standards for separating construction sites from other portions of facilities that must continue in operation while construction is underway, as well as for controlling potential negative effects of construction operations on normal business. These standards are found in several locations including, but not necessarily limited to, the Concessionaire Concept/Project Submittal, Design Submittal and Construction Process, and the ADR Design Guidelines. Their applicable requirements must be incorporated into all project construction documents and must be strictly adhered to by all Concessionaires, their contractors, subs, and personnel and are supplemental to all security and safety protocols enforced throughout the Airport.

- All necessary and required life and health safety measures must be in place and maintained to protect customers and employees as well as construction personnel.
- All necessary and required security measures must be in place and maintained to protect essential operations.
- All necessary and required measures must be in place to minimize the negative impacts of construction, of all types, on adjacent, ongoing operations and those customers and employees involved in them.
- All necessary permanent and temporary signage must be in place and maintained to inform customers and employees about the construction that is occurring and how it may impact their activities.
- All proposals for construction or modifications to facilities or leased areas must be submitted to the Port Representative for written approval.
- All construction and modifications being requested must have proper permits obtained.
- All construction work within the Airport's property shall be ADA compliant.
- Strict adherence to all applicable Airport procedures is mandatory on the part of all parties, whether they are Airport staff, tenants, customers, passengers, design professionals, contractors, vendors, etc.
- Wet paint signs must be affixed while painting and removed prior to re-opening the store for business. Handwritten signs are strictly prohibited in public view.
- All construction waste including, excess chemicals or other hazardous materials damaged equipment, fixtures and furnishings, must be removed from the site as part of the project.

### 9.5.1 Construction and Repairs Safety Protocols

No construction-related operations, inside or outside of the project's vicinity, must expose either customers or employees to hazardous conditions that could cause them to slip, fall or be hit by protruding or falling debris or construction materials.

- Temporary walls/barricades at the storefront will be installed by the Port. Concessionaire and its contractors must keep them in good physical condition with no holes, dents, marks, graffiti, unauthorized postings, tears or other aspects, which are unsightly, compromise the intended purpose, or could be hazardous to human contact. Any damage will be at a cost to the Concessionaire.
- New, temporary evacuation plans must be provided by the contractor and posted in appropriate locations to replace existing plans at any time that existing paths of egress are changed temporarily by construction.
- Life safety systems that are affected by demolition and construction must be maintained in operation at all times. Otherwise, appropriate fire watches or other approved procedures/measures must be maintained until such systems are tested, found to be acceptable by the Fire Department and returned to full service.
- Floors within and adjacent to construction sites must be maintained dry and free of liquid spills and water to prevent slipping and falling, throughout the course of construction.
- No shutdowns of any systems shall be permitted unless an approved Shutdown Request Form has been obtained from Facilities & Infrastructure, Maintenance and/or the Engineering Department.

### 9.5.2 Construction and Repairs Security Protocols

- Door installations in temporary walls/barricades will be limited to the minimum possible number, be as inconspicuous as possible, and will have appropriate locks approved by the Airport in order to maintain safe, secure conditions and prevent unauthorized access to construction sites and construction traffic into non-construction areas.
- No existing security measures shall be modified or otherwise compromised without the prior establishment of alternate security measures approved by all the affected parties.
- Construction workers must be required to possess and display the appropriate SIDA badges and wear required PPE at all times.

## 10. INFORMATION SYSTEMS AND TELECOMMUNICATIONS

The Port owns and operates the Airport's free Wi-Fi system and fiber network consisting of voice and data. The Concessionaire is responsible for installing their own telecommunications (data and communication) systems inside the unit from the Port demarcation box.

## 11. EMPLOYEE SERVICES

### 11.1 ID Badges

All Concessionaires and third party contractors will need to go through the badging process to operate at the airport. The Credential Center is open Monday-Thursday from 6am-3:30pm and Friday from 6am-10:30am and 11:30am-3pm. Each employee will be required to complete Airport Security Training prior to receiving their badge. The Badge Training Center hours are Monday-Thursday from 8am-4pm.

To schedule badge appointments, training, and additional information regarding the badging process, please visit the Credential Center website at

<http://www.portseattle.org/Employee-Services/ID-Badges/Pages/default.aspx>.

\*It is important to check the website for any changes in the hours of operations for both offices as they are subject to change.

### 11.2 Parking

Concessionaires are allowed one complimentary parking passes per lease agreement for the Airport Parking Garage. These passes are ordered through Employee Parking Department. Monthly parking passes as well as employee transportation options can be found at <http://www.portseattle.org/employee-services/employee-parking/>

As of January 1, 2018, the employee shuttle bus runs 24 hours a day, seven days a week (including holidays).

### 11.3 Employment Opportunities

HELP WANTED signs are not allowed to be posted within or outside your Premises at any time.

For new employment facilitation please contact Airport Jobs at (206) 787-7501 to assist with job fairs, outreach and job postings for your company. Please reference Exhibit C, Employee Continuity Pool Overview, for additional information regarding the assistance that Airport Jobs provides.



EXHIBIT D

– Pricing Policy –

Pricing Policy for Concessionaires  
at  
Seattle-Tacoma International Airport

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It is the policy of The Port of Seattle (the “Port”) to require “street pricing” by all Concessionaires at Seattle-Tacoma International Airport (“Sea-Tac”). The purpose of this policy is to ensure that prices charged to Sea-Tac travelers for food, beverages, products and services are comparable to those charged at similar non-airport locations and establishments.

## SECTION 1 STREET PRICING

### Definition Generally

The “street price” of an item is the price charged for an equivalent item at comparable business locations in the Seattle-Tacoma area. In determining the “street price” for an item sold at Sea-Tac, the Port will be guided by the following considerations:

- For any menu items, products and/or services offered by a Concessionaire with a trade name commonly recognized by the public (e.g., Burger King, TCBY and Subway Sandwich), the price charged at the Sea-Tac location shall be within the range of prices charged for such items at up to three comparable business locations operating under the same trade name in the Seattle-Tacoma area.
- For any menu items, products and/or services offered by a Concessionaire that does *not* operate under a trade name commonly recognized by the public, the price charged at Sea-Tac shall be within the range of prices charged for equivalent items at up to three comparable business locations in the Seattle-Tacoma area.
- For any menu item, product or service offered by a Concessionaire that is not readily available from or sold by any comparable business locations in the Seattle-Tacoma area, the price charged shall be within the range of prices charged for either similar items sold from up to three comparable business locations in the Seattle-Tacoma area or equivalent items sold from up to three comparable business locations outside the Seattle-Tacoma area.

In all cases, the equivalent items and comparable business locations shall be subject to the mutual agreement of the Port and the Concessionaire; however, if the parties are unable to reach an agreement for the comparable locations or prices provided, the Port shall have the right to identify the equivalent items, select the comparable locations, and/or establish the price.

### Equivalent Items

For the purposes of establishing the street price of an item, comparisons will be made with products or services of the exact same size and quality. Differences in size or quality of a product or service will, all other things being equal, be considered a price differential.

### Comparable Business Locations

Comparable business locations are establishments selling similar products or services in active and robust retail locations like shopping centers or commercial districts. Businesses and locations that are partially or fully protected from competition (such as hotel lobby shops or sports arenas) or that operate using an off-price or discount pricing structure are *not* comparable locations.

## **SECTION 2 POLICY ADMINISTRATION**

Enforcement of this policy falls to the Aviation Business Development Department. In administering this policy, the Department is responsible for:

- Disseminating information about the policy to both current and interested Concessionaires
- Monitoring compliance with the policy
- Enforcing compliance with the policy

## **SECTION 3 ESTABLISHMENT OF STREET PRICES**

### **Baseline Pricing**

No later than sixty (60) days prior to the expected Rent Commencement Date, each Concessionaire must submit to the Port for its approval a list of at least three (3) comparable business locations in the Seattle-Tacoma area from which comparable pricing information will be obtained. Concessionaire should ensure that there is a comparable product or service among the comparable business locations for each product or service provided at Sea-Tac. Once approved, these locations will be used as a basis for price comparisons for equivalent items.

Concessionaire shall also submit to the Port by the same deadline a list of: (i) all menu items, products and/or services to be offered from Concessionaire's premises, (ii) the price that Concessionaire proposes to charge for each item, product or service, and (iii) the equivalent item, product, or service and its price from the comparable business location(s) on which Concessionaire relied to establish the street price.

This list shall specifically be subject to the Port's review and approval. However, the Port is not required to review every line item in the list, and the failure to object to the price proposed for a particular item at the time the list is originally submitted shall not prevent the Port from later objecting to a price that it reasonably determines is not a street price.

### **Pricing Adjustments**

If the Concessionaire proposes to change any of its items or prices, Concessionaire must submit to the Port, for its prior review and approval, the proposed changes. Concessionaire may also propose to change its comparable business locations if, for example, the establishment is no longer comparable or closes. Concessionaire must submit a justification for any proposed change. The justification for the street price should generally follow the list format required for Concessionaire's initial price approval. Concessionaire may not change its prices without prior written approval from the Port.

### **Annual Reporting**

Each Concessionaire must submit an annual Pricing Report that provides evidence of its ongoing compliance with this Pricing Policy. The annual pricing report must include a price comparison for each concession unit operated by the Concessionaire. However, prices do not need to be

submitted for all menu items, products and/or services. Instead, the annual Pricing Report only needs to contain price information for the following items:

<b>Type of Concession</b>	<b>Items for Annual Price Comparison</b>
Specialty Retail	Top 25 products sold
Convenience Retail/Newsstand	Top 10 newspapers/magazines/books sold Top 10 gifts/souvenirs/toys sold Top 10 packaged snacks/candy sold Top 5 health & beauty aids sold Top 5 travel/business accessories sold
Duty Free/Duty Paid Shop	Top 5 liquor products sold Top 5 accessories sold Top 5 souvenir/gift/confectionary sold Top 10 perfume/cosmetics sold
Financial Services and Foreign Currency Exchange	Top 5 products sold
Food Service	Top 25 food items sold Top 5 non-alcoholic beverages sold Top 10 alcoholic beverages sold (if applicable)

The Port will generally establish a due date for the annual Pricing Report relative to the date on which the initial pricing is approved; however, in the absence of an agreement on such date, Concessionaire shall submit the annual Pricing Report by December 31 of each calendar year. The Port will generally perform price checks within 30 days of the report due date.

#### Pricing Review

The Port may perform periodic price reviews at its discretion at any time by either Port employees or third parties (e.g., “secret shoppers”). In addition, the Port may require Concessionaire to submit a comprehensive pricing report at any time on fifteen (15) days’ notice, and Concessionaire agrees to submit such report to the Port.

#### **SECTION 4 ADDITIONAL PRICING GUIDELINES**

The Port has separate pricing guidelines for certain branded goods and pre-priced books and periodicals.

##### Branded Goods.

If Concessionaire operates a branded concept where prices are set by the brand, Concessionaire must use the prices set by the brand. Concessionaire must provide evidence of the brand pricing. If a brand changes prices, Concessionaire must provide the new prices to the Port prior to changing prices in the Airport location.

Pre-Priced Books and Periodicals.

The prices for newspapers, books, and periodicals that have a publisher's suggested retail price in U.S. dollars printed on the outside of the item do not need to be verified through the comparable pricing process. Concessionaire should charge the publisher's suggested retail price as marked at Sea-Tac.

Auctions, bankruptcy, close out, distress, liquidation, or going-out-of-business sales.

There shall be no auction, fire bankruptcy, close out, distress, liquidation or going-out-of-business sales conducted in the Premises; provided, however, that the Port may not preclude periodic seasonal, promotional or clearance sales, nor shall the Premises operate as an outlet/surplus store. In no event shall Concessionaire conduct any insolvency sales from the Premises.

## **SECTION 5 PRICING PROMOTIONS**

If the Concessionaire operates under a national or local brand, and this national or local brand is promoting a "special" product or price promotion that is advertised through audio, video, or print media in the Seattle-Tacoma MSA, then the Concessionaire shall offer that promotional product or price at the Premises during the same promotional period. If the Concessionaire operates under a national or local brand and offers a "value menu" (or other such similar program that promotes a number of items at a reduced price), the Concessionaire shall offer a similar promotion at Sea-Tac. Notwithstanding the foregoing, the Concessionaire may request the written approval of the Port to "opt-out" of a national or local promotion if it believes in good faith that participation in the promotion is not economically feasible due to certain required equipment or facilities not being available without a further investment by the Concessionaire, which is not required by this Agreement. The Port will determine, in its sole discretion, whether to allow the Concessionaire to opt-out, and Concessionaire agrees to be bound by the decision made by the Port.

## **SECTION 6 POSTING PRICES**

Prices and charges for all items sold or offered from the Premises shall be conspicuously displayed in a manner approved by the Port. In no event shall the price charged exceed an advertised price or the price marked on the item being sold.

## **SECTION 7 POLICY COMPLIANCE**

The Port will monitor Concessionaire's operations for compliance with the Pricing Policy. If the Port determines that a Concessionaire is not complying with the policy, the Port will provide written notice of the non-compliance. Concessionaire will have 72 hours from receipt of the notice to correct the prices and bring them into compliance. If Concessionaire does not correct the prices within the time provided, Concessionaire will be subject to liquidated damages as provided in the Lease and Concession Agreement.

If, in the opinion of the Port the prices or product quality does not meet the requirements of this Pricing Policy, the prices, serving portions or product quality shall be adjusted accordingly.

## *Addendum to Pricing Policy for Concessionaires*

### *Street Pricing Plus*

Notwithstanding anything to the contrary in the Pricing Policy to which this addendum is attached, the Port Commission approved a temporary, conditional increase to Concessionaire's pricing on November 24, 2015 as revised on June 11, 2019. This short-term amendment to the Port's street pricing policy allows Airport Dining and Retail (ADR) tenants to increase their prices over the otherwise applicable street price as follows from December 1, 2015 through December 31, 2019:

12/01/2015 – 12/31/2016: up to 10% over street prices  
01/01/2017 – 12/31/2017: up to 7.5% over street prices  
01/01/2018 – 12/31/2018: up to 5% over street prices  
01/01/2019 – 12/31/2019: up to 2.5% over street prices  
01/01/2020 – 12/31/2020: up to 5% over street prices  
01/01/2021 – forward: up to 10% over street prices

Concessionaires will only be allowed to increase prices if they meet certain criteria. The criteria Concessionaires must satisfy are set forth in the attached Frequently Asked Questions document published by the Port in December 2015.

If a Concessionaire seeks to implement "street pricing plus" as allowed by this addendum, the Concessionaire shall, in connection with any required submissions under the Port's Pricing Policy, specifically identify the street price for the particular menu item(s), product(s) and/or service(s) and separately identify the amount the Concessionaire proposes to charge based on this short-term, conditional increase over street prices.

## EXHIBIT E

- Links to Key Port Standards -

Leasing & Tenant Resources: <https://www.portseattle.org/sea-tac/leasing-tenant-resources>

Click on:

### **Tenant Construction and Design References for**

ADR Preventative Maintenance Program Manual

Tenant Design and Construction Process Manual

Design Guidelines

Design Standard

### **Airport Tariffs**

**Rules and Regulations for Sea-Tac**

**Airport Tenants, Sea-Tac Environmental Resources**



EXHIBIT F

– Schedule of Liquidated Damages –

Schedule 1 Liquidated Damages		Schedule 2 Liquidated Damages	
First Occurrence	\$250.00	First Occurrence	\$500.00
Second Occurrence	\$500.00	Second Occurrence	\$1,000.00
Third and Subsequent Occurrence	\$750.00	Third and Subsequent Occurrence	\$1,500.00

The specified liquidated damages amounts are in addition to, and not in lieu of, any other charge or amount that may be due for the conduct giving rise to the violation. Without limiting the generality of the foregoing, this includes late fees and interest as well as fines set forth in the Sea-Tac Rules and Regulations or other Port Standards.

Schedule 1 Violations	Schedule 2 Violations
Reporting Standards, including: <ul style="list-style-type: none"> <li>• Monthly Reports</li> <li>• Annual Report</li> <li>• Post Construction Reports</li> </ul> Storage Standards <sup>2</sup> Signage Standards <sup>2</sup> Other Operating Standards <sup>2</sup> Pricing Standards <sup>2</sup>	Food Handling Standards <sup>1</sup> Maintenance & Repair Standards <sup>2</sup> Pest Control Standards <sup>2</sup> Safety & Security Standards <sup>1</sup> “First Class” Standards <sup>2</sup> Customer Service Standards <sup>2</sup> Hours of Operation Standards <sup>1</sup> Delivery & Distribution Standards <sup>2</sup> Environmental & Waste Removal Standards <sup>2</sup>

<sup>1</sup> Subject to assessment per day for each day of the same occurrence (i.e. for a continuing violation, the first day and each additional day thereafter that the violation is not remedied).

<sup>2</sup> Subject to assessment per day for continuing violation that is not remedied within three (3) days of the date on which liquidated damages are first assessed (i.e. for a continuing violation, the first day and each additional day on or after the fourth day that the violation is not remedied).

## EXHIBIT G

### – Additional Non-Discrimination Covenants –

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the acts and the regulations (“Acts and Regulations”) relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Aviation Administration, 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:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and 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 the contractor of the contractor’s obligations under this contract and the Acts and Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts and Regulations, and related directives and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Aviation Administration to be pertinent to ascertain compliance with the Acts and Regulations and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as

the Recipient or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



## EXHIBIT H

### – Pertinent Non-Discrimination Authorities –

- 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); and 49 CFR part 21.
- 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, 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 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).



